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PARLIAMENTARY GOVERNMENT IN ENGLAND

A Commentary

by

HAROLD J. LASKI

London

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TO MY FRIEND

MAX LERNER

WITH WARM AFFECTION

Preface

It is important for me to emphasize that this book is not a formal description of the working of parliamentary government in England, but, essentially, as its sub-title states, a commentary limited to certain aspects of its working. I have tried, as best I can, to deal with those aspects of its working which are most relevant to the pressing problems of our time.

I owe many debts to friends for help in writing it. Among the dead, Lord Haldane and Mr. Arthur Henderson were good enough to discuss with me some of the problems here treated, on many occasions; and I have, I hope, learned a good deal from Graham Wallas in long years of eager colleagueship. Among the living, I should like particularly to mention Mr. and Mrs. Sidney Webb, to whom, like all of my generation, I owe an unlimited debt, and Dr. W. I. Jennings whose work on *Cabinet Government* has already taken its place as the classic work on the subject. None of them, of course, has any responsibility for the views I have expressed. Perhaps I may add that parts of the book have benefited greatly from the friendly, if vigorous, criticisms of my students in the London School of Economics and Political Science.

H. J. L.

July 3, 1938

LITTLE BARDFIELD, ESSEX

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CHAPTER ONE

Introductory

1.

No system of representative government has a history so continuous or so successful as that of Great Britain. It was born of a revolution which, in any real sense, may be said to have lasted almost fifty years. Yet if it was the deposit of a grim civil war, for two hundred and fifty years all its fundamental changes have since been effected by peaceful compromise. It has stood the strain of two wars of world importance; and it has been able to adapt itself to a condition in which the form of its political institutions has been successfully adapted to the substantive distribution of its economic power. In the century and a half of its modern history, the government of France has been reshaped by three violent revolutions; while the constitution of the United States was challenged, half-way in its evolution, by four years of civil war. If we date the history of representative government in Germany and Italy from 1870, the one lasted sixty-three, the other for fifty-two years.

The contrast is, on any showing, a striking one; and it is tempting to attribute it, as eulogists are wont to do, to some special British genius for the difficult art of self-government. That explanation, however, is an unsatisfactory one, since, obviously, it is a deduction from the history rather than a principle informing it. A passion for simplicity usually works havoc with political philosophers; and it is rare indeed for a phenomenon so complex as the success of the British government to be capable of explanation in terms of any single principle. Explanations which base themselves upon some supposed virtue in a national

character rarely deceive any save those who are responsible for their making. Anyone who compares the impression produced by Englishmen upon Frenchmen in the seventeenth and eighteenth centuries respectively will recognize at once that judgments of national behaviour are always a dangerous enterprise. There is a presumption in them both of unity and objectivity which rarely coincide with the facts themselves.

The "prerequisites," as Bagehot called them, of successful representative government are, indeed, both manifold and complex. It requires something more than intelligence and virtue. It presupposes a body of citizens who are fundamentally at one upon all the major objects of governmental activity; so fundamentally at one, it may be added, that the thought of conflict as a way of change is incapable of entering the minds of more than an insignificant portion of the nation. It requires, in the second place, a sense in the nation that no single class of any importance in the community is permanently excluded from power. For it has been not less true of the British than of other peoples, that the possession of power over a long period is corrupting in its nature; so that, in the long run, exclusion from power tends naturally to mean exclusion from benefit also. The rule of an aristocracy has always meant rule in the interest of that aristocracy; the rule of business men has always taken a narrow view of the interests both of agriculture and the poor. Unless a body of men who feel that their place in the society is, granted that they are numerous enough, either certain to receive consideration or, alternatively, that its refusal will jeopardize the position of those in office, they are unlikely, if the object involved is one to which they attach any profound consideration, to acquiesce at all easily in the maintenance of social peace.

A third condition of successful representative government is that it should be built upon widely diffused habits of tolerance throughout the nation. Men who are to live together peacefully must be able to argue together peacefully. They must not run to suppress criticism of things as they are; rather they must be willing, if pressed, to invite its examination. They must refrain from pressing upon a significant minority principles of legislation by which the latter is outraged. Without this tolerance there is no prospect in the society of compromise; and every subject of division then becomes a high-road to disruption.

It is, I think, historically obvious that the habits of tolerance are born of a sense of security. By that I mean that the members of the society are confident, above all in matters of economic constitution, that their established expectations will be fulfilled. For tolerance depends on the existence of a mood in which men are susceptible to rational argument; and nothing is so destructive of this temper as the fear that is born of the disturbance of a wonted routine. Political reform in England was postponed for forty years by the terror born of the French Revolution; and there was a moment when it seemed not unlikely that the compromise of 1832 would not be effected peacefully. Men cannot settle their differences by reason when the passion of fear hangs over their lives. It may be the outcome of defeat in war. It may come through a wholesale disruption of the currency. It may be the invasion of some custom or right held specially dear by those to whom it is denied. Whatever the causes, the deeper the disturbance of the atmosphere of security, the less likely will it be that a free system of representative government can be successfully maintained.

When, seventy years ago, Bagehot made his famous analysis of the English Constitution, he added two further

conditions which he regarded as essential. The people, he thought, must, as a mass, have the habit of deference; and he regarded the institution of the monarchy as a "myth" which, by its magic influence, persuaded them to accept the rule of their betters. "They fancy," he wrote, "they are governed by an hereditary queen, a queen by the grace of God, when they are really governed by a cabinet and a parliament—men like themselves, chosen by themselves. The conspicuous dignity awakens the sentiment of reverence, and men, often very undignified, seize the occasion to govern by means of it."

We need not deny the influence of the monarch's person in unifying the sentiment of a nation. But it is obvious enough that Bagehot's myth, in fact, goes a very little way. For, historically, myths of this kind are only successful so long as, beneath their aegis, the "efficient" part of a constitution, as he termed it, is able to do its work successfully; and this, in its turn, depends upon the ability of the system, as it functions, to satisfy the legitimate expectation of citizens. Where it does not, as with Charles I or Louis XVI, or Nicholas II, the ability of the myth to do its work of conviction vanishes pretty rapidly. A successful myth operates only where a régime is secure; it collapses as that régime is undermined.

Underlying Bagehot's insistence on the importance of the "dignified" part of a constitution, there was a deeper apprehension, hardly, perhaps, made fully articulate, which is more important. Bagehot, it must be remembered, wrote before the maturity of trade unions, before, also, the Education Act of 1870 had exercised any effect upon the population. He doubted the compatibility of representative government with universal suffrage. He was afraid of the ignorance of the multitude. The combination of the lower class might, he thought, drive their "betters"

from power, and he urged a coalition of the aristocracy and the wealthy against this danger. It is clear enough that what he had in mind was a situation, like that of Chartism, or the French Revolution of 1848, in which the masses would use their political power to undermine respect for property. Particularly, he feared a situation in which the masses should find "two combinations of well-taught and rich men constantly offer to defer to their decision, and compete for the office of executing it. *Vox populi* will be *vox diaboli* if it is worked in that manner." "A political combination of the lower classes," he wrote, "as such and for their own objects, is an evil of the first magnitude; a permanent combination of them would make them (now that so many of them have the suffrage) supreme in the country; and their supremacy, in the state they now are, means the supremacy of ignorance over instruction, and of numbers over knowledge."

That fear of the brute force of numbers is a characteristic of the generation in which Bagehot wrote. Mill and Maine and Lecky are all, in different degrees, pervaded by its influence in their writings. It is, of course, clear now that in some ways their fear was greatly exaggerated. They under-estimated the power of education to make men take long views; they under-estimated the influence of propaganda in maintaining ancient routines of thought. But, at least from one aspect, their fear of a democracy based on universal suffrage has a significance in which their warnings are of great importance.

For it is certain that in any society where men and women enjoy universal suffrage, there will be a persistent urgency to use their political power for the improvement of their material conditions. So long as the economic system is able continuously and measureably to respond to their demands, they are unlikely to discuss those

foundations which, as Burke insisted, it is always dangerous to examine. They will want security, higher wages, shorter hours, better housing, more ample education and opportunity for their children. So long as the system is able to provide them with these things, so long, in Bagehot's own phrase, as the "better" classes can "remove not only every actual grievance, but, where it is possible, every seeming grievance, too; they must willingly concede every claim they can safely concede," all will be well. But the essential and central problem of representative democracy is the question of what the "better" classes can do when some claim is made which, in their judgment, they cannot "safely" concede. For Bagehot, no doubt, the idea of "safety" was an objective one; something, perhaps, that could logically be deduced from the postulates of that political economy of which he was so brilliant an exponent. Yet it is clear enough that those postulates were, in fact, the half-conscious assumptions of a class which had made them work and built its conceptions of "safety" upon the fact that it had come to think of no others as possible.

The real problem was one which was confronted in this period only by Tocqueville among Liberal, and by Marx and his disciples among Socialist thinkers. It was the consequences of the situation that might arise if the conception of "safety" in the granting of concessions was viewed differently, even antithetically, by the different parties to the political equation. Men would then be in disagreement about exactly those fundamentals unity upon which, as Bagehot saw, was the condition of successful government in representative democracy. "Our whole political machinery," Lord Balfour has written, "presupposes a people so fundamentally at one that they can safely afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-

ending din of political conflict." It is that unity which explains the remarkable contrast between the political history of Great Britain and that of its continental neighbours.

It is a unity born of economic success, of success in war, of success in empire-building. Out of these came an expanding volume of wealth which permitted the policy of concessions which Bagehot recommended to be continuously applied. Moments of danger, like those of the Chartist movement, were transcended peacefully because each of them broadly synchronized with a great economic move forward which permitted the conference of increasing material benefit upon the masses. That conference, moreover, in nowise endangered, at least until the close of the war, the privileges or the security of the "better" classes; even so late as 1908 an eminent American observer could see no future for the Labour Party save as a minor partner in the Liberal alliance. It was widely held, until the outbreak of the war, that the capitalist foundations of society were not seriously in question. It was believed that the new socialized Liberalism of which, perhaps, T. H. Green was the most notable exponent, had built a philosophy of State-intervention which would safeguard in perpetuity at least the large outlines of the Victorian compromise. The main bulk of British Socialists themselves hardly doubted the validity of this view. Nourished, directly or indirectly, on the views of the Fabian school, they thought of the State-power as a neutral force which responded objectively to the will of an electoral majority. They had no doubt that reason was on their side; and they assumed that they had only to persuade that majority that they were right, to proceed to use the power of the State for the Socialist transformation of economic institutions.

This simple theory, no doubt, is still the predominant view in this country, though it has received some rude shocks in recent years. Its acceptance is built, in fact, upon a long series of assumptions none of which has been adequately tested. It believes, clearly, in the existence of an objective reason which compels men to peaceful acceptance of its conclusions whatever be their interest in the result of its application. It regards democracy as the supreme good; and it refuses to visualize the operation of democracy in the framework of the capitalist system to which it is so vitally related. It differentiates between the experience of continental countries, and that of Great Britain, on the ground that our national character and historic traditions create decisively different possibilities here; British capitalists, in view of that character and those traditions, will not, it is assumed, act like continental capitalists when their privileges are threatened. It is, moreover, a purely rationalist interpretation of political action; it hardly considers at all the degree to which, in politics, reason has its opportunity only where men have an equal interest in its findings. Above all, perhaps, it has never seriously examined the relation between economic power and political power, the degree, that is, to which the authority of the State is subordinated to the logic of the economic foundations upon which it rests.

As Bagehot and, indeed, most of his generation saw, the position is far more complicated. Constitutional principles and forms do not operate in a vacuum of abstract reason. They are a method intended to secure the triumph of certain ends; they are shaped to the purposes of those ends. The English State of the last two hundred and fifty years is the institutional expression of that Liberalism which received its first classical expression in Locke. It was the affirmation of the right of the property-

owner to be protected against arbitrary interference in the enjoyment of his property. The business of the State was to find the terms upon which that enjoyment could be most amply protected. How narrow was the conception of the State's function Adam Smith was not slow to admit; for him the main function of justice was the protection of property. "The affluence of the rich," he wrote, "excites the indignation of the poor, who are often both driven by want and prompted by envy to invade their possessions. It is only under the shelter of the civil magistrate that the owner of that valuable property, acquired by the labour of many years, or perhaps many successive generations, can sleep a single night in security." That the protection of property was the main end of the State was also the view of Burke. "To provide for us in our necessities," he said, "is not in the power of government. It would be a vain presumption in statesmen to think they can do it. . . . It is in the power of government to prevent much evil; it can do very little positive good in this, or perhaps in anything else." The underlying assumption of this attitude was, perhaps, put most clearly, if somewhat starkly, by Arthur Young. "Everyone but an idiot," he wrote in 1771, "knows that the lower classes must be kept poor, or they will never be industrious."

The English Liberalism of the last century has, in outward form, departed widely from that attitude. It has built a State in which freedom of speech and association, equality before the law, universal suffrage, compulsory education, and religious liberty, are postulates to which all parties give adherence. More: the police-State of the early nineteenth century has given place to the social service State of the twentieth. Upon a scale of which Bagehot could not have dreamed the State has used its supreme coercive power deliberately to mitigate, by its

conscious intervention, some of the harsher consequences of economic inequality. The improvements in public health and education, in housing and the facilities for recreation since Bagehot's day, are quite literally immense. The assumption made by most politicians is that there is no reason to assume any permanent suspension of this progress unless there supervenes some unlooked-for catastrophe. Social progress, no doubt, will have its ups and downs; we are not yet, for instance, the masters of the consequences inherent in the trade-cycle. But, given good will and patience, there is, it is argued, no inherent reason to suppose that our constitutional system is not elastic enough to provide for the peaceful achievement of any social transformation upon which the electorate has decisively made up its mind.

There is, I think, in that confidence an omission to pay due attention to the generalization Saint-Simon made in one of the most remarkable of his prophetic insights. "The law," he wrote, "which constitutes the powers and the form of government is less important and has less influence on the happiness of nations than that which constitutes property and decides its use." Our political system takes for granted the private ownership of the means of production; the consequences of that assumption cover every nook and cranny of the law. All the great categories of our jurisprudence are soaked in the traditions of individualism. They assume property-rights which, save in the absence of direct contrary prescriptions from Parliament, are to be safeguarded from invasion. They are based, not upon the collectivist and corporate habits of the twentieth century, but on the liberal-atomic principles worked out from the seventeenth to the mid-nineteenth century. They were the work of men who believed that, with the triumph of the business man, a term had been

put to the need of revolutionary change. For, in their eyes, his victory ended the power of those barriers of race and birth and creed to prohibit his place in the sun. The true freedom was the freedom he had won—the freedom to acquire property and to be safeguarded in its acquisition. This was the magic that had turned sand into gold. This was what had brought the relations of production into harmony with the forces of production. Religion, ethics, political philosophy, all contributed to its sanctification. It was the "simple system of natural liberty" which had at long last enabled man to enter into his Kingdom.

The essence, at least, of this outlook was not touched by later changes. The concessions Bagehot recommended were made; they have not touched the class-relations of English society. Fundamentally, it still remains divided into the two nations of rich and poor. Fundamentally, also, any approach to equality of opportunity does not exist within its confines. Fundamentally, once more, the motive to production is not the need of the society but the ability of the owners of the instruments of production to make profit from their effort. Our society, as Mr. Keynes has insisted, has, upon this basis, become "absolutely irreligious, without internal union, without much public spirit, often, though not always, a mere congeries of possessors and pursuers." The political constitution it built is, in form, one which leaves the substance of governmental action at the disposal of that party or parties which command a majority in the House of Commons. But it is vital to realize that all the pivotal positions in the judiciary, the civil service, the defence forces, the police, are occupied by members of the governing class. The rules and habits in which they have confidence are those which do not disturb the social order they dominate. Here, as elsewhere, right and wrong, wisdom

and unwisdom in public action, are established in terms of the effect they have upon the existing social order. The question it raises is whether its framework, not seen abstractly, but in terms of the social order, of which it is the protective envelope, is elastic enough to admit changes which seek its basic transformation.

For, at this stage, both the method and the dynamic of change are different from anything known in the last two hundred and fifty years. Party government is still to-day, as it was in Bagehot's time, the vital principle of representative government. But both the principles and the interests underlying party structure have undergone a radical change. On the one side, there stands a party which, broadly speaking, represents a faith in the private ownership of the means of production, on the other is a party committed to the view that the system of private ownership has broken down and that the socialization of those means is fundamental to national well-being. It is, of course, true that the first is willing to continue the policy of concessions in so far as, within the limits of the national economy, this appears a feasible adventure; and it is also true that their opponents are anxious to carry out the policy of socialization with the minimum detriment to existing interests. Each is anxious, in fact, to discover the maximum common ground because neither desires to pursue a policy which would be regarded by the other as a challenge to democracy. But neither has seriously confronted the issue of whether the uneasy marriage between capitalism and democracy is psychologically possible in the period of capitalism's decline. While the party of the *status quo* remains in office, it is constantly outbid by its rival in what is offered to the electorate in return for its suffrages. Granted the nature of the party-system, the Opposition will one day become a Government. But it

then meets a situation when the changes it will recommend are not such as can, in Bagehot's phrase, be "safely" conceded by the party of property. That sense will inspire in business men a lack of confidence which may well go so deep as to provoke, as it provoked in 1931, a grave financial crisis. Can representative government work if one party to the political equation provokes by its policies a situation in which the economic stability of the society is threatened?

As the issues are now set, in fact, the problem that confronts us is the problem of whether our people is so "fundamentally at one," as Lord Balfour put it, as to be able to "afford safely to bicker." It is a test to which the parliamentary system has not had previously to submit. It threatens the general sense of security; thereby, it weakens the power of reason to maintain its empire over men's minds. The great characteristic of the previous period has been the general ability of each party to accept, without undue difficulty, the legislation of its predecessor, because this left undisturbed the foundations of the State. The perspective that now comes into view is one in which this characteristic can hardly obtain. Neither in the diagnosis nor in the cure for our difficulties is there any basic agreement between parties; and the remedies proposed by Socialists seek nothing so much as the transformation of the State. Not that only. They insist that necessary ameliorations must accompany the process of transformation. From the standpoint of a capitalist society, the bill of costs for these is a staggering one; as in 1931 its impact is the disturbance of business confidence and the prospect, above all in a time of economic difficulty, of budgetary disequilibrium. Are the psychological strains and stresses of such a programme not greater than a system of representative democracy can bear? If they are,

it goes to prove that the British Constitution, in the form in which we have known it, is merely an expression in political terms of a special parallelogram of economic forces. If they are not, then the British Constitution will be the first to witness a change made without violence in the class-structure of society. If they are, then the maintenance of parliamentary government in its classic form is no longer a feasible adventure. It then becomes a type of government suitable to capitalism in its period of expansion, but incapable of maintaining itself in the period of capitalism's decline. It would be one more illustration of the general thesis that forms of government are contained by the economic principle they express; and that they disappear as that principle ceases to meet the needs of a new time.

It is important for us to remember that the changes we are witnessing in Great Britain are universal in their nature. We assist at a spectacle as momentous in its implications as the transition from feudalism to capitalism. Abroad, at least, the pressures resulting from the differences involved have been everywhere threatening, and sometimes fatal, to the parliamentary system. Even here, in the brief period since the war, they have witnessed significant changes. They have resulted in an eclipse, which seems likely to be permanent, of the historic Liberal Party. Its members have discovered that in a choice between the defence of capitalism, and the acceptance of Socialism, their real interest, and, they would add, the interests of the nation, lie with the former. More than this. The acceptance by a great mass of Liberals of the policy of Conservatism has resulted in the formation of a "National" Government which regards the classic technique of opposition quite differently from its predecessors. For where, before the war, the idea that it was

the duty of an Opposition to oppose was regarded as of the inner essence of the parliamentary system, now it is increasingly urged that opposition as such is merely faction; and the tendency is to discount the whole validity of the party conflict as in and of itself a detriment to national unity. At bottom, of course, this criticism is no different from that made by Fascists of the parliamentary régime. A nation, they say, struggling to maintain its competitive power cannot afford the luxury of an organized brake upon the power of its Government.

Nor is this all. It is significant that our time has seen the first legislation against the trade unions in over a century. It has seen an urgent movement for the reconstruction of the House of Lords, not simply because, as a form of legislature, that chamber is now an admitted anachronism, but in order, as its proponents have avowed, to provide as strong a safeguard as is available against the success of a Socialist Government. There has been not only a deliberate and intense effort to revive and extend the prestige of the monarchy; even more significant is the revivification of the theory that the Crown is the guardian of the Constitution—a theory which leads straight to the notion that, in a period of crisis, it is the arbiter between parties; a position which, in an emergency, may easily become Bolingbroke's idea of a Patriot King. For reasons that I shall explore in detail later, the effort to exploit the personality of the monarch is of exceptional importance. It is not only a complete reversal of the classic Whig doctrine so painfully established in the two centuries after the Revolution of 1688; it is also a recognition that the prestige of the Crown—Bagehot's dignified part of the government—is a weapon of immense contingent value in future political conflicts, a weapon, it must be added, of which all the emphasis is

necessarily on the side of the *status quo*. Nor is it in this context irrelevant that a Prime Minister has warned the Labour Party of the danger it would run if, as a Government, it were to follow the advice of those who urge it to make a frontal attack on capitalist foundations. On Lord Baldwin's view, the safety of democratic government in Great Britain seems to involve a willingness on the part of the Labour Party to be an instrument of social reform on the old model. But that is to say that any attempt on its part to attack the foundations of capitalism, even when there is an electoral majority behind that attempt, is to put itself, as a Government, outside the understandings upon which the system rests. Once more we are back at the conception of things that cannot "safely" be conceded. We are warned, in fact, that the maintenance of representative government depends upon the willingness of the victor in a general election to respect the private ownership of the means of production. But that, obviously enough, would be the frustration of the whole purpose of such a victory.

"So strong," wrote Bagehot, "are the combative propensities of man, that he would rather fight a losing battle than not fight at all." But it is not at all certain that the mere force of numbers is as decisive in constitutional struggles as he appeared to imagine. The temptation to a party of property to use all its influence, direct and hidden, to rid itself of its opponents in an epoch of challenge, appears to be immense. As a rule, it is integrated in opinion, while its foes are divided. The technique of modern administration, moreover, gives it an advantage in initiative and striking power that it would be difficult to over-estimate. Its control of the forces of opinion are far greater than those at the disposal of its critics. It has, while it remains a Government, the immense advantage

that it can abrogate the spirit of representative government under the cloak of constitutional forms; that was an important aspect of Herr Hitler's arrival at power. I am not, of course, maintaining for a moment that the Conservative Party desires to destroy the Constitution in its historic form. I am arguing only that men value the forms of government at least as much for what they do as for what they are. It is the results of their operation, as these are translated into their daily lives, which create loyalty to the forms. Men did not go out to battle for an abstract dislike of the royal prerogative under Charles I; it was the result of its operation on merchant and nonconformist which sent them out into the field. Men, similarly, will respect the British Constitution so long as they respect what it does. And their respect will be a function of its ability to satisfy their established expectations. Once it begins to fail in this, they begin to doubt the validity of its forms.

That, surely, is the implied presumption of the warning explicitly made in Bagehot's essay. He was sceptical of the extension of the franchise because he did not like what he believed an extended franchise would involve. He was no democrat; and he believed that the wider the foundations of political power, the greater was the chance that ignorance would gain the mastery over reason. For intelligence, for him, stopped broadly with the "successful" classes; the men who had a banking account could alone appreciate the mysterious laws of political economy upon which the welfare of the nation depended. That was why he recommended a combination of those classes to inhibit the thrust to power of the ignorant multitude.

Bagehot wrote in a generation that was still oppressed by the fears of 1848. As those fears faded, men became more reconciled to the notion of a democratic society.

They had the confidence which came from an ever-increasing volume of trade. They found that the trade unions could, without undue sacrifice, be reconciled to the foundations of the existing order. Not, perhaps, until the turn of the century was there any revival of the doubts to which Bagehot gave expression. After 1906, they can be detected in an increasing degree as the demands of the working-class begin to be emphatically made. There is a period from 1906 to 1914 in which it seems that, despite critical moments, the alliance between Liberalism and Labour will keep the latter in safe leading-strings; as late as 1911 Mr. Ramsay MacDonald was discussing the possibilities of coalition with Mr. Lloyd George. But, as we now look back upon those years, it is clear that the unrest of 1911 in industry was not a superficial phenomenon but the index to a deep dissatisfaction on the part of the workers with their material condition. There was a new trade unionism abroad, as militant and determined as that which, after the dock strike of 1889, had given birth to the Independent Labour Party. That unrest made any permanent reconciliation between Labour and Liberal capitalism an impossible adventure. For the latter was already deeply involved in those diplomatic difficulties of which the war of 1914 was the outcome. That war ended an epoch; for its result, psychologically intensified by the Russian Revolution, was to breed in the Labour Party a conscious determination for an independent position in the State. Once it had come to this decision, an abyss had opened between itself and the older parties. The question was posed for the first time since 1832 whether the Constitution could successfully bridge that abyss without violent disruption.

This is, I think, evident upon any analysis. In no period since 1832 have so many concessions been made to the

workers by their masters; in no period, either, has the response to those concessions seemed so unsatisfying. The Socialism which, before the war, was hardly more than a pious resolution for conferences, has become, since the peace, an active slogan of battle. Whole areas of territory, the mining districts and the East End of London, for example, have been lost, it appears permanently, to the forces of Conservatism. The need to maintain an army of unemployed which has never been less than a million and a half and has risen, in economic crisis, to over three millions, has put the problems of order and taxation in a new perspective. The growth of economic nationalism has struck a grave blow at the basis of the English export trade; that has created special areas of distress in Great Britain which no Government has yet been able seriously to tackle because, at every point, the vested interests of capitalism stand in the way. At some point, this is true of all the major economic and social problems of the post-war years—housing, education, cotton, coal, iron, and steel, and agriculture. In all of them, the contrast between the demands of labour and the relevant Government action has been grave. If a Conservative Government has been in power, the cause of the contrast has, of course, either been the conviction that the demands of labour were wrongly conceived, or, as in the case of mining amalgamations, the inability of a Conservative Cabinet to transcend the opposition of its supporters. If a Labour Government has been in office, it has lacked the power, and so far, at least, perhaps the will, also, to fight against the refusal of its opponents to accept its solutions. In the result, while, in all these years, there has been a great mass of social and economic changes, the constitutional system has not, save in the single instance of the protective tariff, given rise to any major reconstruction in the realm of our national life.

The effect of this has, I think, been serious in many ways. In the first place, it has lowered the prestige of the parliamentary system in the eyes of public opinion. A Member of Parliament, even, with rare exceptions, a member of either of the front benches of the House of Commons, has much less hold upon the interest of the nation than in the pre-war period. The power of the debates themselves to influence public opinion has deteriorated also. They are less fully reported than in the past, with rare exceptions; there has even grown up a section of the public Press which barely attempts to report them at all. I add that this is not, in my judgment, either the result of a decline in the quality of members of Parliament or of any diminution in the interest or significance of the debates themselves. It is rather due to two things for neither of which can the institution of Parliament be held responsible. On the one hand, the nature of the subject-matter with which Parliament has now to deal rarely lends itself to the direct solutions, the dramatic clashes of personality, which were characteristic of the pre-war period. Franchise reform, the principle of national education, Home Rule for Ireland, at least the large outlines of these issues could be seized by every responsible citizen; and they could be dramatized by men like Gladstone and Disraeli so that they appeared an intimate part of everyone's life. As soon as an issue capable of being so seized by the public emerges—the Revised Prayer Book, divorce law reform, the Hoare-Laval proposals—it makes the House of Commons at once the centre of the national interest.

The second cause is related to the first. Most of the questions now discussed by Parliament are of a quasi-technical character. Their very nature does not lend itself either to dramatic debate or to simplicity of journal-

istic interpretation. The details of a tariff schedule, the principles of a de-rating scheme, the terms of a subsidy to agriculture or shipping, these affect, by their character, less a general than a specialized public; their inherent news value is profoundly affected thereby. To get into the Press, therefore, they need the accompaniment of some external incident; otherwise they are crowded from the page by the superior interest of a dramatic murder, the presence in London of a famous film star, or the newest excitement in a dictatorial country. The result is the important one not only that politics are not the staple of popular discussion in the proportion that was the case in the Victorian age; the result is that the public is less interested in politics because, partly, it is less educated by immersion in the political process, and partly because it is less able to follow the results of a body of legislation less easily susceptible of discussion than in the past. A Parliament which is to interest an electorate of thirty millions must deal with objects that will arouse their attention. It has rarely been able to do so in the post-war years. For, if it did, it would be dealing with the foundations of the national life, and it is a major object of the Conservative Party to prevent such an effort; while in so far as the Labour Party seeks to deal with such issues, being in a minority, the result is a foregone conclusion when the division is taken. The result of a debate has little popular interest when it is a foregone conclusion.

A further fact has contributed to the decline in the status of Parliament. It is, necessarily, a far more overburdened body than in the past, because the area of its activities is so much more wide. The result is a great increase in the governmental control of its processes. The initiative of the private member has diminished. The intensity of party organization has increased. Practically

all political bills of any importance now emanate from the Cabinet; and the pressure on the time of the House is so great that the process of debate must be rigorously controlled. This means two things. It means, first, that, with exceptions I shall note later, the House of Commons has largely been transformed into an organ of registration for the will of the Cabinet; it means, secondly, that party discipline, owing to the exigencies of the situation, is now so strict, that only when a minority Government is in office is there any serious likelihood of a Government being compelled to resign or dissolve on defeat there. The contrast between this position and that of Parliament before the war is striking. It means that its processes are much less dramatic because the results there effected are, from a spectacular point of view, much less impressive. Governments are now made and unmade by public opinion outside the House of Commons rather than by parliamentary opinion inside it. In these circumstances, the picture painted by Bagehot of its impact on mid-Victorian opinion could hardly be true of our own time.

I emphasize the view that this is not a consequence of any inherent defect in the system itself. A Parliament with great principles to debate will still debate greatly; a Parliament that so acts as to jeopardize the existence of a Government will still arouse widespread interest. In either case, it will create intense discussion outside; and that process of public education, which is one of Parliament's most important functions, will be resumed. It is notable that when the Labour Governments were in office, both in 1924 and 1929–31, the galleries and the lobbies of the House were thronged with interested crowds; and it is worth remarking that few elections have been able to attract meetings so numerous or so full as those of 1929 or 1931 when it was realized that momentous issues hung

upon the result. The same is true, it is worth adding, of the Popular Front elections in France in 1936 and of the Blum Chamber which followed on it; and the general truth it implies is emphasized once more by the fact that the drama of the Roosevelt experiment has created more interest in the proceedings of the American Congress than at any time in its history since the Civil War.

The inference, I think, is clear. Parliamentary government, to retain its hold, must give the promise of great results. If it fails to do so, the electorate will look elsewhere for them. Nothing is more dangerous in a democratic State than a condition in which the people is persuaded that the fundamental instruments of its government are not equal to the tasks imposed upon them. A habit of lethargy is thereby induced which easily persuades a people to lend a ready ear to the siren voices of dictatorship. This is especially true in a time like our own. For we have reached the stage where the parties of the Right deny the premisses upon which the politics of the Left are conducted. The result of that division is simple. When capitalist democracy is challenged, it has to be enormously successful in the economic sphere if it is to maintain its authority. For the contrast it provides between its economic and its political configuration of power is, at best, a startling one. To maintain the loyalties of men it must be able continuously to satisfy their hopes. It must, that is to say, be capable of one of two things. Either the possessing class by which it is controlled must be willing to tax itself on a constantly augmenting scale for the benefit of the masses; or its volume of production must so constantly expand as to make possible an ever greater standard of life for the ordinary wage-earner. This second alternative, obviously, must be achieved on the basis of at least a maintenance of that level of profit which persuades the

capitalist to perform his function. If either of these alternatives fails, the power of the capitalist system adequately to exploit the forces of production is then stricken at its base; and no system is likely long to survive which produces the spectacle for the masses of a poverty which is not their own fault suffered in the midst of a potential plenty to which access is not possible under the system. They are then bound ultimately to consider whether that system itself is not the cause of the dissatisfactions from which they believe themselves to suffer. In those circumstances it is in the long run inevitable that they should turn to the party which advocates a change in the system itself.

Something like this, at least, is the condition in which we find ourselves; and it is important to think of its repercussions upon the economic basis of parliamentary government. For the parties of the Right such a change implies not merely a surrender of great privileges. It implies also the acceptance of a transformation which they have been taught by two and a half centuries of power to be fatal to the national welfare. They regard the good of the nation as bound up with their own good. Their defeat would be, accordingly, such a hazard of vital principles as to make impossible the old continuities of governmental policy upon which the parliamentary system has been built. They cannot be neutral in such a contest, when they believe that all they have and are is being called into jeopardy. At the best, they will lose that confidence in the Government which is always the condition of a successful transition from one economic system to another. At the worst, they may hold the right of the Government to make such changes, one that they cannot permit without challenge. The first mood leads directly to what is nothing less than sabotage of the Government. Investment halts, business is withheld; the economic strain

leads to a growing exacerbation of temper. In that mood, for a Government to go on with its programme is a challenge to its opponents unlikely to promote the spirit of compromise. In that mood, also, for it to withdraw is to admit that, whatever the will of the electoral majority, the owners of economic power are the permanent masters of the Constitution. For it then becomes obvious that they are, by reason of that ownership, in a position to dictate the possible limits of change. The State is their State; and its supreme coercive power can only be directed to those objects of which they are willing to approve.

The second mood, not less obviously, leads directly to civil war. It is the policy of Franco who refuses to abide by the results of an electoral decision on the ground that their consequences are impossible to contemplate. It is ridiculous to argue that such a condition is unthinkable in a country with the political traditions of Great Britain. It is exactly such a condition that, in the Home Rule controversy of 1912–14, Sir Edward Carson deliberately organized with the full and conscious assent of the Conservative Party. He built and munitioned an army, not hesitating to seek the assistance of a foreign power for its equipment. He jeopardized the loyalty of the British army. He compelled the surrender of Parliament to the will of the forces he represented as the alternative to civil war. What was possible over a relatively minor controversy like Ulster is certainly not impossible over a major controversy like the foundations of the economic system. Once more, it is necessary to affirm that the strength of parliamentary government is exactly measured by the unity of political parties upon its fundamental objects. Once that unity is broken, the fragility of the assumptions upon which it rests is even more obvious than it was when the Reform Act of 1867 awakened Bagehot to their implica-

tions. No subject is so likely to break down the barriers of mutual self-restraint as property; and what has now moved into the foreground of debate is the rights that attach to its possession.

2.

The British Constitution, moreover, is the expression of a politically democratic government, it is not the expression of a democratic society. The implications of that distinction are important. In Great Britain not only is there a contradiction between our economic power and our political power; what Mr. Tawney has called "our religion of inequality" has made a contradiction between our political democracy and the hierarchical character of our social system. It is, no doubt, true that wealth in Great Britain can purchase for itself access to the highest social place. But it is also true that, save for a favoured few, any serious approach to equality of opportunity does not exist. There are barriers in the way of ascent to the highest places in the State which the possession of ability alone is not sufficient to overpass.

There is little approximation to equality in educational opportunity; and that means that the main positions in the State are closed to the great mass of the nation. Access to them is largely a function of parental circumstance. Whether it be the law or the civil service, the armed forces of the Crown or the professions, the conditions of entrance to them are a heavy tax upon all not born into the middle or the upper class. Anyone who studies the composition of boards of directors in public companies, or appointments to such bodies as Royal Commissions, the British Broadcasting Corporation, the London Passenger Transport Board, will see that, for the most part, working-class representation is virtually ex-

cluded from them. It is the same with important positions within the Empire or in British embassies abroad. It is the same with membership of the House of Lords. Even in the House of Commons, the average age of membership in the Conservative Party is less by ten years than that of the Labour Party; that is the price of the struggle the working-class has to endure. It is, particularly, notable that in the hundred years which have passed since the Reform Bill of 1832 not half a dozen working men have been chosen by the Conservative Party to represent it in Parliament.

Nor is this confined to politics and industry. It is true, also, of the State Church; in 1937 all but one of the bench of bishops were educated in public schools. It is true of the whole machinery of the Palace, the whole surrounding atmosphere of its operation denies the essential thesis of democracy. The universities will recognize distinction in politics or scholarship; they will hasten to bestow their doctorates on rich benefactors. But there have not been half a dozen occasions in a century when service to the working-class has been a passport to an honorary degree. Anyone, moreover, who studies the honours list will realize that, direct service to the State apart, what is really recognized there is the inherent right of wealth to position; the modern House of Lords reads like a summary of the Directory of Directors. And perhaps the profoundest irony of it all is when we are asked to view with admiration the occasional visit of a member of the Royal Family to some working-class area or institution; or to perceive in a holiday-camp where the sons of the workers mingle for a brief fortnight with public school-boys, the proof that class-barriers have broken down.

No doubt there has been a real change in social temper these last hundred years; the reader of Dickens and

Thackeray, Trollope and Meredith can perceive a significant movement of opinion in a democratic direction. The status of the aristocracy is far less important now than then; though it would be legitimate to argue that the real change is the enhanced status of the plutocracy as such in its place. Oxford and Cambridge are no longer places where the sons of the wealthy only are trained. The scholarship system brings the children of the working-class to the universities, even to Oxford and Cambridge, who would not have made their way there fifty or even thirty years ago; there is far less chance than there was of a tragedy like Jude's. But here certain things must be remembered. The percentage of working-class children who get the opportunity of that secondary education which is the necessary passport to the university, is pitifully small; the demand for economy makes it still smaller. It has, for example, shrunk appreciably since the call of 1931 for "equality of sacrifice." And evidence goes plainly to show that the barriers which exist are largely unrelated to natural differences of ability; they are, rather, the result of the re-imposition of traditional differentials upon successive generations. Bad housing, weak health, defective nutrition, out-of-date school buildings, excessively large classes, uncertificated teachers, all these represent denials of opportunity to the workers' children.

The result of this situation can be put quite simply. Our society is, overwhelmingly, what Mr. Tawney has called an acquisitive society, and its main governmental apparatus is in the hands of those who have been themselves successful in acquisition. It is they who determine what the State shall do with its power. It is they who examine the needs of our society and decide to which of those needs, and in what degree, response shall be made. Very largely, indeed, the workers have to trust their

ability imaginatively to enter into conditions of life of which they have, quite naturally, no first-hand knowledge. Almost all of them enjoy security and a standard of living far beyond anything the great mass of the workers is likely to know. Almost all of them, also, enjoy that security and that standard by reason of the circumstances into which they were born. They tend, therefore, not only to think differently of the foundations of our society from those over whom they rule. Because they are, so to say, the conquerors, they tend to believe also that the system is justified merely on the ground that they are the conquerors. The implications of the idea of equality cast no shadow of serious scepticism over their social horizons. They are Bagehot's "better" class; they expect to receive, it should be added that they largely do receive, respect and deference from their inferiors. It is not unnatural for them to infer from their experience that the rejection of their social philosophy is the outcome either of ignorance of the "natural" laws of social organization or of envy from the defeated at the higher return to superior talent.

And all the emphasis of our social life is used to impose this point of view on the masses. In the large contours of its substance, our educational system is nothing so much as a gigantic training in habits of obedience. The Press, the cinema, the theatre, the Church, are all, in their total effect, agencies used for a similar purpose. They invest, for example, the inept routine of what is called the life of "society" with a glamour intended to conceal the price the masses have to pay for its fantastic ceremonies. They teach them to believe in the obligation to show gratitude to their industrial masters. They convey the impression that all industrial unrest is not the revolt of sober-minded working men against conditions too often intolerable, but the work of "agitators" betraying

their pathetic victims. They make heroes of working-class leaders who desert the Socialist movement. They utilize every rare instance of working-class ascent to their own ranks to misrepresent the proportions in which the career is open to the talented. They fight fiercely against every scheme of social reform; a century ago Bentham listed the whole armoury of fallacies they employ in defence of their privileges. Their whole outlook is still based upon the notion that the problem of poverty is insoluble even while they boast that capitalism has given to man an undreamed-of control over nature. They believe, in their hearts, that their wealth is justified, in part as a return to their talent, and, in part, by reason of the charity they so gracefully confer.

Yet in their hearts they hate and fear the poor. Nothing is so striking in our civilization as this one inexpugnable fact. It emerges in every great strike. It emerges, also, in the constantly reiterated belief that unemployment is the outcome of defective character. It emerges in the professionalization of charity; and it lies at the base of the philosophy of bodies like the Charity Organization Society. It can be seen in the widespread belief that there is too much education, or that our education is too "literary" in character; it has even been urged by an eminent Dean that our national education system must have gone too far since it has begun to enable the children of the working-class to compete with the children of the privileged. It can be seen in the attempt to draw a distinction between "safe" and "unsafe" trade union leaders. It was not a Socialist but Mr. Gladstone who said that "when the people of this country are silent, you say they are contented; when they are disorderly, you say you must not yield to violence." "Our streets," Mr. Shaw has written, "are fuller of feuds than the Highlands or

the Arabian desert." It is so because our religion of inequality breeds fear and hate and envy. There is goodwill, but there is not justice; and there is an uneasy feeling abroad that the denial of its justice is increasingly apparent to the multitude.

We cannot understand the parliamentary system in Great Britain unless we recognize that, beneath the appearance of democracy, this is the economic and social system it is intended to uphold. It was made by the owners of the instruments of production in the interest of their property; and the safeguarding of their conception of their rights is inherent in all the rules by which it moves. It has been compelled to confer the franchise upon the masses; it has been careful to maintain for property the substance of effective authority. For those who own decide what shall be produced, and their claim to rent and interest and profit is, as it is satisfied, the chief thing that determines the way in which we live. Without the power to command property, the citizen has nothing but his labour-power to sell. Whether he shall work or no is settled not by his will, but by the decision of the employer as to whether there is profit in his employment. He cannot demand work. If he does so alone, he is helpless. If he does so in concert with others, he is threatening the structure of law and order; and the coercive power of the State will be used to bring him to his senses. What we mean by bringing him to his senses is that he is compelled by force to recognize the rights of property. This recognition is called the will of the people.

But all this is to say that a political democracy which rests upon capitalist foundations has war, open or secret, in its midst. The distribution of wealth is deemed unsatisfactory. Capitalists are always striving to maintain

what they have; the workers are always pressing to obtain more. That is why each demand of the workers for a higher standard of life is first of all rejected, on the ground that it is impossible, and then, if it is urged with sufficient strength, in part, as a rule, grudgingly conceded. So it has been with factory regulation, with safety in the mines, with the hours of labour, with the establishment of a minimum wage. Nor has this resistance been confined to the purely economic relations of master and man. It has affected, also, the social relationships of rich and poor. The former have resented the need to tax themselves for measures like education, public health, facilities for recreation. One has only to watch the habits of rich ratepayers when some large municipal amenity is proposed to realize that, for them, it is psychologically impossible to understand why the State should provide for the poor services that their property enables them to purchase for themselves. The historic environment has so accustomed them to assume that the poor must remain poor as almost to compel them to resent provision which mitigates their poverty.

As I have said, the system worked well enough so long as it was in a condition of expansion. The problem for parliamentary government is what is to happen when, as now appears certain, the period of expansion is drawing to its close. The necessary effect of this is to exacerbate that latent war which lies at the heart of this society. The search for profit becomes increasingly more difficult. Concentration of capital becomes ever more intense. Technological revolution, with its multiplication of the unemployed, is quickened by the need to reduce the costs of labour in a competitive economic market. The balance of agriculture and industry is disturbed. The necessity to protect the home producer, with its consequential

impact upon the export trades, develops increasingly. The power to produce rapidly outdistances the power to distribute since the massive inequality of incomes involves an inability in the poor to meet the costs of purchase. And since, year by year, also, technological change increases at a revolutionary rate the productive power of our machines, the deliberate organization of scarcity becomes a necessary feature of the system. We adopt, on all hands, a deliberate policy of restriction-quotas and the like. But the inevitable result of this is an increase of price; and the consequence of that increase is a demand for higher wages in order to offset a threatened decline in the standard of living. Within the ambit of the capitalist system, there is no way of breaking this vicious circle save by the discovery, either at home or abroad, of new markets capable of the profitable absorption of our productivity. But, on any considerable scale, the poverty of the masses makes this impossible at home; let us remember that in Great Britain nearly ten million people spend a shilling less per week on food than the minimum laid down by the British Medical Association as required for reasonable physical existence. The conquest of markets abroad is possible; but that, as we have grimly learned, involves the international rivalry of States. They have to be strong in order to safeguard their markets, and their access to them, whether actual or potential. They arm in order to be strong. This has two inescapable results. On the one hand, it means a scale of taxation which inhibits the State from embarking upon alternative schemes of social reform; on the other, it means a competition in armaments which breeds distrust and insecurity. At the end of that grim high-road lies war.

Now parliamentary government, as I have said, involves the principle that citizens can settle their political

differences by the compromises of consent. It assumes not only that they are rational creatures; it assumes also that they discuss their differences by accepting the same premisses of discussion. There is no great difficulty in achieving that result so long as everyone can see that the society steadily satisfies the wants of its members. There is profound difficulty in achieving it when there is serious division within and the threat of war without. The division within means that the contrasts of an unequal society do not appear just to those who believe themselves excluded from its benefits. The threat of war from without means the need in the society to organize itself for a defence, the technical preparations for which are likely, in the long run, to sharpen the very divisions which provoke disunity. The power of reason to survive in this atmosphere is not likely to be great. The social tensions are such that what, in an earlier period, appeared abstract arguments now appear as threats to public order. Passions begin to rise. What seemed harmless becomes, in the context of passion, a danger to the wonted routines. And because the power of the State is behind those routines, passion drives its possessors to its exercise. They seek to control those elements in society which threaten the routine; if, as in Germany and Italy, the passion drives hard enough, they seek to suppress them. But those elements are precisely those which, under a democratic parliamentary system, arise naturally to defend the interests of the working-class—trade unions, Socialist Parties, even the co-operative movement. With their suppression, of course, the foundations of parliamentary government are undermined. The society is, as it were, in a state of siege. No society in that condition is ever amenable to the claims of reason upon which a parliamentary system depends.

This may be conveniently put in terms of an historical generalization. A democratic political system will always seek, in the long run, to become a democratic society. It will seek, that is, such a distribution of reward as will recognize either equality of claim, or such differentiations in the claim as can prove their relevance to a conception of justice framed in terms of an insistent drive to equality. At the outset, its attack will be upon those privileges of status, birth, religion, race, most easily recognizable as unjust in terms of that conception. Formally, at least, it will have little difficulty in securing their surrender. But it will then discover that the real source of privilege remains even when these have been destroyed. It will learn, as, very notably, the United States of America is learning, that merely to abolish the privileges of feudalism is in no sense to create an equal society. It will discover that the real source of privilege lies in the private ownership of the means of production, that this compels a system of class-relationships incompatible with its notion of justice. It will accept those class-relations just so long as, but only so long as, they directly and measurably satisfy the social demands they encounter. But so soon as those demands no longer appear to them capable of satisfaction at a level they deem adequate, they will seek to abolish that private ownership of the means of production as the direct and essential cause of the dissatisfactions they experience. Because the political system is democratic, they will seek to use its authority to effect this transformation. The alternatives they then pose to the owners of economic power are either abdication from ownership or the forcible destruction of the democratic basis upon which the political system rests. The State then assumes the form, in fact, of a capitalist dictatorship to inhibit the transformation it is sought to effect.

Clearly enough, in formal terms, the British Constitution provides all the necessary avenues to achieve this transformation peacefully. But every political democracy that is based upon the principle of inequality in matters of social and economic constitution encounters a difficulty here from which Great Britain is no more free than any other country. It is the difficulty that those who benefit by the inequality are so wedded to its righteousness that they tend to prefer to fight for it rather than surrender its advantages. They do not do so, let me insist, from any selfish motives. They do so because long tradition has accustomed them to a conception of justice in which the idea of economic equality has no place. They have the assurance of their achievements behind them. They have the conviction of their right to rule that is born of the age-long exercise of their right. They have the knowledge of the degree to which, even when defeated at the polls, they remain in psychological possession of the governmental apparatus of the country. They are driven by the passionate conviction that the transformation proposed is not only fatal to them, but fatal, also, to those with whose well-being they believe themselves to be charged. They are aware that attempts at such transformation have been defeated, even easily defeated, elsewhere. They have seen the immense cost at which the Russian revolution has established a Socialist system. In this background, it is at least thinkable that they will refuse to abdicate peacefully from their power.

It is important in this context to notice how many and how profound are the doubts of a democratic society in this epoch of crisis. We are warned of its fragility; we are told that of all forms of government it is the most difficult. It is suggested that there is too much interest

in politics on the part of the masses; if they were freed from the pressure of this interest, their minds would be set free for higher things like the service of religion. It is argued that the complexity of modern phenomena makes control by experts ever more essential, as though the problems of valuation involved in the co-ordination of governmental problems were matters in which the public judgment was no longer valid. Or we are told of the enormous importance of liberty, which is, somehow, held to be incompatible with increasing government control; and we are informed that we shall all be deprived of our freedom unless a halt is called to this development. That in this view is the implication that government must interfere no further with the rights of private property is rarely openly affirmed; but, on analysis, it always appeals that the safeguarding of private ownership is what the advocates of this attitude have in view. Some critics, like the Lord Chief Justice of England, emphasize the dangers of bureaucracy; by which, on analysis again, they are found in fact to mean that social reform must work in the leading-strings of those individualist principles evolved by the Common Law.

The temper, in short, that is emerging is one that is sceptical of democratic methods because it dislikes democratic ends. It was prepared for democratic government so long as certain fundamental interests were not touched by its evolving demands. As soon as these were brought into question, it was prepared at once to revise its views of the validity of the democratic hypothesis. That is evident in many ways. It is seen in the very different treatment meted out by British policy to the Soviet Union, on the one hand, and to Hitler and Mussolini on the other. It is seen in the implications of Sir Samuel Hoare's notorious phrase that the struggle between the

Spanish constitutional Government and General Franco was "a faction fight" in which we, as a nation had no interest; it must be rare, since 1815, that a British minister has announced our indifference to the results of a struggle between democracy and privilege. The fact is that, since the war, our foreign policy is largely unintelligible save as the expression of a determination to discourage all movements abroad which, seeking democratic emancipation, have been driven to recognize that the vested interests of property are the main obstacles in its path; and that discouragement has been enthusiastically welcomed by the propertied class of this country. They show a lack of self-confidence, a tendency to panic, a fear of fundamental examination, like nothing so much as the attitude in which Burke greeted the French Revolution. When a world-congress of churchmen urges the need for ecclesiastical bodies to think of the relation of the Christian religion to social problems, it is admonished by *The Times* to remember that the true business of religion is faith and not works. "A world conference," it said, "of Christians might have been better employed in pondering specifically religious subjects, instead of devoting much of its time to political and economic issues."[1] Christianity is held even by its Conservative votaries to be a way of life. "There is need," wrote Lord Salisbury, who, as an ex-leader of the Conservative Party in the House of Lords, can hardly be suspected of unfriendly feelings for private ownership, "for a pledge of loyalty to apply under God's guidance the spirit and principles of Christ to individual conduct, and to every department of social and national and international life." But in the judgment of *The Times* "this pledge of loyalty" is out of place when it deals with "economic and political

[1] *The Times*, August 2, 1937.

issues." These, in its judgment, have seemingly no place in a Christian way of life.

We are being prepared, in short, for a break in our habituation to the idea of political democracy. Its results are not what were expected. Our possessing class is not ready, as Matthew Arnold pleaded with them to be ready, to "choose equality and flee greed." At a time when the need for rational examination of fundamentals was perhaps more necessary than at any time since the Reformation, a temper is developing which gravely threatens the power of reason to maintain its empire. There is growing up a resistance to the idea that a democracy may examine the foundations of property. On the economic field, the owners of property consider sabotage and even resistance justified. On the political field, they consider at least the possibility of refurbishing ancient weapons of constitutional controversy, the power of the Lords, the influence of the Crown, in the hope that this will postpone, and perhaps destroy, the victory of Socialist principles. And all this is accompanied by incessant propaganda intended to convince the masses that their own ruin is involved in that victory. That the prophecy may not be falsified, preparation is made for the catastrophe.

There is a vital relevance in all this to the central problems of parliamentary government. For I must insist, once more, that its power to be effective depends not merely upon its methods; it depends also upon agreement upon the objects to which those methods shall be devoted. Disagreement is of minor importance when it is concerned with minor things; it is vital when it moves into the region of foundations. For then men who are led to question what the Constitution is doing are led very rapidly to question the validity of the Constitution

itself. And where the Constitution involved is, like that of Great Britain, not only in itself an infinitely complex thing, a matter of understandings and ideas and sentiments that are always half-articulate rather than explicitly expressed, the danger that it may be abused is great. We who have seen what judicial construction can do with a constitution so much simpler than ours, as in the Constitution of the United States, can never risk the separation of its underlying theory from its actual functioning. It is a dynamic thing, the instrument of a struggle for power between opposing parties. As an instrument, it becomes what it can be made to do; and this, in its turn, depends upon what those who operate its principles think it ought to be made to do in the special set of circumstances with which they are confronted. They will have, in those circumstances, an end they wish to serve; and they will normally and naturally assume that the way they make the Constitution serve that end is "Constitutional." It is from this angle that we must examine the "conventions of the Constitution" as the necessary basis for any real understanding of parliamentary government.

3.

"The conventions of the constitution," Edmund Burke has written, "determine the manner in which the rules of law, which they presuppose, are applied, so that they are, in fact, the motive power of the constitution. In the second place, these conventions are always directed to secure that the constitution works in practice in accordance with the prevailing constitutional theory of the time." But, obviously, the "prevailing constitutional theory of the time" is a very concrete thing. Men work the Constitution to make it attain certain ends they deem desirable; the theory is the expression of those ends.

"The association of constitutional conventions with law," write the authors of a classic report, "has long been familiar in the history of the British Commonwealth . . . it has permeated both executive and legislative power. It has provided a means of harmonizing relations where a purely legal solution of practical problems was impossible, would have impaired free development, or would have failed to catch the spirit which gives life to institutions. Such conventions take their place among the constitutional principles which are in practice regarded as binding and sacred whatever the powers of Parliaments may in theory be."

But men regard constitutional principles as "binding and sacred" because they accept the ends they are intended to secure. Will they so regard them if they are doubtful about those ends? It is a convention of the Constitution that the Standing Orders of the House must be so worked as to give full protection in debate to the Opposition. That convention, clearly, depends solely on the will of the majority; in a time of profound crisis nothing would be easier than their suspension. Most of the conventions are vague in form and imprecise in substance. They depend for their life upon the agreement of parties to the way in which they should be worked. Let that agreement be once withdrawn, and no Opposition will doubt that their interpretation by the Government is "unconstitutional." For it is certainly untrue to argue, as Dicey argued, that they must be ultimately obeyed because, otherwise, their violation would produce a breach of the law. The Army Act need not be passed annually in order to compel a summons of Parliament each year. Financial provision for national services could easily be made for two years instead of one. Even a defeated Government could remain in office,

once it had passed its financial legislation, and the bills relating to the discipline of the Defence forces, for almost a year. It is because circumstances have continued to make these conventions seem "binding and sacred," that is, convenient to the objects of the Government which observes them, that they are respected.

For consider certain other conventions, more delicate in their nature than those to which I have referred. It is a convention of the Constitution that the Cabinet is collectively responsible to Parliament for its acts; that convention was found inconvenient by the National Government in 1931; it was temporarily abrogated, despite the protests of the Opposition, by the "agreement to differ." It is a convention that the King should act only on the advice of his ministers. Does this mean that he must accept whatever advice they proffer, so long as they can persuade the House of Commons to approve that advice? Or does it mean that a King who disapproved of the advice given by one set of ministers could appeal to others to form a Government and seek to obtain, by means of a dissolution, electoral approval for his action? There is no agreement upon the point among the authorities. It is certain that a Government with an assured majority that was dismissed in such circumstances would regard the King's action as unconstitutional; it is certain, also, that the new ministers would, by the mere implication of accepting office, have taken an antithetic view of constitutionality. The mere fact that we do not know the limits of the royal power, that it can remain to be invoked, on one side or the other, in the twilight zone of crisis, sufficiently indicates the difficulties of the position. For it is certain that the limits of the prerogative would be judged, not on the precedents, which are doubtful by their antiquity, but by the approval or disapproval

by citizens of the purpose for which the prerogative was invoked. Let us remember that in 1936 Mr. Baldwin's opposition to the marriage of the Duke of Windsor led a section of opinion to urge on Edward VIII the desirability of a change in Government; it was only the self-restraint of the King and the firm agreement with Mr. Baldwin of the Labour Party which prevented a constitutional crisis of the first magnitude. Yet that firmness of agreement and that self-restraint may easily be absent on the next occasion when relations between the Crown and its ministers are strained.

Precedents, in short, do not establish conventions unless it is beyond cavil that all persons who may be bound by them will regard themselves as so bound. They are unlikely to regard themselves as bound if they feel really passionately about the purposes to which they become bound as the result of operating the convention. That is, I think, clear from the experience of the controversy over the Parliament Act of 1911; it is clear, also, from the experience of the conflict over Home Rule in 1914. In neither case was the issue pushed to a decisive constitutional choice. But, in each case, it is clear that we were dwelling within narrow margins which might easily have precipitated disaster. Or, take the crisis of 1936. Suppose that Mr. Attlee had accepted an invitation from Edward VIII to form a new Cabinet and, having dissolved, proved successful at the polls. Would that have meant that the King was entitled to appeal from his ministers to the country whenever he could find men willing to accept responsibility for his dissent from the policy of their predecessors? Such a view would soon come to mean that the effective pivot of constitutional action was in the hands of those able to shape the mind and will of the King. It would, obviously, be a pivot

transcending that party structure which is now the real dynamic of the Constitution. It would be bound to receive passionate opposition from those not included in the circle able to influence the royal mind. Sooner or later it would mean that the major political battle would be concentrated upon the limits of the royal power. But that is to discuss the responsibility of the Crown; and its irresponsibility is a dogma of the Constitution simply because, as we know it, it is workable only on the assumption that the Crown is neutral in all disputes of a political character.

Or let us take the convention which determines the relation of the two Houses of Parliament. These are now governed by the Parliament Act of 1911; and, within its framework, that statute has rendered obsolete the convention noted by Dicey "the understanding—a very vague one at best—that in case of a permanent conflict between the will of the House of Commons and the will of the House of Lords, the Peers must at some point give way to the Lower House." That point is now defined by the two years mentioned in the Parliament Act. But that period still leaves great room for conflict. It is not easy to imagine that a Labour Government, flushed with success at the polls, would be willing to see its essential measures hamstrung for two years by a chamber which it regards as nothing more than the reserve power of the Conservative Party. Or, let us suppose that a Labour Government attains power under conditions of financial urgency akin to those of 1931. Let us suppose that the emergency powers it proposes to take to deal with the situation are not approved by the City of London. It is at least uncertain that it would be able to secure the co-operation of the Peers in obtaining those powers. If it did not, it would be

bound, is, indeed, by its programme committed, to ask for the creation of a sufficient number of peers to override any possible opposition in the Upper Chamber. Is it certain that it would obtain the right to their creation? Is it not possible that it would meet a demand, by way, for instance, of a second general election, for an assurance that the will of the country was on its side? And is it not clear that in so strained a situation as this the exacerbation of party temper would perhaps prohibit, and certainly make difficult, any agreement between the Government and the Opposition as to what exactly the convention is that governs the relations between the two Houses?

In the usual sense, it is clear enough that the "fundamental liberties" of Englishmen are not in themselves a part of our constitutional convention. But it is certainly an assumption of parliamentary government upon which, ultimately, all its conventions rest, that the minority must be protected in its rights from outrage by the majority. In that sense, at any rate, the safeguarding of "fundamental liberties" is an important constitutional problem. The issue is twofold. It is, in part, the issue of leaving ideas so free that the Government which prevails is a Government of opinion; and it is in part the problem of so defining "free" as to secure agreement upon its substance from all parties.

That is a far more difficult matter than appears upon the surface. Legally, we have no fundamental rights in this country; we trust for their protection to the ordinary constitutional machinery of the State. And, in quiet times, we need not doubt that such protection is ample for all necessary purposes. The problem lies in the fact that in periods of rapid social change the substance of what appears fundamental to one sort of opinion does not

appear to be fundamental to another. No one argues that freedom of speech, or meeting, or association is unlimited; for at some point the absence of limitation is incompatible with public order. Freedom of speech, for instance, cannot mean, as Mr. Justice Holmes pointed out, the right to cry "fire" in a crowded theatre. Freedom of association cannot mean the right to form an armed body for the forcible overthrow of the Government. There are limits; and those limits are, in fact, defined by the Government's view of where these should be drawn. In this country the enjoyment of those rights is the exhibition of one of those paradoxes characteristic of our public life. For, on the one hand, the limitations of the law are severe, while, on the other, there is a tacit understanding that the limitations of the law shall not be enforced. The law, as Dr. Jennings has pointed out, is, for the most part, a legacy from the days "when the country was governed by a small section of the population, and when the 'lower orders' had no function but to obey." It represents the expression by that "small section" of what it thought its needs to be if it was to have power enough to maintain itself against challenge.

In an epoch of tranquillity the legislation, by common consent, has not been used. Its ambit is extraordinarily wide. "It is sedition," writes Dr. Jennings, "to endeavour to degrade the King in the esteem of his subjects, or to create discontent or disaffection, or to incite the people to tumult, violence and disorder, or to bring the Government or Constitution into hatred and contempt, or to effect any change in the laws by the recommendation of physical force. . . . A combination of persons to effect this object is a seditious conspiracy; and an assembly at which such statements are made is an unlawful assembly." To all this must be added the immense police control over

public speeches and meetings, the power to control processions, even, where the Home Secretary or a Chief Constable thinks it desirable, to forbid them for a stated period in some given district, and the right, under a statute of 1361, to order any person to find sureties not merely for his own good behaviour, but for that of persons who may not be under his control; in the recent case of Mr. Tom Mann, he was sent to prison for a refusal to find sureties even though the magistrate admitted that he had been guilty of no offence. Trade union action had been deliberately made more difficult by the Trade Union Law Amendment Act of 1927, the first legislation since 1825 intended to interfere with the freedom of the workers. The defence forces and the police were thought, before 1934, to be already safeguarded against the danger of disaffection by propaganda; but a statute of that year now contains provisions so wide that it may legitimately be argued that it would be an offence against the Act to make a pacifist speech in such a military area as Aldershot; certainly it would be difficult to say that a speech which there urged the absolute duty of non-resistance would not be such an offence. It was long ago admitted by Dicey that, as the law now stands, normal political controversy is only permissible because the Government does not seek to enforce the law.

It is not, I think, a sufficient answer to its implications to say that no Government would seek that enforcement unless it went out of its mind, or that the accused would always have, if he so wished, the protection of a jury. For the answer to the first point is, quite simply, that in times of serious strain Governments do go out of their minds; and the answer to the second is that a jury, in such cases, is almost always a collection of very conventional people asked to judge the conduct of people who

are likely by mere definition to hold unconventional opinions. The cases, moreover, are likely to be tried by judges whose unconscious assumption is that the holding of extreme opinions in the political realm is undesirable; the student of *R.* v. *Pollitt* will not be tempted to infer that judicial independence is the same thing as judicial impartiality. Judges, in at least the last hundred years, have had an enormous influence upon the verdicts of juries. It is certainly difficult not to feel, granted the nature of the jury-system, that a Government sufficiently panic-stricken to enforce the law will, in all human probability, be able to obtain the sort of panic-stricken juries it requires.

But even this is not all. For a Government, after all, presumably commands a majority in the House of Commons. If it is stricken with panic, there is at least a likelihood that its supporters there will show the same sense of panic too. There is no limit to the law-making power of Parliament; and a disturbed Government may easily mean legislation without limit against the "fundamental liberties" of Englishmen. A Defence of the Realm Act could control all the usual forms of propaganda upon which the critics of the Government rely. The latter, moreover, has in its hands the immense new weapon of broadcasting. Thereby it could create a state of tension without limit in public opinion, without its opponents being able to command any comparable weapon of response. There is no limit, in short, to the penalties upon opinion a Government in a panic may not be capable of imposing; and, when the panic has passed, all the blunders committed by it or its agents are pretty sure to be wiped out, like the blunder of *ex parte O'Brien*, by an Act of Indemnity. Certainly there is no occasion on which such an Act has been refused these last hundred years.

It is not a satisfactory answer to the prospect of these possibilities to say that they are in a high degree unlikely, that a British Cabinet does not lose its head, that the political genius of the nation prevents an abuse of such powers. A British Cabinet loses its head just like any other Cabinet when it is subjected to unwonted strains. Pitt after 1792, Sidmouth after 1815, both became responsible for reckless suppression; and the political genius of the nation in neither experience prevented the commission of grave injustices. The reactionary temper of those periods was part of a universal movement in which war and economic repression were the outcome of the revolutionary psychological changes induced by the French Revolution. The propertied class was everywhere alarmed; and it used the authority of the State to safeguard itself not merely from violent challenge, but also from any effective discussion of the economic postulates to which it owed its power.

The Russian Revolution has had on our own day a psychological influence at least as great as that of the French Revolution almost a century and a half ago. Like its predecessors, it has thrown the propertied class into a panic; its members have become persuaded that ideas and voluntary associations, which they once regarded with indifference, now constitute a challenge to their privileges. They move out to battle against them exactly as in the earlier time; old-time Jacobin has become new-time Bolshevik and he is similarly suppressed in the name of law and order But by these terms are meant not a framework of principles in application for which there is general agreement. What is meant is the defence of the old order from the danger of change. There is even less reason, in so much more interdependent a world, to suppose that Great Britain will remain free

from the pressure of these ideas. Its insular position, its historic traditions, its great wealth with its consequential capacity to set the limits of concession wider than elsewhere, are all of them, of course, important safeguards against extreme measures. But they are no more final safeguards here than they have proved elsewhere. They are all subject to the fundamental condition that men care so much more for social peace than for the rights of private property, as the present system views those rights, as to accept without counter-attack whatever disposition of their content the mass of the electorate may choose to make.

There is, this is to say, more room for compromise within the framework of the British system than has been found to be the case in other countries, though it must be added that room for compromise is a hope, rather than an assurance, of its successful attachment. The variables in the equation of social peace are as delicate as they are complex. It is not merely a matter of wisdom and self-restraint on the part of our governors. At least as important is the existence of the objective conditions which make possible their wisdom and self-restraint. They need international peace and economic recovery as the essential postulates of the conditions of successful compromise. These give men confidence, and, where they are confident, there is the prospect of mutual understanding. But there is no certain prospect of peace in an international situation which visibly deteriorates before our eyes. There is little prospect of permanent economic recovery when, all over the world, vested interests stand in the way not merely of Socialism, but of the very habits of successful intercourse which capitalism itself requires. It has its own inherent and inescapable logic. The world of vested interests cannot continue to deny that logic

without paying the price for it. And there can, in the light of the post-war years, be no possibility of mistaking what that price is.

To put it briefly, that price is the war of creeds. Established expectations become armed philosophies, and they go out to do battle with one another. Men whose feet are set on the path of war, whether internal or external, do not speak the same language; how then can they hope to understand one another? To assume, in this kind of atmosphere, that they will accept as "binding and sacred" principles so delicate as those upon which the conventions of the British Constitution rest is to go contrary to everything we know from historic experience. In the circumstances we confront, what they do is either to suspend the conventions—a direct challenge to those whose hopes depend upon their continuing operation; or they retain their form while altering the spirit which lies behind that form. In Great Britain, it is the latter danger by which we are threatened. Political parties feel the strain of the pressures to which they are subjected. They seek as best they can the formulae of peaceful adjustment. They emphasize the special character of our conditions; they urge us to remember that violent solutions are out of accord with the national genius of the people. But the sense of strain is there; and its appeasement depends upon the arrest of that deterioration of the world-position which the wisest of national statesmen are not, of themselves, in a position to secure.

Peace, in fact, depends upon our ability to bring the relations of production into a new harmony with the forces of production. That new harmony means, as in the past it has always meant, a wholesale invasion of the privileges built upon vested interests. They have to be persuaded or coerced into giving way. And, historically,

on any large scale and within any brief period of time, they have never, so far, been persuaded. For that persuasion requires a volume of mental adjustment which wholly contradicts the basic *weltanschauung* of those who have to be persuaded. Their lives have been tempered to the medium in which they live. Their conception of right is limited by the horizon of that medium. The State they built they conceived as an assurance of their purposes. Its apparatus of coercion was intended for nothing so much as to protect those purposes from invasion. They are asked to see that same State, that same apparatus of coercion, used for the denial of those purposes. And they are, more profoundly than any other, the religion by which they live. It is the religion which enshrines all that has made life pleasant for them. They no more doubt its principles than a good Mohammedan can doubt the promises of the Koran. It represents for them all the certainties that give colour and hope to their lives. Are they to admit, if regretfully, yet still freely, that all for which it stands is in fact grave error? Such an admission has not been the previous habit of mankind. Nor do we know of any change which should predispose us to believe that a change has taken place in the mental constitution of mankind.

We know, of course, that conflict is more disastrous, by reason of the weapons at its disposal, than in any previous age; but we are still, at least on fundamentals, prepared to fight rather than to give way. We can even, like Japan in the pursuit of its imperialism, lie shamelessly in the language of peace, and watch cynically the world refrain from protest out of fear. Little has changed since the Athenians ravaged Melos save the language in which we wrap our excuses for taking our Naboth's vineyard regardless of the price. It may be the pseudo-

learned of Germany inventing a fantastic racialism to hide the fact that their leaders have need of the positions held by Jews to reward their followers. It may be the jurists of Italy who prostitute their science to invent a legal philosophy for a non-existent corporative state. It may be the great American industrialists who, as at Ludlow and Herren and Chicago, shoot down strikers on the pretext that they are fighting to preserve freedom of contract. The sober truth is that those who have power do not propose to abdicate from its possession. They require an ideology to justify their hold to those who do not profit by it, perhaps even to justify it to themselves; and they use their coercive power, which they clothe in the majestic panoply of a State, to impose the acceptance of that ideology upon the masses. The coercion may well wear the appearance of consent so long as the masses do not challenge that possession. Once any considerable section of them does so, their criticism becomes a threat, their organization sedition or treason; and the power of the State is brought into play to crush the challenge to law and order. These are the invariable habits of power; and the greater the inequality they have to maintain, the more savage will be the suppression for which they are responsible.

This is the context, at least, in which the conventions of our Constitution are to be understood. Each generation will interpret them in the climate of its predominant opinion. Where that climate is calm, they admit of generous interpretations; where it is stormy, their construction is gradually narrowed until the interpretation put upon them by one side is unintelligible in its spirit to the other. There is no question here of sincerity or good intention. Any class which seeks to maintain its power must adapt the means to the end. As the perspectives

of our politics are shaped, the maintenance of capitalist democracy means, in the long run, the transformation of capitalism into Socialism by the methods democracy places at the disposal of the masses. That is the way in which the relations of production can be harmonized with the forces of production. But to harmonize them in this way is to contradict the limitations within which capitalism has sought to confine democracy. At the margins, the genius of each is the antithesis of the other. We have moved into one of those marginal periods in which the ultimate assumptions invented by one class for its own advance are sought to be used against that class by another which seeks to replace it. That, in bare outline, is the present disposition of the problem of parliamentary government. The battle has not been joined. We see only, as in the General Strike of 1926, or the crisis of 1931, the skirmishes which intimate the likelihood of conflict. But there is no more reason to doubt their meaning than there was to doubt that the attitude of Spanish privilege to the Azana republic meant that the maintenance of a liberal temper would prove an impossible adventure. If once men cannot reconcile the acceptance of a new social system with their consciences, they find it easy to go out on crusade. Once they are in that mood, reason is the instrument of their passions, and the temper in which tolerance is a virtue rapidly disappears.

Nothing in recent years, perhaps, brings out so sharply the growing divergence of temper I have here been noting as the reaction of this country to the problems of the Spanish civil war. To the Right, it has either been, as in the phrase of Sir Samuel Hoare, "a faction fight" in which we had no interest in the victory of either side; or, as with Mr. Garvin, it has been a fight of light against

darkness in which the victory of General Franco has been necessary if civilization is to be preserved. To the Left, sympathy for the Left has been a primary article of faith. The Labour Party was prepared, always with heavy doubt, to acquiesce in non-intervention, provided that it could become real; after the summer of 1937, it threw overboard that acquiescence. The working-classes have provided thousands of volunteers for the Spanish Government, and those who have died fighting on its behalf are regarded as martyrs to the cause of democracy. They arouse no such emotion on the Right. Indeed, on the whole issue, the two sides seem to have no common premisses between them. At best, the Right would regard the victory of the constitutional Spanish Government as full of difficulty, and its defeat as a problem in negotiation not incapable of solution by skilful diplomacy. To the Left, anything short of a complete victory for the Government forces would be an irreparable disaster. Their triumph is, as its leaders emphasize, the key to the survival of democratic liberties in Europe. The policy of the British Government has therefore aroused its passionate hostility. It has created suspicions deeper than any British action since intervention in Russia at the close of the war.

Why is there this cleavage? At bottom, the answer is that the things for which General Franco stands are approved by the Right, while those against which he is in combat are approved by the Left. The Right prefers to see the defeat of democracy in Spain rather than risk, in its victory, the admission of the authority of an elected popular Government to alter the foundations of property. The Left recognizes increasingly that the defeat of Government would be a fatal blow to that authority. It is difficult not to feel that each sees the relevance of its

choice in terms of our own problems. Certainly a defeat of the Spanish Government would encourage profoundly the forces in this country which feel that the rights of democracy halt at the frontiers of the private ownership of the means of production.

One final remark may be made. A constitutional system, it may be said, exists to promote the rule of law; nothing is less likely than that Englishmen will be willing to abandon a principle which, in some shape or other, goes back to the beginnings of their legal history. But the rule of law means only that the ends of law must pass through the interstices of a defined procedure; that does not define the end of law itself. That end is set by the objects to which the State-power in any society is devoted; and those objects in their turn are set by the class-relations of the society. We are back, in short, at that principle of Saint-Simon which I quoted earlier. In the marriage between capitalism and democracy which has given us our system of parliamentary government, the capitalism is more important than the democracy because the relations of property that it imposes give to the democracy its constitutive principle. The democracy cannot deny that principle without, as it were, dissolving the marriage that has given it birth. It may survive the dissolution, but that will be on the condition only that it is a divorce by consent.

I am arguing, therefore, that the validity of parliamentary government in Great Britain lay in the fact that, for those who made it, it expressed successfully the ends they sought to fulfil when they built society anew upon the basis of capitalism. The British Constitution was an instrument for men who were agreed about the way of life the English State should impose. It was nourished by the immense economic success of the system upon

which it was founded. The England that became the workshop of the world, the England that could achieve priority over all other nations in access to the world market, could afford to pay the price of all the compromises it involved. That explains the liberty, the tolerance, the social peace that Englishmen have enjoyed. They could, after 1689, afford to make concessions to one another which never implied the re-opening of fundamental questions. We must not, indeed, forget that, behind the success of the system, there lie both the grim struggles of the sixteenth century and the civil war of the seventeenth. We must not forget, either, that both the French Revolution and the Napoleonic wars gravely threatened its ability to remain successful. We must not forget, either, that though its success conferred upon it a prestige which caused it to be imitated all over the world, it has rarely been imitated successfully over any length of time. That is because, among most nations in which it has been tried, the economic foundations of success were wanting. They rarely had the economic leeway to discover that unity of sentiment which builds the habit of compromise into the foundations of the national political tradition. This is most notably true of Italy and of Germany. In both, there was a longing for the peace which the habit of compromise makes possible. In neither was there ever a sufficiently long epoch of economic well-being for the habit to take root. It was destroyed before it came to maturity because the price of compromise was deemed too high by the owners of economic power.

But the habit of compromise, as I have argued, does not exist in a vacuum. It is always subject to the limitation that it may be destroyed when the conditions that foster its continuance are destroyed. I have argued that they

are gravely menaced with ourselves. That menace is reflected by the antithesis between the views of the economic system now taken by the major parties in the State. Their differences inhibit that continuity of policy which in all large matters of social and economic constitution has so long been a distinguishing feature of English political history. By inhibiting continuity, they inhibit unity also; and that inhibition, as I have urged, at least raises the question whether the conventions of our system will work in the new phase into which they are passing. I have not, it must be noted, denied the presence of a will to make them work. I have insisted only that the power of this will to be successful depends upon conditions only partially within the control of statesmen. I have also given reasons to suppose that those conditions impose a psychology of their own which pervades, and may easily transcend, even those habits we regard as most firmly rooted in our tradition. We must not forget that the prelude to our historic compromise was war and revolution. Neither came because it was deliberately willed; rather, each came despite strong efforts to oppose its onset. We can only make the adjustments our situation requires in the degree to which we are conscious of the dangers we confront. For it is, above all, in our awareness of peril that we seem to hear the call to act while there is still time.

CHAPTER TWO

The Party System

1.

"PARTY government," says Bagehot, "is the vital principle of representative government." That is a generalization which appears obvious to most Englishmen; and, in some form or other, it has been pivotal to the working of our institutions since the civil war of the seventeenth century. It has, indeed, been copied all over the world; and nothing appears to us so definite a proof of dictatorship as when the dictator destroys, as he is logically driven to destroy, all political parties save his own. Yet the existence of these permanent organizations is a more striking thing than we who are accustomed to their operations can readily realize; and it is worth while to begin their examination by reflecting upon this fact.

The real business of a political party in Great Britain is to get a Government of its own leaders into office, and, if possible, keep it there. For that purpose, it seeks by every possible means to organize the electorate in the constituencies. It gives parties, dances, receptions. It holds meetings and organizes educational classes. It employs agents, speakers, canvassers. It raises funds for its activities. It seeks to permeate the local and the national Press with its propaganda. It tries to discover what is in the electoral mind and, as far as it can, to make the objects it believes to be desired by the public its own objects. Out of the great welter of confused desires by which every electorate is moved, it seeks to discover those which it believes most likely to prove attractive, and to use them as the basis upon which to win power.

So regarded, the functions, and even the methods, of a party are intelligible. But given a party in office as a Government, the processes of the party system are surely remarkable. For they have given rise, ever since the eighteenth century, to the idea of His Majesty's Opposition as an essential feature of our Constitution. We have, that is to say, a Government in office that is, presumably, trying to do its best. It is introducing measures which it believes to be for the good of the country. It is administering the whole machinery of the State as efficiently as it can. Yet we pay a large number of members of the House of Commons to obstruct public business as much as they can, to take the maximum advantage of the Government's mistakes, to insist that it is ruining the country, to extract from it, if possible, information by which this can be proved, and to flood the electorate with propaganda intended to show that the Government, however good its motives (and even these may be suspected), is in fact doing the worst possible things in the worst possible way. On one set of platforms, as in 1931, Mr. Ramsay MacDonald is a brave man who has sacrificed old party allegiances for the higher interest of the nation; on another, he is the lost leader who betrayed his followers for the riband to stick in his coat. To the pre-war Liberals, the Welsh Disestablishment Bill was a necessary incident in the structure of religious toleration; to Mr. F. E. Smith it was a bill which "had shocked the conscience of every Christian community in Europe." The leaders of parties become the object of affections and dislikes which, in such moments of tension as the Home Rule split of 1886, may make the ordinary social relationships effectively impossible.

The most striking feature of this mimic warfare is that it maintains (or has so far maintained) the peace and does

not lead to its infraction. There is drama and incident as one party gives place to the other as the Government of the day; but no Government, on defeat, has, so far, attempted to govern in defiance of electoral opinion. This is the more noteworthy because, with growing intensity since the foundation of the National Liberal Federation in 1877, mainly inspired by Chamberlain, and directed with genius by Schnadhorst, party organization has grown ever more rigid in character. It may be doubted whether, normally, there are a score of constituencies in this country in which a man would be elected to Parliament independently of acceptance of the party label. Roughly, that means that when he gets to the House of Commons he will be expected, on all major matters, to support the party he represents; if he fails to do so, it is pretty certain that he will not be adopted as its candidate at the next election. The cost of elections, moreover, has tended to make local party organizations increasingly dependent on central control; in the Labour Party, it is impossible for a candidate to be adopted without the official endorsement of the National Executive. Roughly speaking, it is accurate to say that every party has now a pretty definite programme, and no person can hope to be one of its candidates who rejects any of its major principles.

This rigidity is, of course, reflected in the House of Commons itself. It has meant that debates and divisions are in all normal cases stereotyped; we do not expect any wide liberty of speech or vote from the private member. Such elaborate cross-currents of opinion as were displayed, for example, on Lord Shaftesbury's Factory Bill of 1844, or in the Don Pacifico debate of 1850, on Palmerston's foreign policy, have now become impossible; they occur only on those rare, and usually minor, occasions when the Government permits a free vote in the

House. The rigidity, of course, means an increasing control of the House of Commons by the Cabinet; and the secret of that control lies in the fact that the leaders of the Government and the Opposition alike are in control of the activities of their members through the domination of the party machine. The day of the independent member has gone; and there is no prospect that it is likely to be revived.

The causes of this increased rigidity are not simple. Partly, of course, it is due to the fact that the vast electorate of modern Britain requires a far more elaborate party organization; this, naturally enough, has accreted power to itself. Partly, also, the great increase in the area of State-intervention has meant a great increase in Government business in Parliament; a more rigid party structure is necessary if that business is to be completed within the necessary limits of time. Partly, too, perhaps, it is possible that electorates of the modern size tend to accrete about principles in terms of personalities; they return their members less for their own sakes than for the leaders they are to follow. The whole system of party has become necessarily professionalized; and the very width of its tasks has driven it to a discipline not unlike that of an army. There may be protests against its intensity; there may be "caves" and even revolts. But most members of a party recognize that a break with it is not only a danger to themselves; it also increases vastly the chance that their opponents will be successful, if the break is of serious proportions. Any considerable rebellion in a party is, therefore, an occurrence unlikely save in the gravest circumstances; even in 1931, only sixteen members of the Labour Party crossed the House with Mr. Ramsay MacDonald.

It is a feature of the British system, though charac-

teristic effectively of English-speaking countries only, that there should, broadly speaking, be only two parties in the State which seriously claim the attention of the electorate. With some writers, indeed, this position has almost assumed the position of an axiom; and it is strongly argued that this is the best method of working representative government. I believe this to be true; though it should be added that the two-party system arises from accident rather than from design. Certainly the two-party system has the enormous advantages, first, that it enables the electorate directly to choose its own Government, and, secondly, that it brings home the responsibility for action taken to a determinate group of persons. In the multi-party systems of the Continent, the choice of the Government is transferred from the people to the elected chamber; and the voters who have wished to be ruled by M. Herriot may in fact find themselves governed by M. Poincaré or M. Laval. The multi-party system, moreover, either makes for coalition government, with its inherent erosion of principle; or for minority-government which is always liable to be weak and, consequently, to lack any effective clarity of purpose. If we assume that parties seek for power that they may translate into action the principles they profess, the more direct and decisive the choice the electorate has to make, the better is the function both of the electorate and of the legislature likely to be performed.

In an interesting analysis, Mr. Ramsay Muir has rejected this conclusion. He argues that multi-party government has the great advantages of avoiding "violent oscillations" from one side to the other. It makes "reasonable compromises and adjustments of view" both possible and necessary. He traces the true development of the two-party system to the evolution of its elaborate organiza-

tion. This has led to the strict discipline which has involved the "dictatorship of the Cabinet." "It has disturbed the working of our system of government," he writes, "by dividing Parliament into two serried and disciplined armies, a majority whose primary aim is to keep a party Government in office, and a minority whose primary aim is to discredit it in order to replace it. This gives unreality to the proceedings in Parliament and has greatly weakened its prestige in the eyes of the nation. Because the Opposition will seize every possible opportunity of discrediting the Government, the Government party must swallow all its scruples, and support the Government in all it does, abdicating the duty of frank and candid criticism except when it is not likely to have any serious result." With ourselves, Mr. Muir believes, "there is a significant and constantly recurring trend towards a three-party system; it is commonly checked by the working of the electoral system, but it continually revives." What he would like to see is a three-party system of the Right, the Centre, and the Left. These would "correspond more or less to the British Conservative, Liberal, and Labour. And this would seem to be the most natural grouping under modern conditions. In almost all countries, those who take a serious interest in politics may be divided into three types: first, those who do not desire any great changes in the social order; secondly, those who desire great changes, but only in a Socialist or Collectivist direction; those who desire great changes, but not in a Socialist direction—rather in the direction of creating the conditions within which individual enterprise can operate with most advantage to itself, and with least restriction of the liberty of others." Mr. Muir points out the fantastic disproportion between seats and votes in the present electoral system; and he

advocates the adoption of proportional representation as the best method "of ensuring that every substantial body of political opinion in the country should be represented in proportion to its strength." "It is only," he writes, "on the basis of the security and stability which proportional representation can alone secure that free and responsible criticism can be carried on."[1]

The argument is, obviously, both able and persuasive; I yet believe it to be wholly erroneous. There is no evidence that the prestige of the legislature is higher in countries like France, where the group-system obtains, than it is with ourselves; on the contrary, the deputy's freedom of manœuvre tends to discredit any Government by making it uncertain of the steady allegiance upon which alone a great programme can be carried through. The "significant and constantly recurring trend towards a three-party system" in Great Britain has, the abnormality of the Irish Party apart, occurred exactly twice in the last hundred years; it occurred in the thirty years of confusion after 1832 when the modern Liberal and Conservative parties were emerging from the political configuration of the pre-reform epoch; and it occurred again, slowly from 1906 to 1918, and more rapidly afterwards, when the emergence of Socialism as a new principle of political action in this country was re-shaping fundamentally the whole orientation of our politics. Since approval or disapproval of Socialism is now the real issue before the electorate, it is natural for the division of parties to turn upon their attitude to its principles. A centre party, such as Mr. Muir desires, naturally disapproves of such an evolution since, granted our system of voting, it tends to disappear between the two bodies who present the electorate with a definite and decisive choice.

[1] *How Britain is Governed* (1930), Chapters IV and V.

Mr. Muir desires to keep it alive; and he therefore holds the view that Parliament should be a mirror of national opinion; from which he naturally infers the desirability of proportional representation. It is important, first, to note that since Mr. Muir wrote, both Germany and Spain have pretty grimly disproved his contention that proportional representation gives security and stability to a democratic régime; these qualities are, as I sought to show in an earlier chapter, the result of quite different considerations. If we assume, for the sake of convenience in argument, Mr. Muir's three-party system on the basis of revised electoral methods, what is the result? Either we have one party strong enough, as now, to form a Government by itself, in which case there is not likely to be any vital change from the present position; or we have a House of Commons in which no party is strong enough to form a Government without support from one of its rivals.

The second situation must result either in minority or in coalition government. The weakness of the first hardly needs elaboration in the light of our post-war experience. Its consequence is the substitution of manœuvre for policy. The supporting party is the real master of the situation; and the Government postpones those principles in which it believes for others for which it hopes to gain support. Its measures, accordingly, always lack courage and consistency—virtues of the first importance of any governmental system. The second is an intelligible relation under either of two circumstances. It is intelligible during a war, when it is essential to postpone all other differences, supposing that there is agreement about the purposes of the war, to the single object of victory. That is a unity of specific limitation in time which, as the Lloyd George coalition made mani-

fest, is hardly likely to survive the conclusion of peace. It is intelligible, also, where, as with the Blum Government of 1936 in France, two parties separated by wide differences are able to unite upon a body of specific objects which they agree to be temporarily more important than those differences. It appears likely, on historic experience, that such coalitions require a dramatic background for their achievement; and it is probable that, like the National Government in 1931, they either result in permanent alliance (in which case there is, in fact, a return to the two-party system), or in a dissolution of the alliance which means a further period of weak government until the electorate makes up its mind about the direction in which it wishes to move.

The real truth is that Mr. Muir forgets the grounds upon which the Victorian party system worked so well. He forgets that the comparatively small electorates of those days were agreed about the objects of the State, and that the volume of legislation was neither big enough nor important enough to require, as it now requires, the initiative for its inception to remain in the Cabinet's hands, at least where major matters are concerned. He wants Parliament to govern directly, as it did in the Victorian period, at a time when the circumstances which made this possible have vanished. I shall discuss later in this book his view of the Cabinet as dictator. What is here important is the realization that once we grant the need for legislation on a body of coherent principle, the fragmentization of opinion may easily prove a major disaster. I omit from this survey the less vital arguments against proportional representation—its tendency to multiply groups, the ease with which, as in Germany, it multiplies, instead of diminishes, the power of the party machine. The evils it is sought by this method to

cure lie far deeper than any electoral machinery can remedy.

For if we look at parties at all closely we shall see at once that their dominant principles turn upon those views of economic constitution with which, at any given time, the nation is at all deeply concerned. If, as in the nineteenth century, Great Britain is confidently capitalist in texture, it is about the incidence of policy in promoting different aspects of capitalist ownership that their differences will chiefly turn. Their programmes and their subscribers will be predominantly relevant to those differences. If, as in our own day, the main national debate is either for or against the socialization of the means of production, party organization will mainly, and inevitably, group itself about that debate. Mr. Muir's attempt to find a permanent strand of British opinion, neither Conservative nor Socialist, which desires great changes in the "direction of creating the conditions within which individual enterprise can operate with most advantage to itself, and with least restriction to the liberty of others," breaks down partly because it is a perfectly good description of what most Conservatives would claim as their policy, and partly because, in so far as it seeks translation into measures which neither of the other parties would normally and naturally accept, it is not a basis for effective government. Rather it simply states, quite truly, that whatever the configuration of parties, there will be a corpus of opinion within the State that is unable to contain itself within the measures any Government will propose. Such a corpus may be able to influence the policy of parties; but it is highly unlikely that it will be able to control their dominant direction. Its emphasis, in any case, is clearly on the side of Conservatism by the fact that it associates its opinion with the maintenance of private ownership.

Parties, I suggest, are predominantly organizations which seek to determine the economic constitution of the State. I am not, of course, arguing that only economic considerations will determine their policy. The Labour Party will pay large attention to the Roman Catholic vote in matters of education; the Conservative Party will pay large attention to the voting power of Anglicans in the matter of Disestablishment. Every party is, to some degree, a federation of interests to which, as best it can, it will seek to accommodate its policy. But, that granted, the main basis of its operations is the economic basis; the policy of each is unintelligible except in the light of that understanding. It was the Whig acceptance of Free Trade which won for it the manufacturer's vote; and the Tories clung to protection as long as they could because they were so closely affiliated with the agricultural interest. Anyone who notes the changed attitude of political parties to the empire after about 1880 will recognize in that change a direct reaction to the perception of new economic opportunities.

Even more striking are the facts connected with their personnel and their funds. Working men have never played any significant part in the direction of the Conservative Party. An occasional worker has been put on its executive committee; it has found room for a rare candidate for Parliament, usually in a seat where there was no hope; but the highest positions have never been conferred upon them. The great autocrat, the landowner, the financier, the rentier, the business man, these have overwhelmingly predominated in its councils. We do not know with any certainty the sources of its funds. We do know that it mainly depends upon large contributions from wealthy men. We do know, further, that when one of its "safe" constituencies is vacant, the scramble to

obtain it is like nothing so much as a private auction in which the ability of the bidder to pay the costs of running the local organization is an important element in his success. We do know, also, that no small part of its funds have been raised by a private sale of honours comparable in character to the method by which James I replenished his treasury by the marketing of baronetcies. We do know, finally, that at each general election an appeal for funds on its behalf goes round in the name of eminent business leaders; and there is no reason to suppose that they are unsuccessful in the effort.

The complexion and habits of the Labour Party are, in these regards, wholly different. The bulk of its membership comes from the trade unions; and its National Executive Committee is mainly composed of working men. It is rare to find among its representatives more than an occasional rentier or business man; there will be a handful of barristers, doctors, and teachers; there are a dozen members of the House of Lords, about half of whom are peers created by Labour Governments to fulfil the statutory requirements of tenure of office. The essential direction of the party, in a word, is in the hands of the working-class, with a small admixture of "intellectuals" and minor business men. Its funds derive largely from the levies voluntarily imposed upon themselves by members of the trade unions; though a considerable part of the local funds is secured by contributions of a penny a week from members of constituency parties, and by such methods as bazaars, dances, and contributions raised at meetings.

We know little more of the sources of Liberal finance than we do of those of the Conservative Party. Certainly until about 1916 they were raised in much the same way as those of its historical rival; the funds of the Lloyd

George section from 1917 to 1922 being secured by an almost open sale of honours probably unprecedented in British history. Since 1922, no doubt, the Liberal Party has fallen upon more difficult financial days. But there is nothing to suggest that anything has seriously changed about its method of raising funds except the scale upon which it has access to them. Any party whose hope of becoming a Government is small, will rarely find it easy to attract rich supporters; and both the decline of Liberal propaganda, on the one hand, and the diminution in the number of its candidates, on the other, suggest that the Liberal Central Office has not been able successfully to cope with the withdrawal of interest in its fortunes by rich men. They have gone to the party from which results might be expected, or, alternatively, they have ceased to concern themselves directly with politics.

It is, I think, impossible to explain this striking contrast except upon the hypothesis that a party is essentially what is implied in the economic interest of its supporters. It is not likely that the Labour Party will consciously adopt a policy which would have the effect of seriously alienating the trade unions; and it is no more likely that the Conservative Party will announce its adherence to measures of which the result would be the alienation of business men's support. Each, at least in its fundamentals, is confined within a framework of principles pricked out for it by the support on which it must rely. Each, outside that framework, is free so to manœuvre as to secure the maximum electoral support that it can. No one, for instance, would expect an announcement from the Labour Party that, after careful consideration, it has come to the conclusion that the trade unions have no cause for quarrel with the Trade Union Law Amendment Act of 1927; any more than one would expect from

the Conservative Party an announcement that it is in favour of a compulsory minimum wage of three pounds per week. The area, in fact, within which each is free to manœuvre is drawn fairly rigidly for it by the economic character of the support upon which it relies.

Now the striking thing about the foundations upon which the principles of each party rest is the abyss by which they are separated. Liberal Government could succeed Conservative Government before 1924 with the assurance to business men that the basic economic structure of our society would be undisturbed. Anyone who examines the "Short Programme" of the Labour Party, issued in the Spring of 1937, will see that there is no longer any such assurance. There are promised to the electorate, in the event of a Socialist victory, not only wide measures of nationalization, to be completed within a five-year period, but also immense social reforms, which include the abolition of the Means Test for the unemployed, the revision upwards of the insurance rates paid to the latter, and the raising of old age pensions to one pound per week to a single person, and thirty-five shillings per week to a married couple. The financial implications are clearly immense. More: this kind of legislation is a conscious disruption of the old continuity of policy upon which the parliamentary system previously rested. It is built upon a response to the demands of different interests; it assumes a society motivated quite differently from that of Great Britain at the present time. It is not, I think, too much to say that it is an attempt deliberately to transform the purposes to which the State-power is devoted. It represents one of those "violent oscillations" which Mr. Ramsay Muir has told us it is the purpose of the party system to avoid.

2.

Will party warfare over differences so wide as these continue to be "mimic" in character? Can we, in Lord Balfour's phrase, "afford to bicker safely" about fundamentals? The possibilities, clearly, are these. The character of the Labour programme may prevent it from getting a majority over any period it is necessary to consider. In that case, the Conservative Party remains in power, without the possibility of challenge within the framework of the Constitution. Or the Labour Party is victorious, and is able peacefully to carry out the changes to which it is committed; this, as I have suggested in the first chapter, would be a unique revolution in history. Or, thirdly, the Labour Party is victorious, but finds that the implementation of its victory is impossible save in terms of crisis, both economic and constitutional. Would it be possible, in this last event, to maintain the classic habits of parliamentary government?

Let us recognize what is involved. A Labour victory would occur at a time when the electorate has been subject to an intense campaign in which it would have been informed that the triumph of Socialism meant national ruin. The party would come into office with a programme every item of which was, quite sincerely, anathema to its opponents. They would be gravely alarmed about the future of their capital; they might well, as Viscount Runciman advised them to do, have taken the precaution to export what capital they could in anticipation of possible defeat. There would be a general decline of confidence; the capital market would be weak; the short-term loans would probably be withdrawn from the City of London. Merely to prevent financial crisis, the successful Labour Government would obviously have to embark upon heroic measures to stabilize the financial situation. To put

through those measures effectively it would have to count, not only upon the support of the House of Lords, but also upon that of exactly those financial institutions whose confidence was most shaken by its policy.

I do not know whether it would get that co-operation; I do not think anyone is entitled to claim that he knows. Clearly enough, it is a crucial test of parliamentary government. It is not easy to be confident that it will meet the test successfully in the light of the events of 1931. For, the delicate questions of constitutionality apart, the whole impact of 1931 was the production in the electorate of a mood of panic. Had the Labour Party been victorious in that contest, its ability to overcome that panic in ways compatible with the normal formulae would have been slight indeed. In the atmosphere engendered by Mr. Ramsay MacDonald and his colleagues there would have been, almost certainly, a catastrophic flight from the pound; do not let us forget that Viscount Snowden had described the financial proposals of the Labour Party—proposals of which he was substantially the author—as "Bolshevism run mad." Can a party capable of generating that temper turn round on the morrow of the election and explain that nothing said by it during the campaign is to be believed, that the men who, yesterday, were the would-be authors of the nation's ruin, are, to-day, worthy of the co-operation of all patriotic citizens—citizens, be it remembered, who believe themselves thereby to be called upon to sacrifice the privileges to which they believe themselves entitled? It is not, let us remember, a situation like 1924 or 1929, in which a minority Labour Government can be turned out of office the moment it tries to live up to its principles. Our assumption is that its majority has given it control of the whole apparatus of State. The only way in which it can be turned out now lies outside

all the normal assumptions of the parliamentary system. How amply will those assumptions work in circumstances of this character?

Faced, it may be said, by the knowledge of these stark possibilities, we are likely to encounter the first of the three possibilities I have mentioned. There will be a long period of Conservative rule, simply because the electorate will not face the dangers implied in any alternative. But this hypothesis is not so simple as it superficially appears. For unless that period is coincident with a fairly continuous development of material well-being, with, as its consequence, advances in social legislation, it will transfer the incidence of Labour's action from the political to the economic field. There will be inevitable industrial dislocation, attempts by strike action to prevent decreases of wages standards on an industrial market, efforts, as by hunger-marchers, to draw attention to the condition of the unemployed. The Labour Party will be compelled to support the struggle by action in Parliament. On past experience, as, notably, after the General Strike of 1926, bad trade and its consequences will be blamed on the Government; there will start a drift towards Labour victories. Conservatism, in short, will find itself in the dilemma of having, somehow, to meet the demand for an increased standard of life or paying the penalty at the polls. Within the framework of our system, it has no alternative, at least, over any considerable space of time.

On experience, indeed, it may be doubted whether any modern electorate, under the parliamentary system, is prepared, save in quite special circumstances, to see the same Government in office over a long period. That might prove acceptable during the course of a long-drawn-out war; it might be acceptable, also, if the Government's period of power coincides with an epoch of continuous

prosperity. In Great Britain, since 1832, no Government has been in office for more than ten years; in the United States, if we take the first election of Grover Cleveland in 1884 as marking the full re-emergence of the South into the national life, the sixteen years of Republican administration from 1896 until 1912 is the maximum period. In France, in the period since the Dreyfus case, there has been a pretty continuous swing of the pendulum from a chamber dominated by the Right to one dominated by the Left. It is, therefore, I think, clear that a Conservative Government would have to be quite extraordinarily successful to be capable of any long series of electoral successes. It may be doubted whether either the economic or the international situation—though they cannot legitimately be separated—give much prospect of that success. When, therefore, the tide turns, that strain on the party system of which I have spoken is bound to be felt.

It may, indeed, be legitimately argued that the longer a party of the Left, like the Labour Party, is excluded from power, the more drastic will be the legislation to which it feels itself committed. For unless its opponent is the author of continuous and comprehensive social reforms, it will be bound to take office on the basis of two expectations. There will be the assumption, first, that it must make up for the leeway lost under its predecessor. In matters like housing, education, public health, the treatment of the unemployed, the different standards of legislation envisaged by the major parties are an assurance that this will be the case. There is, therefore, from this angle alone, bound to be a pretty steep rise in the level of taxation. There will be the assumption, secondly, that the victory on the political must be implemented by advances on the industrial field. Anyone who examines the history of the trade unions under the administrations

of President Roosevelt in America, and of M. Blum in France, will have no difficulty in recognizing this probability. This means, in fact, that a Labour victory would be followed by an attack upon capitalism from three fronts. There would be the move for social amelioration; there would be the industrial drive for better conditions; there would be the legislation intended to socialize the major industries and to take the land into national ownership.

On any showing, it is clear, this subjects the parliamentary system to considerable strain. All of it, I suggest, is clearly implied in the nature of the party struggle we are witnessing. Once the division between parties is set by acceptance or rejection of the capitalist method of production, the logic of the contest turns upon the clash of these purposes. Nor is it, let me add, a contest in which the evolution can be so gradual as slowly to accustom the owners of economic power to the transformation. The announced programme of the Labour Party itself excludes that possibility. It is committed by its terms to a direct parliamentary attack upon the central citadel of capitalism. Once it is given authority by the electorate to fulfil its programme, it would be psychologically impossible for it to attempt its abandonment. To do otherwise is to commit suicide; for to abandon the attempt at the transformation of capitalism would be to surrender the whole ethos of its being.

My argument, therefore, reduces itself to this: a political democracy seeks, by its own inner impulses, to become a social and economic democracy. It finds the road thereto barred by the capitalist foundations upon which the political democracy is built. The validity of those foundations therefore becomes the central issue in politics. The party of the Right seeks to prove the validity

of capitalism by making it work successfully upon the basis on which all economic systems are judged in a society where there is universal suffrage: that is, by offering a constantly increasing standard of life to the masses. It will remain in office so long as the masses are satisfied with its performance. Once they are dissatisfied, they will return the Left to power; and the Left will begin, or attempt to begin, the task of transforming capitalist foundations.

The party system, then, operates in an atmosphere different from anything known in the two and a half centuries of its history. So far, its function has been the settlement of what may be termed quantitative differences; now it is called to settle differences that are qualitative in character. What it is vital for us to understand is that the constitution within which it works has been built upon the presumption of quantitative difference. The principles of Gladstone always started from the same premisses as those of Disraeli; so did those of Mr. Asquith and Mr. Lloyd George start from premisses which, in broad substance, Lord Balfour or Lord Baldwin would have been willing to accept. The one issue of fundamental difference in the hundred years of modern parliamentary history before the war was the exclusion of Ulster from the Home Rule Act of 1914. That was an issue on which Ulster was prepared to fight rather than to give way; effectively, the Liberal Government of 1914 abdicated before the threat of conflict. In those hundred years the nature of the disputes between political parties tended, therefore, to conceal their unity of essential purpose and emphasize their inessential differences. Broadly, they were never debating the foundations of the State. They were discussing, always, until 1928, in terms of a franchise which, for nearly sixty years from 1832, was a narrowly

limited franchise, the precise manner in which the capitalist system should be run; they were never debating whether it should be run at all. Each put its immediate emphasis on one point rather than another; neither ever laid its emphasis upon those points which might bring the system itself into question. It is this unity of essential purpose which made possible continuity of policy. Whether in the realm of empire, or foreign affairs, of social principle or of economic method, Liberals and Conservatives alike could accept without repining the results of each other's governments because the policy of neither touched the basic question of the ultimate constitution of property. They conducted the affairs of the nation upon the agreed principle that this could not be brought into debate.

They were, of course, perfectly sincere in this, for they believed that, as a basic question, it was not seriously open to discussion. The complexion of politics, moreover, hardly gave them any reason to suppose it was. Until 1874, there were no working-men members of the House of Commons at all; until 1906 they were hardly more than a significant handful; until 1922, they were never the official Opposition, in a position to influence the fate of a Government. In all those years, moreover, they had never had an integral part in the formation of policy from within either of the older, historic parties. Neither thought seriously of them as possible candidates for the House of Commons; an illuminating letter of Mr. Ramsay MacDonald's makes it plain that inability to secure a Liberal candidature as late as the 1890's was the real reason why he joined forces with Mr. Keir Hardie. It is evident from contemporary discussion that the formation of the Labour Representation Committee in 1900 was not felt by either Conservatives or Liberals to be a matter of any outstanding

importance; if anything, Liberals tended to resent Labour candidatures on the ground that they divided the vote against the common enemy, the Conservative Party. Even during the long years of Liberal supremacy from 1906 to 1914, it may be doubted whether the significance of the Labour Party was grasped on either front bench. Their occupants might pick and choose possible concessions from among the items in the Labour programme of those years—the Trades Disputes Act of 1906 for example. They would deal with sweated industries, as in the Trade Board Acts, or with unemployment, as with the establishment, in 1908, of the Labour Exchanges, or with the grim problems of old age by the conference, in the same year, of five shillings per week on persons above the age of seventy. It is yet certainly true, I think, to affirm that there was nothing seriously to differentiate this legislation in principle from efforts like those of Lord Shaftesbury or Viscount Cross. These are simply the necessary "concessions" of which Bagehot spoke, enlarged it may well be by the pressure of an electorate far more literate and, through its trade unions, immensely more organized for pressure than it had been in his day.

After the war, there is an immediate and dramatic change in the perspective of the political scene. The Russian Revolution, the large extensions of the franchise, the new consciousness of power in the trade unions, the widespread sense that the war was itself an expression of the breakdown of capitalism, all these brought a new tempo into politics. Their impact was emphasized by long-continued depression, by the high cost of living, by the technological revolution in industry, by the psychological changes in habits and social relations produced by the war. The Labour Party became the official Opposition. For the first time, it became a great national organization,

comparable in character to the older parties. It put itself upon a frankly Socialist basis. It did not, indeed, either in its Government of 1924 or that of 1929, have the courage to experiment with its principles. But, at least, it showed in 1931 that it was not prepared to abandon them; and, rightly or wrongly, the history of Europe and America in the years since then has persuaded it that it was not mistaken in refusing that betrayal. The result of this evolution, accordingly, has been to make the economic constitution of society the pivot of party difference. It is upon that axis that all future discussion is, granted the parliamentary system, to revolve.

But the startling result of this evolution is its effect upon the older parties. This may best be put briefly by saying that it has, for all major purposes, compelled their consolidation. The formation of the National Government in 1931 was a real turning-point in the history of British political parties. Announced as a purely temporary alliance—its Prime Minister spoke of it as likely to last only a few weeks—it has developed into a permanent coalition. There is nothing to distinguish the partners from one another, and the real basis of their unity is their common front against the implications of a Socialist programme. That hostility, indeed, they even share with the Opposition Liberals who, free trade apart, would find no major principles of differentiation separating them from the National Government. The effective choice for the British voter to-day depends, on any realist view, upon whether he is for or against the Socialist transformation of the economic basis of our society.

The true inference from this is implicit both in Bagehot's analysis and in Lord Balfour's comment upon its implications. It is that, since 1689, we have had, for all effective purposes, a single party in control of the State.

It has been divided, no doubt, into two wings. It has differed within itself upon matters like the pace of change and the direction of change; it has never seriously differed upon the fundamental principles of change. It has been able to quarrel without repining upon the extent of the suffrage, the limits of religious toleration, free trade or protection, the character of social legislation, the amount of self-government to be conferred upon the colonies, the details of foreign policy. Its quarrels upon these have always, so to say, been family quarrels in which there has always been ample room for compromise. The one issue on which this has not been the case has been Ireland; and it is important that, when the Irish problem was solved, the solution accepted was applied by force and was the outcome of an agreement upon its terms between the two wings. Neither has ever moved so far from each other upon any vital question as to bring an ultimate disharmony into view. Each has always remained convinced that the private ownership of the means of production could not legitimately be called into question. The men who directed the destinies of both circles came, broadly, from the same social environments; they spoke the same language; they moved in much the same circles; they depended upon the same common stock of ideas. They thought in the same way because they lived in the same way. Members of either wing could cross to the other without any alteration of fundamental doctrine. A Tory democrat like Disraeli could be more advanced in matters of social legislation than a Liberal like Gladstone or a Radical like John Bright. A Conservative aristocrat like Lord Cecil could have more cosmopolitan conceptions of foreign policy than a Radical "man of the people" like Mr. Lloyd George. A Liberal like Sir Herbert Samuel could take the same view of the problems of Indian self-

government as a high Tory like Sir Samuel Hoare. A Conservative like Lord Baldwin, with a high sense of *noblesse oblige*, had a much higher conception of the responsibilities of capital than a Liberal business man like Viscount Runciman.

The explanation surely is that they all agreed about the framework within which they were to operate; and the society of which that framework was the expression was rich enough and elastic enough to permit ample margins within which discussion of differences could be at once permitted and lead to acceptable compromises. For, invariably, the framework itself was not brought into discussion. It had never been so brought since the success of the Parliamentary forces in the Civil War had settled the lines of its construction. Nor was there, until the other day, any need for its discussion. The nation as a whole felt that it had made its bargain with fate. Odd individuals, like Robert Owen, small groups like the Fabian Society, might arise to point out that the bargain would have to be re-opened. In the confidence of a society the success of which hardly seemed seriously capable of challenge, there seemed no good reason to take such scepticism at its announced value. That is why, throughout this period, the doubters, Carlyle, Arnold, William Morris, Ruskin, were never really taken seriously. They were "unpractical" people—poets, critics, prophets; in any case Cassandras whose predictions could be discounted by the magnificence of the trade returns. The rulers of Great Britain never doubted the solidity of their achievement. Why should they who drew tribute from the whole world, who, America apart, had built a higher standard of life for their subjects than had ever been secured in any other country or time?

The power of the conquerors to confine the debate has

ended. They are now compelled to discuss the framework they had assumed to be unalterable. Between them and their opponents there now lie differences hardly to be bridged upon the old terms, or in the old way. Herein is the central problem that the party-system confronts. For the Constitution that it operates had translated its unity upon assumptions into institutions habituated to that unity. Freedom of speech, freedom of association, these were the outcome of the assurance, the self-confidence, bred of unity. Their power to preserve them lay in the fact that they chose the issues to be discussed; and it was difficult for issues other than those they decided to choose to be discussed at all. The Irish learned this; and the genius of Parnell forged the weapon of obstruction to compel attention to the wrongs of Ireland. Until his advent, British policy on its problems had been a typically English mixture of cajolery and repression. It is not unfair to argue that this was also their method with the labour problem until the new status of the Labour Party decisively altered the contours of debate. The handling of that alteration lies at the heart of the future of parliamentary government.

Let us note that these are not characteristics of Great Britain only; they are universal in capitalist democracies. We can see the same forces compelling the consolidation of Republican and Democrat in the United States as a party of property seeking to resist the invasion of its hitherto uncontrolled empire. Rather more slowly, the same evolution occurs in Canada; and it is already setting the frame of events in Australia and New Zealand. In South Africa, its arrival has been retarded by the intensity of the colour question; what has occurred there is the consolidation of the white peoples in a joint exploitation of the black. The same is true of France and Holland and

Belgium, if in different degrees. The party system can operate capitalist democracy so long as the masses remain satisfied with the results of capitalism. It is able then so to guide and shape the course of public opinion that no questions reach the status of legislative possibility which may injure the essence of capitalist security. But the narrowing horizons of capitalist success have brought such questions exactly to that status. The ability to find a new basis for unity then becomes the condition for the survival of parliamentary government.

3.

I have dwelt in this chapter on what I conceive to be the essence of the party function in the modern State. I have argued that, in real substance, the absence of legal recognition for the existence of parties does not mean that they are not effectively a part of the machinery of government itself. Officially, no doubt, the Cabinet is merely a body of His Majesty's ministers charged, under parliamentary supervision, with carrying on the business of administration. But the point is that they are His Majesty's ministers because their party supplies them with a majority in the House of Commons, and there is no way in which they can otherwise continue in their posts save through a constitutional revolution. What keeps the party together? In part, no doubt, the momentum of organization itself, in part the power of leadership to attract followers. But, above all, the cohesiveness of a party is the outcome of the decision of its members to promote, as Burke said, "particular principles in which they are all agreed." I have argued here that, at bottom, those "particular principles" will be found to be economic in character. Often enough, no doubt, that character may be obscured by the complex cross-currents of the intricate

thing that society is. But two facts go to show that the economic foundation. provides the durable texture of party composition.

The first is the fact that all political parties which endure for any considerable space of time are founded in economic discontents. This is true of Whig and Tory in England, of Republican and Democrat in the United States. Where third parties arise, like the Labour Party in England, or the Agrarian Party in America, the same is true. Parties which have been built around religions have rarely been able to maintain themselves for long; or, if they have done so, they have been compelled to adopt an economic programme only casually relevant to their religious origin in any direct way. And the same rule holds for nationalist parties, like the Irish in Great Britain or the Flemish Party in Belgium. The claim for national autonomy is a protest, in the last resort, against economic opportunities withheld, as the nationalist deems, by the superior power. That is why one of the first expressions of nationalism, after independence has been secured, usually takes the form of a protective tariff. It is desired to secure the home-market for the home-producer out of considerations in which the interest of the consumer may easily take a very secondary place. All this, of course, is natural enough. Since the most important thing to any individual is the way in which he gets his living, it is inevitable, as Madison said, that "the only durable source of faction" should be property. The party is a mechanism to control public opinion about property in the particular way its members deem desirable.

The system, of course, engenders its pathological results upon which observers, like Ostrogorski and Michels, have written well-known treatises. Ostrogorski, indeed, after an exhaustive examination of parties in

Great Britain and the United States was driven to propose their abolition as the only way to prevent the monstrous perversities for which he believed them to be responsible; he felt, like Halifax at the time of their origin, "that the best kind of party is in some sort a conspiracy against the nation." But all he could propose in their place was voluntary associations for the promotion of particular objects; and it is evident enough that his scheme would be fatal to the necessary coherence which government requires. An electorate requires to know what its candidate feels about foreign policy not less than his sentiments about anti-vivisection; and examination usually makes it pretty obvious that his views on foreign policy are close-linked with views on economic matters so as to form, however imperfectly and unconsciously, a philosophy or way of life which he is prepared to recommend.

The truth is that there is no alternative to party government save dictatorship in any State of the modern size. Government requires leaders; leaders require not an incoherent mob behind them, but an organized following able to canalize the issues for an electorate with a free choice. The case for party as the necessary condition of representative government was made as long ago as Burke; and there has since been no answer to his argument. The imperfections which result are simply due to the fact that, because we live in an imperfect world, because, also, we are not wholly rational creatures, politics is a philosophy of the second-best. And because behind the activity of parties is the strongest interest man has—his interest in getting a living upon the terms this experience teaches him to be just—parties will exhaust all the artifices of which human nature is capable to secure victory each for its own side. The "whispering cam-

paign" against President Roosevelt, the legend of Chinese slavery, the slogan of "hang the Kaiser," these are not the most generous of techniques by which to win. But when the interests in the result of the struggle are so intense and, let it be added, so unequal, they are not techniques which any party will put on one side. Granted that man is a pugnacious animal, that thought is difficult, that, especially in an unequal society, there are conflicting ambitions, and envy and hate, it could hardly be otherwise. Washington's "alternate despotism of one faction over another," which "has perpetrated the most horrid enormities," and "is itself a frightful despotism," is yet, on balance, better than the despotism which suppresses the party system altogether. The price of the one, after all, is exclusion from office. But the price of the other, as we have grimly seen in our time, is the concentration-camp and exile, organized violence by the Government tempered only by assassination of its leaders.

Quantula sapientia nos regamur; the lament of Oxenstierna is perennial in human history. We can mitigate that unwisdom in large degree by the mechanism of parties, so long as we may presume the good faith and fair play of those who operate it. But the condition of these qualities is a fragile one. It is, said Mr. Gladstone, "bound up with the growth of mutual confidence between the great parties in the State, transcending the political differences of the hour." But that "mutual confidence" has, historically, always depended upon the fact that political parties are agreed on the fundamentals. Those fundamentals, broadly speaking, are set by what Burke called prescription, and the greatest part of prescription is the established expectations of property. My point has been that we simply do not know what will happen to the party system, with the political democracy it makes

possible, when a major party in the State denies the title of prescription to its privileges. We here, on all the evidence, enter the realm where the research of reason reaches but a little way. Most people would agree that a confiscatory denial would be followed by instant conflict. Would denial accompanied by some measure of compensation preserve the understandings of the system? Again, we do not know. In Italy and Germany, men had begun to suspend the formulae of constitutional democracy even before there was legislation to deal with property; the debate, merely, was sufficient to throw property into a panic and achieve the Fascist State. The optimist argues that our traditions are so different as to make foreign experience irrelevant to our problems. I have given reasons in this chapter for the view that the basis for this optimism is more fragile than it appears to be on the surface.

For we must remember that party leaders, however anxious for an accommodation, have, in fact, an authority which reaches but a little way. They have to persuade their followers; they cannot coerce them. A party leader therefore tends to be, as Bagehot said, an uncommon man of common opinions. His power is, very considerably, in the identity of his views with those who support him. The combined influence of Peel and Wellington forced Catholic emancipation upon the Tories; but Peel broke his party when he accepted the necessity for the repeal of the Corn Laws. So, too, not even the unique authority of Mr. Gladstone could persuade the Liberals of the 'eighties to the acceptance of Irish Home Rule without a split which cost him about one-third of his followers. Mr. Ramsay MacDonald was in agreement with his Cabinet colleagues over almost all the economics proposed in the financial crisis of 1931; but the overwhelming majority

of his party broke with him on the question of a ten per cent cut in unemployment pay.

A party leader, in short, must never be so much in advance of his party that its members cannot willingly follow him in the divergence he makes from its normal high-road. In the kind of situation we confront, the leader of the Conservative Party has two obligations, if Mr. Gladstone's "mutual confidence" is to be preserved, not easily reconcilable with one another. On the one hand, he has to tell his followers that the economic programme of the Labour Party would be disastrous to the nation; a view, quite certainly, that they accept with passionate sincerity. On the other hand, he would have to tell them that if the mass of the electorate prefers the programme of disaster, they must reconcile themselves to its acceptance. On any showing, that is a hard task. It is particularly hard because the means through which, as bankers and investors and business men, they can register their antagonism to its operation are only partly within his power to influence. How many Conservative investors would refuse to change English securities into foreign because their political leader informed them that a newly-elected Labour Government ought to have a fair chance; that Government which, as it were the day before, he was warning the electorate would, by its triumph, jeopardize the security of the nation?

The converse, of course, is just as true of the Labour Party. As a Government without a majority, its followers, not very happily, permitted it to legislate within the framework of capitalism. It is at best highly dubious whether a Labour Prime Minister in command of a majority would be permitted the luxury of refusing to put his principles to the test. The second MacDonald Government produced the defection of the Independent Labour

Party from among its supporters by the degree of its indulgence in that luxury. It is, I think, as certain as anything can be certain in politics that a third experiment in such indulgence would split the Labour Party from top to bottom, with immense defections from its ranks to the Communists. That, quite inevitably, would produce a grave crisis in our affairs. And in the degree that the opponents of a Labour Government, in and out of Parliament, strove to put obstacles in the path of carrying out the programme for which it believed itself to have a mandate, I believe the main result of their effort would be the heightening of the strain and not its diminution. It would arouse tempers on both sides; passions would run high; and the consequent atmosphere would not easily permit the possibility of accommodation.

The fact is, that the intellectual abyss between parties requires a strategy almost too heroic for human beings to adopt. On the one hand, it seems to require from the Conservative Party some such philosophy as this. "Socialists," its leaders must say, "will ruin the country if they obtain a majority; and your ruin will be involved therein. We must, therefore, strain every nerve to prevent their victory as an unthinkable disaster. But you must remember that, if they are victorious, we must do nothing that will jeopardize the peaceful application of their victory. That peace is a higher good than your property. The British Constitution is unworkable unless we assume the right of a Government, which the House of Commons supports, and behind which the electoral verdict clearly is, to implement in legislation the programme upon which it won its victory."

That would, I say, be an heroic strategy for Conservative leaders to adopt. It might persuade the supporters of the capitalist régime to recognize that, however justified

their fears of the consequences of Socialism, they would not, if defeated at the polls, be entitled to act upon their fears. On the other hand, it might have the effect of persuading them that counsel of this kind indicated a lack of virility in the men who gave it, that if their leaders are sincerely persuaded that Socialism means national ruin, they ought not tamely to accept defeat because of a snatch victory at the polls which a more fortunate campaign, with an electorate always uncertain of its own mind, might easily be persuaded to reverse.

But let us look, for a moment, at the same position from the other side. Can we imagine a Labour Prime Minister, on the morrow of a victory at the general election, addressing his followers on these lines: "We have at length got our majority for Socialism. We intended to use our power to lay the foundations of the Socialist State, for, as we have urged for so long, it is impossible to patch up any longer the decaying structure of capitalism. Unfortunately, our victory and its consequences have produced such panic on the other side as to make it doubtful whether the implementation of our victory can be carried through peacefully. We ought not to jeopardize peace, which is more important than Socialism. The British Constitution is unworkable unless the minority is prepared to abide by the verdict of the polls. Clearly, it is not prepared so to abide. My colleagues and I therefore propose, in the interest of peace, to postpone the introduction of the measures we promised, and for which we have the necessary support in the House of Commons, until it is clear that their introduction is unlikely to provoke conflict."

Such an attitude is the negation of government; a leader who adopted it would not remain a leader for twenty-four hours. And it is no more a possible attitude

if the Labour Party were to say to-day that they would undertake not to begin their experiment in Socialist transformation until they were assured that its beginning would not outrage their opponents. For, first of all, no one can give them such an assurance, least of all those who live by the conviction that Socialism means disaster. And, secondly, to announce that they would act only on these terms is deliberately to invite the creation of that sense of outrage in order to compel the postponement of the experiment. It is, as it were, to invite every industry it is proposed to socialize to become an Ulster in order to prevent socialization

The only possible tactic, in fact, the Socialists can pursue is, as a democratic party, to assume that "mutual confidence" between parties of which Mr. Gladstone spoke. So long, that is, as the law permits them to make propaganda for Socialist ideas, their obligation is to inform the electorate as clearly and incisively as they can of the principles upon which they propose to act if they are elected to office. The only constitutional right of their opponents is to persuade the voters, if they can, not to accept Socialist principles. But there is literally no meaning in our Constitution if a Socialist victory, after long years of propaganda in which its consequences have been fully explained, is to be followed by the withdrawal of that "mutual confidence" on which its operation depends. That is the announcement that one party only is entitled to define the ends of parliamentary government; and this is certainly not an hypothesis of possible action that the other party is likely to accept. Certainly, if it did, it would cease to be a party by so doing.

The strategy I have been discussing explains, from another angle, what I meant by arguing earlier that, until our own day, we have been governed in all fundamental

matters by a single party in the State since 1689. For though that party has given the appearance, by its technique of division into two main wings, of bifurcation, the fact always has been until now that both wings did define in common the ends of parliamentary government. Those ends, broadly speaking, may be described by saying that, always within the framework of the private ownership of the means of production, whatever Government is in office must respond, within the limits of the possible, to the will of the electorate; the electorate being, at the next general election, the judge of the adequacy with which the commission had been fulfilled. That was what Dicey meant by saying that our system made the electorate the political sovereign of the country. It decided what party should form the Government and, in broad outlines, what it should form the Government for. There is not, and there has never been, in our system any body of fundamental rights, either explicit or implied, that are safe from change by the direct will of Parliament; and, both legally and constitutionally, there is no limit to the power of Parliament to effect those changes it chooses to approve.

It must, we are told, have a "mandate" to do so; or it must not "outrage" the feelings of the minority; or it must act, in the use of its authority, with the wisdom and discretion upon which successful government depends. The first of these arguments is in a different category from the others, and it requires a brief examination. Relatively, it is a new doctrine, which may be said to date from the Newcastle Programme of the National Liberal Federation in 1891. Its rough substance is that a party will not, as a Government, submit measures to Parliament without announcing beforehand that it proposes to carry them if it can. Clearly, as a doctrine, the theory of the mandate is subject to a wide construction; for in the period of any

Government's office contingencies will occur, the threat of war, for example, upon which in the nature of things a Government is bound to act without seeking the approval of the electorate for its decision; the declaration of war in 1914, the prolongation of the life of Parliament in 1916 beyond the term set by the Parliament Act of 1911, are examples of this necessarily wide construction. So, also, is the National Government's "Doctor's Mandate" of 1931. On that occasion the question of whether the nation should adopt a tariff system was deliberately left open for future enquiry. A few months after the election, a Cabinet committee, with the approval of the majority of the Cabinet, but with strong dissent from Lord Snowden and some of his Liberal colleagues, decided that a tariff was desirable. There was no collective Cabinet responsibility for the decision, and it is surely obvious that a theory capable of so wide an interpretation is not a restriction of a serious kind

In any case, in its usual form, the doctrine of a mandate would not apply to a Labour Government; for its programme of announced measures is already before the country. If the doctrine is clothed with the very different meaning that a Government ought not to introduce fundamental changes, above all in so delicate a realm as the constitution of property, without a substantial majority, we move at once into the region of the third of the limitations I have listed above. The Government, it is there said, must use its majority "with wisdom and discretion." Obviously, all this raises questions which cannot be reduced to constitutional form. What is a "substantial" majority? Is it to be set in terms of seats won or of votes cast? The thing to which a Government will attach attention is its possession of a working majority in the House of Commons. In 1924, for example, the Conservative

Party was in a minority of votes (forty-seven per cent of the total poll) but had 415 seats out of 615 in the Commons. After the General Strike, it used that majority to pass the Trade Union Law Amendment Act of 1927, though, on the theory of the mandate that I have just discussed, it had no authority to do so, and although, at the time, the results of the by-elections were already beginning to foreshadow the Labour victory of 1929. Was that the use of a majority with "wisdom and discretion"? The same considerations apply to the Hoare-Laval incident of 1935; and Lord Baldwin has recently admitted that in the general election of 1935 he deliberately misled the electorate about the scale of rearmament which he had made up his mind to be necessary. Were these also "wisdom and discretion"?

The truth, of course, is that we tend to think a Government has acted with wisdom and discretion when we approve of its policy; and conversely. So long as it is able to maintain its majority, there is no constitutional test of the validity of its acts except the judgment of the voters at the next general election. To argue otherwise is to take one of two positions. It is either to say that when people strongly object to what a Government is doing they may take action against it; this is an extra-legal remedy clearly outside the conventions of the party system. Or it is to say that, in a special sense, the King is the guardian of the Constitution, and if he considers that the Government no longer possesses the confidence of the country, he should dismiss it even though it still commands a majority in the House of Commons. I shall deal fully with the implications of this view later. Here, it is probably sufficient to say that the King's judgment, in such a case, cannot possibly have any objective validity about it, and that the only result of his intervention must be to make

the royal prerogative the subject of a passionate political controversy in which the very existence of the monarchy would be hazarded.

The argument that a Government must not "outrage" the feelings of a minority is, of course, not a constitutional argument at all. It is simply an indication, which there is no reason to doubt, that, at some point, never capable of precise definition, a minority will not submit to the power of the majority. But this is merely to say in other words what I have been arguing in this chapter, that the party-system depends for its success on the fulfilment by each side of certain understandings which they must not violate if the system itself is to endure. The question is whether a programme like that of the Labour Party would be such a violation; and the answer to that question cannot be given on any *a priori* grounds. For, once again, there is no objective test of "outrageous" legislation. Its impact as "outrageous" depends upon what is in the minds of those who receive it. If they decide to regard it as "outrageous," pretty certainly all the conventions of parliamentary government will break down. But it is not, I think, possible for a Government to decide not to introduce legislation to which it is pledged, and for the right to introduce which it has, as an opposition, struggled for long years, because the other party announces that it will regard the "mutual confidence" of the party-system suspended in that event. For that is to say that, majority or no majority, the anti-Socialist party is entitled to permanent tenure of political power. That is not, of course, a tenable view to hold in a political democracy.

But it is held in fact; and that it should be held illustrates the truth of my emphasis that the conventions of our Constitution are, at best, fragile things, that it is a matter of great delicacy to uphold them. The great

success of the party-system was that it enabled them to function, with only rare moments of strain, for two hundred and fifty years. It did so, I have urged, because the terms on which it operated enabled the essential questions of economic constitution to be excluded from the subject-matter upon which parliamentary decisions had to be made. Circumstances have made this exclusion no longer possible. We are brought face to face with the foundations of our society, and we cannot avoid the necessity to decide upon their future form. Epochs in which such decisions have to be made are always epochs of critical strain. It will at least be interesting to see whether the long habituation to peace which the party-system has secured us will survive the experiences it is certain to encounter in the next generation.

CHAPTER FIVE

The Cabinet

I.

THE Cabinet is essentially a committee of that party or coalition of parties which can command a majority in the House of Commons. Such a description, no doubt, is more functional than formal. It does not emphasize some of those characteristics of the Cabinet to which history and ceremonial alike give prominence. There is a sense, of no great importance nowadays, in which the Cabinet is a committee of certain members of His Majesty's Privy Council to whom the executive control of the State-power is confided. There is a sense, also, in which stress may be laid—though too much stress can easily be laid—on the fact that it is a secret committee. The real function of the Cabinet is to govern the country in the name of the party or parties which provide it with a majority in the House of Commons.

It is, therefore, as Bagehot pointed out in that famous chapter which first revealed the nature of the Cabinet to Englishmen, an instrument for linking the executive branch of Government to the legislative. It is the body which directs the latter. It provides Parliament with the policy upon which decisions are to be made. It pushes a stream of tendency through affairs by obtaining for its course the approval of the sovereign organ of the State. But that which enables it to secure that approval is the fact that it is a party committee. Its support comes from the electoral decision that Conservatives and not Labour are to rule. It is by disciplining the House of Commons to its purposes that it carries out its end. But, also, to

discipline the House successfully, it must also discipline itself. That restraint is effected by the fact of its party composition. The ideas it will put into effect are, within pretty well-defined limits, the ideas its party supporters expect it to put into effect. It operates always within a framework of established expectations beyond which it can only pass at the peril of forfeiting its majority, and so ceasing to be in power.

The success of the Cabinet system has been built upon this fact of party complexion. That is the basis upon which it can count, for at least all the main items of its policy, upon the support of its followers. But, hardly less, that success is built upon the fact that the Cabinet is an integral and living part of Parliament and not separated from it. (A House of Commons, so to say, gives the Cabinet life; but, normally, it can itself live only so long as it is prepared to go on giving life to the Cabinet. It destroys it at the cost of self-destruction. The defeat of a Cabinet by the House involves either a dissolution of Parliament or the resignation of the Cabinet if it takes place upon a major issue; and such a resignation, as we saw in 1931, is almost bound within a brief time to result in a dissolution.

That the Cabinet should be a committee of the legislature is one of the two or three main principles which distinguish our system from that of the United States; and it is worth while to reflect for a moment on the consequences of the distinction. The essence of the difference between the two systems is that, with us, the legislature has no interest separate from the executive; in the United States their separation gives it a separate interest. With us, therefore, the House of Commons must have confidence in, as it were, its board of directors; otherwise there will be either a new board of directors or a new Parlia-

ment. But with the Americans, the Congress may have a different party complexion from that of the President and his Cabinet colleagues; or he may have a majority in one House of Congress and not in another. Even with a majority in both, he need not have his way. He cannot control either House directly. He has no power to dissolve it. He can persuade, cajole, threaten, bribe. But the life of the American legislature continues independently of his will. He sends it his proposals; the Congress makes up its own mind what it will do with them. It is an authority of equal legal standing with him in the determination of policy. If he cannot secure what he wants from its members, he has no way of appealing to the electorate against their decision. He can advise Congress; he cannot coerce it. And Congress, in its turn, cannot coerce him, unless a two-thirds majority of its members is prepared to override any veto he may impose.

Even when the President's party has a majority in both Houses, he has no certainty that he will have his way. His defeat does not create a crisis in his party; the loss of his prestige may not, necessarily, even injure it. Congress, as it were, is organized for action independently of his power. It broke President Wilson over the Treaty of Versailles; in 1937 it inflicted a heavy defeat over President Roosevelt on his proposals for the reform of the Supreme Court. Managing Congress is an art, in fact, quite different from the art of managing the House of Commons. The one is built on the assumption of distrust in the executive; the other in confidence in him. And this explains, in some degree, the difference in the process of choosing a President in the United States and choosing a party leader in Great Britain. There is no permanence in the first; everyone knows that, at the end of eight years at most, his day is over. The loyalties he can evoke

are, therefore, quite different loyalties from those a party leader is likely to evoke in Great Britain. The President can influence his party profoundly while he is in office; some of his Cabinet may, by their personal qualities, influence it also. But they are not necessarily party leaders, or even men of considerable party experience. The result is that there will always be in Congress itself a little group of men who, in fact even if not in form, are a kind of alternative Cabinet of their own, a Cabinet the special credit of which must not be overlooked in the making of policy. It requires a President of quite exceptional quality to centralize public opinion round himself for this reason. The separation, in a word, makes for the confusion of responsibility. There is not necessarily a clear direction of policy, because there is always more than one interest competing for the right to direct it; and the fact that the President may be compelled to give way means that, even within the ranks of his own party, there will always be cabals to force him to give way. This senator controls this committee, that congressman another; the President must in some degree compromise with them both. It is not improbable that even so outstanding a President as Franklin Roosevelt has never got a bill through Congress in exactly the shape he desired; he has had to sacrifice this clause, soften the burden of that, to meet the will of one or another in Congress with an authority that could rival his own. And since he cannot effectively appeal to the electorate against these candid friends, he is always having to put up with something he may keenly feel to be a second-rate compromise.

This, moreover, is much more likely to be the case in his second term than in his first. The sands of his authority begin to run down. Those who dislike him cannot help remembering that, in four years at most, there will be

another occupant of the White House. Something he does arouses fierce criticism; an influential member of Congress may easily think that to head this criticism is to give him a chance of the succession. Another may feel that the time has come to hedge; the President has attacked, it may be, the public utilities, and they are powerful in his State; it will do him no harm in his State to display his independence. The President, to put it briefly, when he deals with Congress is always dealing with a quasi-independent empire his hold over which is never certain. His position is like that of a minority Government in the House of Commons without an appeal to the electorate as the contingent sanction of its policy. The time he needs to think out his measures is largely taken up with maintaining a power which ought not to admit of question. And every time he suffers a major defeat, the ability to repeat that defeat is intensified by the loss of prestige he suffers.

From all these doubts and difficulties our system frees the English Cabinet. Broadly, it knows that it can get what it wants. The result is to make responsibility direct and policy coherent. Unless the Cabinet has made a bad blunder, it knows that it can stand by its decisions. No doubt there will be cabals to watch and intrigues to stifle; Mr. Churchill, for instance, may have his little group of sharpshooters to attack the Government's policy over India. But it is rare that the cabal can, or will wish to, pull the Cabinet down. At the best it may put the other side in office; at the worst, its members may be risking their own seats at the next general election. Parties tend to like reliable men, and even consummate artists in criticism like Mr. Churchill may find that they sacrifice their reputation for reliability in their quest for artistic self-expression. The private member, so long as he is satisfied with the large outlines of policy, is not going to

be excessively tender-minded about details. It is only when, as with Sir Robert Peel in 1846, the leap forward goes beyond the frontier within which he expects to dwell, that he assassinates the leaders he has made.

The alternative to this method is not easy to see; certainly it would go to the roots of our system as we know it. Probably it would mean the replacement of parties by groups loosely related to one another; and the outcome of this change would rapidly be an assembly more like the Chamber of Deputies than the House of Commons. That would, no doubt, exalt the power of the private member at the expense of the Cabinet, and it would mean, almost certainly, that the right to dissolve would cease to be a prerogative of the Government. The danger of this is, I think, grave. For, in the first place, as in France, it would deprive the electorate of any real power over group-combinations; Governments would be built on manœuvres within the House, instead of upon electoral decisions outside it. And, secondly, by reason of the exaltation of the private member's power, he would have to be placated by recognition of his influence in wholly undesirable ways. Where the life of a Government depends on the will of the private member, as in the American Congress or the French Chamber, there is always the danger of parliamentary corruption. It may be through a method like the American "senatorial courtesy." It may be because, then, the access of the great interests to the private member has a significance which in our system they can hardly possess with any reciprocal comfort. It is not insignificant that the main field of the "lobbies" in Washington is at the Capitol and not in Pennsylvania Avenue; it is not insignificant, either, that they have, in London, to use Whitehall as an avenue to Westminster. Our Cabinet system, whatever its weak-

nesses, minimizes the danger of sinister influence. And no one who has seen its alternatives at work but will regard this as a gain it is difficult to overestimate.

One other merit, compared with the American, deserves emphasis. The average American politician of eminence is not likely to exchange a place in the Senate, for instance, for a seat in the Cabinet. In the former, in a large degree, he is his own master; he can make the theatre of action to some degree his own. In the latter, he is the servant of any President above the level of the third-rate; and if he cannot agree with the President he must go. An American Cabinet, therefore, is rarely a body of experienced public men who can work together as a team because they have learned to live together in Congress. Some of them are not even names to the public when their appointment is announced; and they cease once more to be names when they leave Washington. Few of them, with a strong President, Mr. Wilson, for instance, or Mr. Roosevelt, have much opportunity to develop a policy of their own. The responsibility is only partly theirs, in any case; and, in the public mind, the credit will be the President's because the external responsibility is his. Cabinet office, therefore rarely in the United States a supreme prize of am
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sense in which an American Cabinet will rarely be, or grow into, a team. Most of its members will have known one another for years; they will have been accustomed to working together in opposition. More than this. Normally, at least, some of them will have had previous experience of Cabinet work; and most of them will have had the experience of deciding policy on problems in Opposition upon which they will have also to decide as a Cabinet. To reach the Cabinet at all, they will have had to display, as a general rule, certain qualities of character, common sense, judgment, the ability to make a case, the power to meet an emergency, which are at least the basis upon which the successful administration is built. If it is said that, as compared with the civil servants whom they will control, they are amateurs, there are at least two answers. It is, firstly, highly undesirable for a Cabinet minister to be a specialist in the work of his department; he then runs the danger, that is common to all specialists, of sacrificing width of view to intensity of gaze. And, secondly, his business as a Cabinet minister is not the manipulation of detail but the definition of a general direction. He seeks co-ordinate the work of his department, on the one and to assist, in the Cabinet itself, in co-ordinating k of the departments as a whole into a coherent licy. The politician at his best is quite invariably his work than any specialist; his training in blic opinion makes him so. That is why oldiers, and sailors, or business men their business in their own way," Cabinet ministers.

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to its death. No Cabinet can fail to take its complexion from what he is and does in its direction. That is not to say that he is its master in the sense in which the American President is master of his colleagues. The British Prime Minister is more than *primus inter pares*, but less than an autocrat. He has, as we shall see, very considerable personal powers; but the condition of their effective exercise is, overwhelmingly, that he should be able to persuade and not to coerce; and the condition of success in that persuasion is pretty effectively dependent upon the success of his Government. No doubt he can always compel the resignation of any colleague; but the famous dismissal of Lord Palmerston by Lord John Russell in 1851 is only one instance of many which go to show that the Prime Minister's compulsions are the Prime Minister's perils. It is not merely, as Mr. Lloyd George has said, that there is no generosity at the top; there is always someone willing, and even eager, to take his place. It is even more true that a Prime Minister maintains his leadership of his party by the atmosphere of success which surrounds his policy; and nothing so injures the appearance of success as constant changes by way of resignation in the team that he drives.

In theory the choice of a Prime Minister rests within the discretion of the monarch; in practice, of course, that discretion is severely limited by the necessities of party politics. Where, for instance, the Government has been beaten, and the Opposition has its own appointed leader, the King has no practical alternative but to offer him the post. Or, it may be, as on the resignation of Lord Baldwin in 1937, both party and public opinion is so clear as to who is his proper successor that the King must follow the drift of that opinion. For he knows that, in such circumstances, it is wholly unlikely that any other nominee will

be able to form a Government. Had the King, in 1937, offered the Premiership to Sir John Simon, for instance, it is clear that, even if he had accepted the commission, he would have been unable to persuade his Conservative colleagues to serve under him. Where the wishes of a party are unmistakable, and the political circumstances normal, convention now requires that the King shall act upon the wishes of the party.

This, however, apart, it is clear that the King has a small range of discretion in the choice he makes; though even that small range will, normally, be closely circumscribed by facts which point to a pretty direct conclusion. Though, theoretically, the Prime Minister must be in either House of Parliament, and has been so consistently since the resignation of Lord Salisbury in 1902, it is fairly certain that in the future he will have to be in the House of Commons. George V had the choice between Lord Curzon and Mr. Baldwin (as he then was) in 1923; but the fact that the official Opposition was hardly represented in the House of Lords made all those whom the King consulted advise that it was no longer practicable for the House of Commons to be deprived of the Prime Minister's leadership. The King is not, of course, bound by this precedent in the future; but, unless political circumstances radically change, it is difficult not to feel that the precedent will be conclusive. The House of Commons is now the chamber to which the Cabinet is alone effectively responsible; it is the one in which the maintenance of party organization matters vitally. The Prime Minister, as the head of the party in power, can hardly afford in the future to be out of touch with the chamber where the effective decisions are made.

There are, however, two other situations which need to be considered. A Prime Minister may resign, like Mr.

Gladstone in 1894, leaving no clear evidence as to whom the party wishes as his successor. In that case, the King may, as Queen Victoria did on that occasion, choose the Prime Minister from among a number of possible candidates. His right so to do is unquestionable. But it is, of course, a right the successful exercise of which is dependent upon the ability of the politician so chosen to form a Government. In 1880, for example, Lord Hartington was the leader of the Liberal Party in the House of Commons, Lord Granville its leader in the House of Lords; but the party also contained Mr. Gladstone, who, though he had resigned the leadership in 1874, was nevertheless universally recognized as the author of the Liberal victory of that year, and expected by public opinion to succeed Disraeli as Prime Minister. The Queen, who disliked and distrusted him, sought to evade the necessity of that choice. She offered the Premiership in succession to Hartington and Granville; each informed her that he could not form a Government without Mr. Gladstone, that Mr. Gladstone would not serve under him, and that, in the circumstances, he was the only possible Prime Minister. The Queen then offered the Premiership to Mr. Gladstone, who accepted it and formed his Government.

It is clear, indeed, that the King's discretion will, normally, reach but a little way. The number of possible Prime Ministers in a party, at any moment, is limited by party and public opinion, and the King will not be able to go beyond that circle. If he does, his choice will be widely resented as breaking the conventions upon which the governance of parties is based; he will almost certainly find that, normally again, his nominee will not be able to form a Government, and unlikely to maintain it for long if he does. His failure will be everywhere taken as a criticism upon the exercise of the royal discretion; and

it is of the essential nature of the royal functions that they must be so exercised as not to invite public criticism.

The second case in which the King has a discretionary choice is one in which the complexities of the party situation in the House do not directly indicate an obvious Government. There have, for instance, been eleven minority Governments since 1832, and three coalition periods of government, if we count the Unionist Government which was in office from 1896 to 1906 as in effect a normal Conservative Government. In all such circumstances, a leeway for negotiation exists in which the King may well become an influential figure. He must, indeed, proceed under certain fairly well-understood conventions. If the Government resigns on defeat, he will be expected to send for the leader of the Opposition and invite him to form a Government if he can. The reason for this has been well stated by Dr. Jennings. "The King's task," he writes, "is only to secure a Government, not to try to form a Government of which he approves. To do so would be to engage in party politics. It is, moreover, essential to the belief in the monarch's impartiality not only that he should in fact act impartially, but that he should appear to act impartially. The only method by which this can be demonstrated clearly is to send at once for the leader of the Opposition."

This has, in fact, been done on every such occasion since 1839; though on a resignation of Lord Salisbury in 1886 Queen Victoria's hatred of Mr. Gladstone induced her to seek departure from precedent, and a long and complex intrigue with those Liberals whom she called "moderate, loyal and *really patriotic* men who have the safety and well-being of the Empire and the throne at heart, and who wish to save them from destruction" preceded her return to a reasonable frame of mind. It

is, further, probable that the King, in sending for the Leader of the Opposition, should have no consultations with any other politician. Lord Salisbury, in 1886, gave the Queen quite different advice; but it is in fact clear that any such consultation can only create the impression that the King is seeking to evade the right of the Opposition leader to form a Government if he thinks that desirable. Wherever, on the precedents, there has been discussion with some person not the recognized party leader of the Opposition he has, as in the Lansdowne precedent of 1861, been the Opposition leader in the House of Lords. So, to take recent cases, the King at once saw Mr. Ramsay MacDonald on the defeat of Mr. Baldwin, and his consequential resignation in 1924; and on Mr. Ramsay MacDonald's resignation, together with his Cabinet, in 1931, the King at once saw Mr. Baldwin.

The two coalitions of 1916 and 1931 raise interesting questions, since, on both occasions, there emerged from the royal discussions a Prime Minister who either had not been, or was no longer, the recognized leader of a party. In 1916, it is certain that the usual precedents were observed. On Mr. Asquith's resignation, the King sent for Mr. Bonar Law, as the Leader of the second largest party in the House, and offered the Premiership to Mr. Lloyd George only when Mr. Bonar Law had refused it and had recommended the course that was followed. The circumstances of 1931 are exceptional and merit more detailed consideration; it must, of course, be added that, in the absence of authoritative documentation, we are largely thrown back on conjecture. We know that the Labour Government, in consequence of financial difficulties about the solution for which it could not agree, authorized the Prime Minister, Mr. Ramsay MacDonald, to resign on August 23rd. We know,

further, that, on the advice of the Prime Minister, the King saw Mr. Baldwin as Leader of the Conservative and Sir Herbert Samuel as Leader of the Liberal Opposition in order, as the official announcement put it, "to hear from themselves what the position of their respective parties is." No public information authorizes us to suppose that this meeting was concerned either with the resignation of the Labour Government or the formation of its successor. When, on August 24th, Mr. MacDonald presented the King with the resignation of his Cabinet, he again advised the King to see Mr. Baldwin and Sir Herbert Samuel. We do not know what occurred at this interview, at which, it appears, Mr. MacDonald was present. "What is said," writes Mr. Sidney Webb, who was Colonial Secretary in Mr. MacDonald's Cabinet, "is that the King, with whom the Prime Minister had been in constant communication, but who never went outside his constitutional position, made a strong appeal to him to stand by the nation in this financial crisis, and to seek the support of leading members of the Conservative and Liberal Parties in forming, in conjunction with such members of his own party as would come in, a united National Government. The King is believed to have made a correspondingly strong appeal to the Liberal and Conservative leaders." All that we authoritatively know is that, after resigning as Labour Prime Minister, Mr. Ramsay MacDonald immediately received a new commission to form what became known as the National Government.

But certain other things are known. (I) On August 23rd the Labour Cabinet had no knowledge, as a Cabinet, that Mr. MacDonald proposed to desert them. The four ministers who joined the new administration may have been aware of this; the others until Mr. MacDonald

returned to Downing Street on August 24th, assumed, and assumed naturally, that, since he was to tender his resignation, Mr. Baldwin would become Prime Minister in the normal way. (II) We must assume that the King was aware that only four ministers would follow Mr. MacDonald that certainly, therefore, the bulk of his Cabinet and, presumably, the bulk of his party was in disagreement with him. This, in fact, proved to be the case; only sixteen out of two hundred and eighty-nine Labour members followed Mr. Ramsay MacDonald. (III) We know that the King was never advised to communicate with Mr. Henderson, the Leader of those in the Labour Cabinet who dissented from Mr. MacDonald, who was elected the Leader of the Labour Party on the former Prime Minister's expulsion from it. (IV) We must assume that the suggestion of Mr. MacDonald as the new Prime Minister was made by the King to him, and accepted by Mr. Baldwin and Sir Herbert Samuel in consequence of what Mr. Webb terms "a correspondingly strong appeal" made by the King to them It has never been suggested that the idea of a MacDonald Premiership in the National Government emanated either from Mr. Baldwin or from Sir Herbert Samuel. Neither is known to have discussed this idea with their party colleagues before Mr. MacDonald accepted that commission on August 24th.

It is difficult, therefore, in the light of the information we have, not to regard Mr. MacDonald's appointment on this occasion as the personal nomination of the King. He was Prime Minister in no sense as the representative of his party. His majority appears, at least, to have been borrowed for him by the King in that "correspondingly strong appeal" to the other party leaders of which Mr. Webb speaks. He did not recommend to George V any

attempt to ascertain the view of the Labour Party which he betrayed; it is, surely, notable that, though he recommended an interview between the King and Sir Herbert Samuel, he did not suggest an interview with Mr. Henderson. His appearance as Prime Minister of a coalition the members of which had been denouncing his Government up to the very moment of the new Cabinet has as much the character of a Palace revolution as the appearance of Lord Bute as Prime Minister in 1763. Mr. Webb and Dr. Jennings both suggest that the King's action was constitutional. The term is an elastic one. If it is accepted in this implication, it appears to mean that the King can make anyone he wishes Prime Minister so long as his action is subsequently approved in a general election. The leader of one party can be, on this hypothesis, persuaded, unknown to his colleagues, to go over to their opponents by a royal appeal to "patriotic" obligations; all the normal expectations of the party system may be ignored; and the resulting confusion may be utilized in order to snatch an electoral majority for the new combination. The theory appears to rest upon the assumption that the King does not deal with parties but with men in their individual capacity; and that he is entitled to do so provided that the electorate subsequently approves his action. If this is so, it is necessary, here, only to point out that the King must be regarded as a factor of first-class importance in any political crisis where the direction of events is uncertain. I shall deal later with the implications of this view.

The Prime Minister, when chosen, proceeds to form his Government. Here, once again, the fact of party is fundamental to the completion of his task. In all normal circumstances he is Prime Minister because he is the leader of his party; and if he did not act in terms of

that relationship, he would be unable to assure himself of a majority in the House of Commons. Certain colleagues he must choose, because their presence in the Government is expected by the party; a few of them, indeed, may be so important that they may be able to insist upon receiving the particular office they desire. It is well known that in 1929 Mr. MacDonald did not wish to have Mr. Arthur Henderson as Foreign Secretary; and only the knowledge that, otherwise, Mr. Henderson would have remained outside the ranks of the Government persuaded Mr. MacDonald to offer him the post. He has, of course, a certain amount of elbow-room, which is perhaps roughly proportionate to his influence over his followers. The world was surprised at Mr. Baldwin's decision to make Mr. Churchill Chancellor of the Exchequer in 1925; and perhaps hardly less surprised that this decision entailed a refusal by Sir Robert Horne to enter the Cabinet. Obviously enough, the choice of colleagues must, apart from the small group who nominate themselves, be an invidious task for any Prime Minister; and those who are excluded will rarely be able to see that the grounds upon which others have been preferred are adequate. The Prime Minister has to do the best he can. He is seeking to build a corporate entity the members of which will be collectively responsible for one another's acts. In general, he will, unless he makes some colossal blunder of omission, have the loyalty of his party behind him in the decisions he makes; and that loyalty will continue unless the Cabinet, as it works, proves a defective arrangement which needs strengthening by reason of the opposition it encounters in the House of Commons.

The Prime Minister must, of course, receive the approval of the sovereign for his decisions. So long as

he is a strong man, this he is certain to have if he is persistent in his determination. For if objections to his decisions are pressed, he can always resign his commission; and it is at least highly unlikely that the King will push matters to this point. Not, indeed, that the opinions of the monarch are without weight. Lord Derby did not propose Lord Palmerston as Foreign Secretary in 1852 in view of the "well-known personal feelings of the Queen." She was doubtful of the wisdom of appointing Mr. Goschen to the Cabinet in 1866, and persuaded Lord Russell to secure the acquiescence of his colleagues in doing so. In 1868 she tried hard to prevent Lord Clarendon from being appointed Foreign Secretary. She tried, in 1880, to make the appointment of Mr. Chamberlain subject to conditions. In 1886 she told Mr. Gladstone, on the eve of the formation of his Cabinet, that she would not accept the nomination of Sir Charles Dilke; and in that same Cabinet she was successful in preventing the appointment of Mr. Labouchere, and in preventing Lord Ripon from going to the India Office. We have no knowledge of later precedents, if there be any. What is clear, at least, from the evidence is that the royal right to discuss appointments is fundamental, and that the right to discuss will carry with it, at least in the period for which the precedents are available, a considerable influence in the determination of the distribution of offices.

Just as the monarch has influence, so, also, inevitably have the principal colleagues of the Prime Minister. Theoretically, no doubt, the Prime Minister has an unfettered discretion; "I have never known," said Mr. Gladstone in 1882, "more than a friendly announcement before publicity, and very partial consultations with one or two, especially the leaders in the second House." Even

to-day this is still broadly the rule; though in 1929 a small committee of the Labour Party, composed of Mr. Snowden, Mr. Henderson, Mr. Clynes, and Mr. J. H. Thomas, discussed pretty comprehensively with the Prime Minister the distribution of offices. In fact, though the Prime Minister's discretion is wide, consultation with his personal colleagues is inevitable. He has not only to form a team; he has also to form a team that will satisfy them. He will have to be an autocrat indeed to be able to impose his views upon them against their will, since there is always the danger that they may not serve. Mr. Baldwin, for instance, desired to include Sir Austen Chamberlain and Lord Birkenhead as ministers without portfolio in his Cabinet, just before the general election of 1923; but he dropped the proposal when it met with opposition from some of his colleagues. And where a Coalition Cabinet is formed, the Prime Minister must necessarily satisfy the leader of the other party. He is limited, too, by the need to provide for representation in the House of Lords, as required by statute. Roughly, it is a fair calculation that about half the Cabinet nominates itself, by the standing of its members in the eyes of the party; and about half of these will be able to bring great pressure to bear in getting the posts they want. It is only with the other half that the Prime Minister really has a free hand.

The Prime Minister is the pivot of the whole system of government. Normally, he is not only the leader of the majority party and the head of what Bagehot termed the "efficient" part of the executive. He settles differences between departments. He can, with the assent of the Sovereign, call for the resignation of any of his colleagues. He has a decisive voice in all important Crown appointments. He has to keep a general eye on all departments,

in particular that of foreign affairs, and to act as the co-ordinator of policy. He is the Leader of the House of Commons, and members there, especially in times of difficulty, will look to him as the reserve power to whom appeal beyond ordinary ministers may be made. He is, further, the effective channel of communication between the Cabinet and the Sovereign; and the *Letters of Queen Victoria* bear witness that this function is no sinecure if the monarch is a person who takes his duties seriously.

Obviously, indeed, the office of Prime Minister varies enormously with the character of the man who holds it. Few colleagues ever challenged the authority of Mr. Gladstone; Lord Salisbury, on the testimony of Sir Michael Hicks Beach, was not good at controlling his colleagues; and Lord Rosebery seems to have been unable to control them at all. His own ability, the range of his interests, his skill as chairman, his capacity for rapid work, his power to distinguish between the significant and the insignificant, will all make a great difference. Disraeli is said to have been able to make his own views prevail even when all his colleagues but one were opposed to him. Peel was able—perhaps because the range of administration was so much more narrow in his day—to keep an eye on the work of all the departments; but Mr. Asquith declined even to make this attempt on the ground that it was completely impracticable. It is said, indeed, that, during the war he was so little interested in Cabinet discussions, that he was accustomed to write letters during their progress, and to assume that, as they died down, agreement had been reached and that the next question could be considered.

It is certain that the modern Prime Minister can, for the most part, hope to do no more than control the large outlines of policy. That does not mean that his authority

is less than before. For, in modern democracy, the issues of elections tend to accrete about a person; and there is a real sense in which a general election is nothing so much as a plebiscite between alternative Prime Ministers. The result is to give him a national standing which no colleague can rival so long as he remains Prime Minister. The party is built around his personality, and, so long as he retains the hold of his party, no one can really rival his standing. After all, he appoints and dismisses his colleagues. It is to him that ministers go, in the first place, with their difficulties. He has a large share in making foreign policy. He settles differences between departments, and, if their dispute becomes a Cabinet question, his voice in the settlement will carry special weight. He is the Chairman of the Committee of Imperial Defence. He controls the agenda of the Cabinet. He has a special significance in the context of both the Dominions and the League of Nations. His word in the House of Commons is a final word. Revolt against him, in the light of all this, is obviously difficult, unless he has handled his job so badly that there is a widespread feeling of his unfitness for it.

It would be too much to say that the position of a modern Prime Minister has approximated to that of an American President; for the careers of Mr. Asquith, Mr. Lloyd George, and Mr. Ramsay MacDonald all illustrate the fact that his authority is a matter of influence in the context of party structure and not of defined powers legally conferred. But it would, I think, on experience be true to say that the stronger the hold of a Prime Minister upon his Cabinet, the better is the system likely to work. He ought to have his own large conceptions of policy. He ought to make ministers feel that he can decide for them in their difficulties. While detailed inter-

ference fritters away his energies, and may even by its repercussions cause grave personal strains, there ought to be no question about the fact of his leadership. There can be no real sort of doubt that the sense that he is driving the team gives it a unity and a coherence it will not otherwise possess. It maintains his prestige with his party, and, thereby, keeps the party together. And, within limits, to keep the party together is by all odds the best way of enabling it to maintain its hold upon the country.

It is clear that the burden of such an office must be very great. To manage the Sovereign, the Cabinet, the House of Commons and the party, all of them with a view to managing the electorate as the result of managing these, requires qualities which no ordinary man is likely to possess. The answer, I think, is that, with not more than two exceptions, no ordinary man has ever possessed them. A stereotype of Lord Baldwin as a "simple Englishman" was composed for the edification of the electorate; but it is a sufficient commentary on that stereotype to say that no simple man has ever been Prime Minister of England. The apprenticeship he will have to serve even to gain sight of office is a safeguard against the prospect of an ordinary man arriving there. Discretion, dexterity, the power to rule men, above all, in that power, the knowledge of what men can be trusted, the capacity for effective statement, the intuitive judgment that, while it is ahead of party and public opinion, is never so far ahead that it cannot be followed with a sense of ease, an ambition that drives, and is yet cautious in the display of its urgency, a relentlessness at the margins where decisions, whether about men or measures, are urgent, these are the qualities no Prime Minister can do without. It is too much, no doubt, to say that a Prime Minister has to hazard his political head every day; but it is not

too much to say that every day is a day upon which he may have to hazard his head. To tread a path of fire is inherent in the function. It cannot be performed by a sensitive soul to whom every decision is a torture. Events do not wait; and it cannot be performed by a man who lacks the feeling for the decisive moment. Party loyalties live by success; and Prime Ministers do not last who lack the secret of success. Politicians want office; and no modern Prime Minister has lasted as a party leader who has lost more than two general elections in succession.

The fact that our system has, on the whole, produced a succession of extraordinary men as Prime Ministers is, I suggest, a tribute of a quite special kind to the selective function of the House of Commons. Since 1868, there has been no Prime Minister save Sir Henry Campbell-Bannerman who has not been a person of exceptional intellectual gifts; and Sir Henry more than compensated for average mental endowments by a unique combination of sterling common sense and profound moral integrity. The contrast, in this regard, with Presidents of the United States is startling; for since the Civil War there have been fourteen Presidents of whom, I think, it is fair to say that only four would have reached the White House had they been subjected to the conditions through which a British Prime Minister arrives in Downing Street. And, in a sense, the tests to which a Prime Minister is subjected are far more severe than those of the American President. The latter cannot be forced to resign. He is the decisive master of his Cabinet. He has never to contend with a leader of the Opposition whom the whole country regards as an alternative to his rule. He has a far easier task in relation to foreign policy. Nor, on a long-term view, has he the same responsibilities as the

Prime Minister for the direction and fate of his party; at most, within eight years the reins of control will pass to another hand.

It is impossible, indeed, to contemplate the office of Prime Minister without the emphasis that its evolution is a signal demonstration of the value of parliamentary government. It confers the responsibility required while it retains upon the exercise of that responsibility a series of controls which have, so far, worked with remarkable efficiency. The Prime Minister who cannot drive his team goes, as Lord Salisbury went. The Prime Minister who is held, rightly or wrongly, to lack the initiative for his task, is driven from office, as Mr. Asquith was driven from office; and it is probably not unfair to say that the main reason for the replacement of Mr. MacDonald by Mr. Baldwin in the summer of 1936 was the wide realization that, under the former's leadership, the future continuance in office of the National Government might well be placed in jeopardy. The system, in brief, provides that office shall test its occupant by the pragmatic criticism of a successful response to popular demand. The loyalty a Prime Minister can evoke has little about it of constraint or artificiality. No doubt his own Press will seek to make him out a superman; but its idealizations will be at least as fully corrected by the Press of the other side. He thinks and speaks and acts in an atmosphere in which criticism has every opportunity and reason to reveal his weaknesses; for his opponents prepare the ground for their victory by the ability with which this task is performed. And that is not the case only with his opponents. The Prime Minister is judged, less obviously perhaps, but not less closely, by his own supporters. The knowledge that they live by his success means a compulsion upon him to bend all his energies

to be successful. He knows that, despite all personal loyalties, there will always be one of his own followers ready, perhaps even eager, to take his place. He knows, even, that there is a sense in which his disappearance will make possible the fulfilment of ambitions that are barred so long as he retains power; the campaign of the great Press lords against the leadership of Lord Baldwin is only one instance of many of this kind. No Prime Minister can ever say of his office what Clement VII could say of his—"Now that we have got the Papacy let us enjoy it." The first day at Downing Street may give the sense of satisfaction that comes to any man who has fulfilled a lofty ambition; it will also be one of the few last days of mental ease that he will know as Prime Minister. The parliamentary system is conducted on the vital hypothesis that no man is indispensable; and its daily operation is a constant and salutary reminder to the Prime Minister that his fortune depends upon his recognition of this truth.

3.

After the Prime Minister, the vital Cabinet positions are, as a rule, those of finance and foreign affairs. It is inevitable that this should be the case. Finance is the key to administrative and legislative possibilities; and not a little of the success of the British civil service has been due to the fact that, under the Prime Minister and the Cabinet, the Chancellor of the Exchequer has exercised, through the Treasury, a general supervision of the departments. The special position of the Foreign Secretary is due to different considerations. In part, it is the outcome of an old and dubious tradition of secrecy. In part, again, it is due to the fact that busy heads of departments cannot hope to concern themselves with

more than a small part of the area of activity with which the Foreign Secretary must deal. They have no time to read more than the vital dispatches; and they cannot even attempt any detailed supervision of his policy. Action, moreover, has only too often to be immediate; and ministers must be content, in general, to trust to the discretion of their colleague to act within the framework of the policy they have laid down in the Cabinet. They will not always do so; the resignation of Lord Palmerston in 1851 shows what a strong personality may do when he takes the bit between his teeth. They may even approve; and may then be compelled by public opinion outside the Cabinet to repudiate their approval. The resignation of Sir Samuel Hoare, in 1936, is an instance of this kind. But since, as a rule, the Foreign Secretary is working in the closest liaison with the Prime Minister, since, also, the major outlines of policy will be discussed in the Cabinet, his colleagues will know in a general way what the Foreign Secretary is doing; and they have at least the right to exact information even if, as Mr. Lloyd George has suggested, it is sometimes only grudgingly forthcoming.

The Chancellor of the Exchequer and the Foreign Secretary apart, Cabinet ministers broadly stand upon an equal footing; or, rather, the differences in the influence they exert will depend less upon the offices they hold than upon the kind of persons they themselves are. A Cabinet consists of two kinds of posts. There are the departments with heavy administrative functions, and there are those, like the Privy Seal and the Presidency of the Council, to which no serious burden of administration attaches. In general, every Cabinet functions better if it contains two or three ministers of this sort. It enables the counsel of men to be made available who do not wish

to be loaded, for one reason or another, with administrative duties. It sets them apart for assistance in the legislature to a colleague who is pressed with the burdens of a great bill that he is seeing through. They are useful, also, in committees of Cabinet and in general discussion because, like the Prime Minister himself, they can take a more detached point of view than ministers who, in some degree, will always be tempted to attach excessive weight to the departmental interest with which they are charged.

It has always seemed singular to some critics of the Cabinet system that it should be composed of men whose major time is necessarily devoted to their departmental work; and there have been zealous advocates of a return to the War Cabinet system of Mr. Lloyd George. The latter suspended the normal character of the Cabinet, and replaced it by a Cabinet of five, among whom only the Chancellor of the Exchequer had departmental duties. The ordinary Cabinet, it was argued, which now contains from twenty to twenty-three members, had become so large that it slowed down the pace at which the war had made it necessary to take decisions. Ministers with departments, moreover, were so buried in the details of their work that the large outlines of policy were, necessarily, a secondary consideration with them; and, in any case, they brought tired minds to that vital task. The fact that the members of the War Cabinet were freed from departmental responsibility had the two great advantages, first, that they were always available for immediate consultation, were, in fact, in almost continuous session, and, second, that they were free from the irritating pressure of minor preoccupations.

There can be little doubt that some such instrument as Mr. Lloyd George devised would be imperative in a period of war. But the evidence also suggests that its

practicability is confined to such a period. It works because, in war time, all considerations are subordinated to the single issue of winning the war, and because the usual processes of opposition are normally suspended in the House of Commons. But as a peace-time expedient, it is, at the best, dubious. It is built upon a theory of the possibility of separating policy from administration which is unworkable except under the pressure of such an urgency as war. Departmental ministers cannot be relegated to a secondary place if they are to run their departments efficiently, for the simple reason that their relegation results in the erosion of responsibility. Men of the standing of ministers, moreover, cannot effectively control their policy if the power to make decisions is one in which they do not share. The unity of policy which the theory postulates disappears because policy is the expression of an accumulation of minutiae with which the non-departmental minister does not concern himself; and, further, the policy of one department shades off into the policy of another, so that joint consultation becomes imperative upon a scale fatal to the ideal functioning the system conceives itself to embody. The conflict between the Prime Minister and the Foreign Secretary during the Lloyd George régime sufficiently indicates the difficulties. There was no real meeting of their minds by the very character of the relation built by the system between them. The result was that, for a considerable period, there were two foreign policies in this country—one in the hands of Mr. Lloyd George as Prime Minister, and one in the hands of Lord Curzon as Foreign Secretary. Neither was fully known to the other; and each was worked through a different personnel. The result was an incoherence of attitude for which there was no possible justification.

The return, therefore, to the older system was justified both on grounds of theory and experience. Those men, broadly, must be responsible for the making of policy who will be charged with its administration. That does not mean that a smaller Cabinet is not desirable or that there are not obvious ways to its attainment. The case, for instance, for a single Ministry of Defence is, under the conditions of modern warfare, an unanswerable one; and it has not been realized less because it has been answered by argument than because it has, so far, been unable to overcome the older tradition of the separate services and the immense vested interests, sufficiently illustrated by the struggle for the control of the Fleet Air Arm, which have accumulated about that tradition. It is probable, too, that Prime Ministers have viewed with some doubt the creation of a single such ministry, for they have been persuaded to see in the immense administrative authority of its head a possible challenge to their over-riding authority in the Cabinet. Defence apart, it is possible to contemplate other methods of reducing the size of the Cabinet—the creation, for instance, of a single Ministry of Production in which, as is wholly logical, the functions of the Board of Trade and the Ministries of Agriculture and Labour should be combined; and it is clear that, given such a unification, the need for a separate Ministry of Transport, with, as now, independent Cabinet status, would cease to exist. Changes such as these would reduce the Cabinet to a membership of eighteen; and it would permit a far more logical re-distribution of departmental functions than now characterizes our system.

Many of the advantages, in fact, which have been claimed for the smaller Cabinet are in reality achieved by the present system, through the way in which it is

organized for its functions. The modern Cabinet, especially in the post-war years, works largely through committees; and it is rare for there to be a Cabinet in which there is not grouped about the Prime Minister a little knot of colleagues who exercise a special influence on its proceedings. The committee-system has very great value. It permits the reference of any special problem to a small number of ministers for special and exhaustive examination. They can go into the problem in detail, examine witnesses, and associate with their deliberations such other persons, including experts, as they may think fit. The result is usually a report which the full Cabinet will find little difficulty in accepting. The committee will usually consist of the ministers whose problems are directly relevant to the issue involved, with one or two others; and their ability to reach agreement is itself an index to their colleagues that a reasonable compromise has been effected.

The working of the "Inner Cabinet," as it is sometimes called, is less well known to us from the documents; and, in any formal way, it does not exist. But it is broadly true that in any Cabinet there will be five or six ministers upon whom the Prime Minister will place special reliance. They will discuss policy, not officially, but as the Prime Minister's intimates, and in an informal way. They are really preparing the background of debate for the larger body. They assure it a unity and a coherence of outlook which, apart from their relationship, it would prove much more difficult to attain. It is not improbable that the existence of such a group is, indeed, imperative if a Cabinet is to work smoothly. "In most Governments," Mr. Lloyd George has written, "there are four or five outstanding figures who, by exceptional talent, experience and personality, constitute the inner council which gives

direction to the policy of a ministry. An administration that is not fortunate enough to possess such a group may pull through without mishap in tranquil season, but in an emergency it is hopelessly lost." It is, in fact, a group such as this which, in most cases, enables opinions to be weighted rather than counted; and it permits the taking of vital decisions suddenly with the reasonable assurance that full Cabinet approval can be obtained later. It is not improbable, for instance, that the Labour Government of 1929 was largely held together by the fact that the Prime Minister met his chief colleagues weekly to talk over, apart from the Cabinet, the general direction of affairs.

The working of the Cabinet has been greatly facilitated since 1917 by the institution of the Cabinet Secretariat—an innovation for which the credit belongs to Mr. Lloyd George. Prior to its creation, there were no Cabinet Minutes, and no organized method either of being certain of what decisions had been taken or that they would be carried out if resolved upon. The Cabinet Secretariat has ended the tradition of secrecy and informality. It receives all documents which a minister may wish to circulate and sees to it that, subject to the approval of the Prime Minister and notice to the Chancellor of the Exchequer, the appropriate agenda is constructed for each meeting. Its official head is present at all Cabinet meetings to take a note of the decisions reached; and these he communicates to the departments affected by them; the advantages of this system are too obvious to need discussion. Broadly, it means that, in all normal circumstances, Cabinet ministers are fully seised beforehand of the questions they will be asked to decide; in particular, they will know from the Chancellor of the Exchequer any financial aspects these may involve. More,

the fact that five days must usually elapse between the circulation of memoranda and the appearance of an item on the agenda, gives an opportunity for those informal consultations which usually mitigate the dangers of disagreement. The fact, moreover, that the agenda remains under the control of the Prime Minister means that he will always be able thoroughly to discuss beforehand with any minister a proposal about which he may have doubts, and, if he desires, to associate other colleagues with him in the process of consultation.

Of the enormous value of the Cabinet Secretariat there can be no doubt. It has produced order where, formerly, it did not exist in anything like the degree of to-day; and the necessity of that order is apparent when it is remembered that Cabinet business is three or four times as heavy as it was fifty years ago. It must, indeed, be emphasized that the value of the Secretariat depends very largely upon its being an agent of business and not an instrument of advice. Were it the latter, it would undoubtedly be a danger to the smooth operation of affairs, since it would tend to multiply conflict between departments by becoming an independent source of policy.

Two other reasons reduce in a considerable degree the work the Cabinet has to perform. The Committee of Imperial Defence, over which the Prime Minister presides, relieves it of the necessity of considering all but the largest principles of policy; through the Committee the problems of detail can almost wholly be handled by the relevant ministers and their experts. The Home Affairs Committee of the Cabinet has, once the parliamentary work for the session has been decided upon, relieved it of most of the technical detail on bills by which former Cabinets were oppressed.

The literature of Cabinet Government is full of com-

plaint of the pressure the system exercises upon ministers and the heavy burden it involves. It is worth suggesting that the complaint fails to distinguish between burden and responsibility. A Cabinet, nowadays, meets for perhaps two hours on between fifty and sixty occasions in a year. It will have before it an agenda of perhaps fifteen items, and the memoranda connected with that agenda will run, normally, to some fifty pages of folio print, each memorandum being, as a rule, carefully summarized for the convenience of a busy politician who does not feel that he has time to do more than consider the outline of an argument. It is pretty certain either that the substance of each proposal will have been carefully explored beforehand, between the ministers most concerned, or that, if it raises radically new issues upon which there is conflict, it will be referred to a committee for report to a Cabinet. No doubt the responsibility of a decision to accept or reject the Hoare-Laval proposals, for instance, or, as in 1925, to secure the postponement of a miners' strike by granting a subsidy, is a heavy one; and in a period like that of the war, the frequency with which great decisions have to be made will induce the strain involved in all great responsibility.

But the actual burden of the Cabinet work can hardly, I think, be called heavy if it is separated from the related pressures of departmental and parliamentary duties. Men of experience in political affairs are trained by the life they lead to making rapid decisions. The direction of the policy within the framework of which they have to decide is largely set by the character of the party expectations they have to satisfy. The material, as it comes to them, has been pretty thoroughly sifted and analysed by the officials in the departments. Where the strain is felt, it is the magnitude of the choice made that con-

stitutes the burden rather than the extent of the materials upon which the choice is built. The very fact that Cabinets so rarely disagree suggests that the large contours of policy are a matter upon which unity is seldom strained to the breaking-point. What causes the pressure is less the strain of making the decisions, or their range, than the knowledge that the nature of our political system will mean that each decision is the starting-point of controversy, and that the fighting of political battles in and out of Parliament is a nerve-racking business. No one need doubt that an experience like that through which the Prime Minister passed on the eve of August 4, 1914, or during the abdication crisis of 1936 is a great drain upon his physical resources. But it is the nature of great decisions to exact their strain; and there seems no inherent reason to suppose that there is anything in the Cabinet system itself which adds unduly to it. The paper work cannot be called excessive; nor is the burden of Cabinet and Cabinet-committee meetings larger than will fall upon the executive heads of any large undertaking—the London County Council, for example. What really constitutes the pressure lies outside the Cabinet; and the strain of the Cabinet itself is psychologically involved in the importance, rather than in the extent, of the material with which it is concerned.

The Cabinet, I have said, is a secret body, collectively responsible for its decisions. The significance of the secrecy may easily be exaggerated. Theoretically, it is safeguarded in three ways: by the Privy Councillor's Oath, the Official Secrets Act, and the fact that, since a Cabinet decision is advice to the King, the monarch's sanction is necessary before publication. But none of these is so important as the fact that men who have to appear before the public as collectively responsible for

their decisions could usefully work together unless they were assured, as normally they are, that the confidences of free discussion will be respected. In fact, indeed, the rule cannot be made an absolute one. Any serious Cabinet division which results in the resignation of one or more ministers always results in a discussion in the House of Commons in which there is revelation, sometimes luxuriant, of Cabinet secrets; that was notably the case after the resignation of Mr. E. S. Montagu in 1921, and after the resignation of the Labour Government in 1931, when ministers and ex-ministers vied with one another in hurling Cabinet secrets about the House. Not only is this the case. There are few Cabinet meetings in which the modern Press is not a semi-participant. Ministers, sometimes the Prime Minister, give to its organs inspired communications intended to promote opinion towards the direction they desire; and there have been fewer Cabinets still in which some member has not been in fairly confidential relations with one eminent journalist or another. Cabinet ministers, moreover, increasingly publish their memoirs; and though the tradition of secrecy still holds, even for a period as recent as that of the Great War, there are few vital controversies in which we have not been made almost familiar participants.

Collective responsibility is a different matter; the rule was well laid down by Lord Salisbury in 1878. "For all that passes in Cabinet," he said, "each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues." A minister, therefore, must accept a Cabinet decision or resign, and, if he does not resign, it is no less his decision than that of his colleagues even if he protested against it in the Cabinet. He must, that

is to say, vote for the decision in Parliament and, if necessary, defend it there or on the public platform. Mr. Gladstone, indeed, took the view that the absence of a minister from a division should be censured, and this appears to apply even to junior ministers not in the Cabinet. The implication goes even further. A minister must not make a speech contrary to Cabinet policy; if he seeks too large a latitude he will, like Mr. Chamberlain in 1903, find it necessary to resign. If he makes a declaration of policy in a speech upon which there is no Cabinet decision, either, like Mr. Lloyd George in the well-known Mansion House speech of 1911, he must have the agreement of vital colleagues who can assure him of Cabinet sanction afterwards, or, like Sir William Joynson-Hicks, when in 1927 he pledged the Cabinet to woman suffrage at twenty-one with no such consultation, he must take the risk that a refusal of *post hoc* consent will put him in a position where he has no alternative but to resign. The Cabinet is by nature a unity; and collective responsibility is the method by which this unity is secured.

The rule is not only salutary; it is also a necessary one. There is no other condition upon which that teamwork which is of the essence of the Cabinet system becomes possible. Not only this. Collective responsibility begets mutual confidence, and it makes possible that give-and-take in the shaping of policy without which any effective mutual confidence is rarely attained. It is clear that ministers could not easily live together if any Cabinet minister could at any time divest himself of responsibility for an unpopular decision or for one pivotal to the Cabinet's outlook; and it is clear, further, that no minister can speak on those topics, especially foreign affairs, on which his colleagues are acting without seriously implicating them in his pronouncements. How

inescapable the rule is was shown by the notorious "agreement to differ" of 1932. For the logic of that situation would have involved the destruction of any party basis for Cabinet government. The "exceptional circumstances" by which Lord Hailsham justified the departure from what he described as a "very sound constitutional principle" would, if they ever became regarded as a precedent, mean that no method would exist of satisfying the supporters of the Government in a coherent way. That would either mean a series of short and weak Governments, which would discredit parliamentary institutions, or a system of coalitions of persons devoid of any principle of unity. Along that road, as Dr. Jennings has insisted, men march to a Fascist State. It is to ask for trust in men regardless of the principles they profess. That trust is what the party system exists to deny. That is why the suppression of political parties is one of the first measures taken by a dictator who destroys parliamentary government.

This leads us to the conclusion that the secret of collective responsibility is, in all normal circumstances, the fact that the Cabinet is rooted in the party-system. It is its party-complexion that gives it its unity of purpose. It is its party-complexion, also, that provides the sanctions by which that unity of purpose is maintained. The party assures the presence in the Cabinet of like-minded men with similar objects who will contemplate from a similar angle the problems they will have to deal with. It is the party, also, which makes it possible for the Cabinet to follow a policy which, pre-determined in its large outlines, is likely to command a continuous majority in the House of Commons. That is why Disraeli could rightly say that England does not love coalitions. For a coalition is essentially a suspension of the normal

principles of our political life for objectives disturbing to the habits by which men seek to live. It involves a suspension of those habits; by its very nature it involves a suspension of principle also. Either it breaks down rapidly, in which case the normal process of politics is resumed, or it continues. And if it continues over any considerable period, as with the National Government of 1931, it becomes quickly apparent that it must either result in a realignment of parties (in which case it ceases to be a coalition) or it results in the destruction of parties. But to destroy parties is necessarily to destroy representative government, since they are the active principle of its life. From this angle, therefore, the collective responsibility of the Cabinet is central to the whole structure of our parliamentary system. To jeopardize it is to risk all that the system secures for effective discussion of the governmental process in this country.

4.

I shall discuss in a later chapter the position of the Sovereign in our system. But it will be useful here to analyse briefly the relation between the Cabinet and the Crown. Theoretically, just as the Cabinet is a unit before, and collectively responsible to, the House of Commons and the country, so, also, collective responsibility determines its relations with the Crown. But the working of that relation involves delicacies and complexities about which there are few established rules.

It is, of course, clear that since the King must act upon the advice of his ministers, the Cabinet can always have its way by making resignation the alternative to the acceptance of its policy. Since resignation unconnected with a defeat in the House of Commons, or some similar external crisis, would mean that the King was involved

in the struggle of parties, once he has put his view and the Cabinet remains firm, the King must necessarily give way.

But there is, obviously, a wide intermediate ground. The King is in constant touch with the Prime Minister on all the vital aspects of policy; he sees other ministers with some frequency; and he has as a matter of course the Cabinet minutes and the main official documents relevant thereto. He will be aware of all proposals before decisions are taken in the Cabinet upon them. He has the right to comment upon them and, where he so insists, to see that the Cabinet is fully informed of his opinions before it decides. It is clear, therefore, that a King who so wishes can play a considerable part in the process of government. No doubt his influence will depend to a large extent upon the quality of his mind and character. A comparatively idle King like Edward VII will have much less influence than a hard-working monarch like Queen Victoria. But it is clear from the documents that even a bad King, like George IV, or a stupid King like his successor, are far from being negligible factors in the process of Cabinet government.

Mr. Gladstone took the view that the Prime Minister ought not to disclose to the monarch any division of opinion in the Cabinet; he is bound, he thought, "not to counterwork the Cabinet; not to divide it; not to undermine the position of his colleagues in the royal favour. If he departs in any degree from strict adherence to these rules, and uses his great opportunities to increase his own influence, or to pursue aims not shared by his colleagues, then, unless he is prepared to advise their dismissal, he not only departs from rule, but commits an act of treachery and baseness." It is difficult not to feel that Mr. Gladstone was right; but the evidence runs

directly counter to his principle. Lord Melbourne, Lord Russell, Disraeli, and Salisbury all gave the Queen details of Cabinet discussions; so did Mr. Asquith on the Naval Estimates of 1909. In other ministries, particular Cabinet ministers have given the Crown information of this kind which it has not otherwise obtained; Lord Granville and Lord Rosebery both acted in this way, and, on at least one important occasion, even Lord Morley. There have been cases in which the Crown has, by means of these private relations, brought pressure to bear on one side of the Cabinet against another. On at least one occasion in the Labour Government of 1929 George V was able to appeal to the Foreign Secretary against a proposal the latter was about to put to the Cabinet by urging that the Prime Minister agreed with the royal view.

It is obvious that any departure from Mr. Gladstone's view will tempt a monarch with strong views to intrigue within the Cabinet; and I shall show in a later chapter that this possibility of intrigue is deepened by the fact that every monarch has his secret and unofficial advisers with their own political connections. Any such departure, moreover, leads the monarch into differentiation between ministers in terms of their accessibility to his influence. It is certain that any knowledge that the royal views tend in a particular direction makes it difficult for a Cabinet, and especially a Cabinet whose unity is threatened, to maintain its position. It is irrelevant, in this regard, that the King's view may happen to be right. The point is that as soon as he tries to get what is virtually a group to favour his view, he is abandoning that neutrality in action which is of the essence of his position. From intrigue within a Cabinet to intrigue with the Opposition is a gravely short step. I shall show later that it was a step that Queen Victoria, at least, did not hesitate to take.

The King has not merely the right to comment upon Cabinet proposals; he can also raise questions for discussion before it. So, too, he has the right to be consulted before any bill or public enquiry is announced. Queen Victoria went even further and argued (after consultation with the Leader of the Opposition, Lord Salisbury) that a Cabinet minister cannot speak upon a grave public question not before the Cabinet without preliminary discussion with the Palace. King Edward VII complained of Mr. Lloyd George's attacks on the House of Lords and of his support for women's suffrage. The Crown has also the right to see important dispatches in all departments and to have its comments thereon considered. "His Majesty," wrote Edward VII, "directs me to point out that it is his constitutional right to have any dispatches of any importance, especially those initiating or relating to a change of policy, laid before him prior to it being finally decided upon." We have a picture from Lord Morley of the efforts required to persuade Edward VII, in 1909, to agree to the innovation of appointing Indian members of the Secretary of State for India's Council in London.

From all this it is clear that the power of the Crown in relation to the Cabinet is a real one. Its exercise, no doubt, depends upon the characters both of the monarch and the Cabinet themselves. It is one thing with Disraeli who was able to transform the Crown into a kind of pocket borough for his own purposes; his correspondence, when out of power, with Queen Victoria shows the kind of problem his impact upon its influence could raise for his successor. The point is that under no circumstances can the monarch's influence ever be negligible. It may be dangerous with a weak Prime Minister; it may be important when the position of the Cabinet is

uncertain; and it may be far-reaching when parties are fairly evenly balanced in the House. It reaches strata of opinion which are not always free from a dangerous bias against the Government in power, and there is no evidence that it may not become infected with that bias. On any showing, the position of a constitutional monarch is, *vis-à-vis* the Cabinet, an extraordinarily difficult and delicate *métier*. The evidence, as I shall show later, tends to suggest that it is through ministers, rather than the monarchs themselves, that it has functioned reasonably well.

5.

"The Cabinet," writes Mr. Ramsay Muir, "has arrogated to itself, half-blindly, a series of colossal responsibilities which it cannot meet, which it will not allow Parliament to tackle, and which are not met at all except in so far as they are assumed by the bureaucracy behind the cloak of Cabinet omnipotence." These responsibilities, he suggests, are (1) "surveying and controlling the whole vast mechanism of administration"; (2) "co-ordinating the work of the various departments, and overcoming the vice of Departmentalism"; the transfer of these responsibilities from Parliament to Cabinet, Mr. Muir urges, is fatal to the adequate working of the parliamentary system.

Cabinet control of the administrative process is effected through the fact that most ministers in charge of departments are members of the Cabinet and have its authority behind them in the decisions they make about departmental matters. They are always free to bring up in Cabinet any issue which, in their judgment, is large enough to require its sanction; and they are expected to bring up any matter which represents a considerable

innovation in policy, the more especially if it represents a departure from some principle previously agreed upon. Where finance, moreover, is concerned, each item of activity will be discussed between the department and the Treasury, and, if unsettled by that discussion, will normally, with the Prime Minister's consent, become a matter which the Cabinet will decide. It is difficult to see what better mechanism of control could be devised; particularly, it is difficult to see how this aspect of administration could suitably be settled by the process of debate in Parliament. For the latter body is too large and miscellaneous in character to debate the infinity of detail out of which administrative decisions emerge; its business is to discuss the general principles which underlie them. In so far as it goes beyond this function the evidence, particularly in the United States and France, suggests that the result is definitely inferior to what is achieved by the method of Cabinet control.

Mr. Muir's point, however, has a wider bearing. We live in an age of vast problems of population, of technological change, of economic relationships. Busy ministers have rarely the time, and seldom the energy, to think out the implications of new knowledge in these fields to the day-to-day issues they have to decide. The pressure of immediate issues weighs so heavily upon them that they lack the leisure as a Cabinet to tackle the issues which go to the foundations of our society. Unless a Government is constantly thinking of these things, there is grave danger of an omission to apply the findings of science to our problems.

There is, no doubt, a real truth in this view; though it is difficult indeed to imagine that a revival of independent authority in the private member of the House of Commons would lead to the kind of change Mr. Muir desires.

Indeed, as he frames the issue, it is misconceived as an attack upon the functioning of the Cabinet. The latter, by its nature, can deal with problems only when they have emerged at that level where they become politically significant. A body of politicians is not an organization of specialists following the drift of research; it must use the results of research as these become apparent in the problems with which it has to deal. Its ability, moreover, to use those results is necessarily conditioned by the values it attaches to them. In a complex community like ours there is little universal agreement upon these values. One group in the community may feel strongly, with much medical evidence behind them, that the reform of the abortion laws is an urgent matter; another may insist that the abolition of the Means Test for the unemployed brooks no delay; a third may insist that the problems of electric power are not soluble save as the industry is nationalized. But each of these views encounters objections from interests which no Government can neglect, interests, indeed, with the outlook of which it is so closely articulated as to make impossible the retention of its supporters if it accepts the insistence of the particular group concerned. From the nature of parliamentary democracy the point, normally, at which a Government must deal with a problem is the point where a significant element of the electorate expects it to be dealt with. At that point only does it begin to possess political significance.

Criticisms of this kind forget that a Cabinet is not, like a committee of the Royal Society, engaged in the pursuit of knowledge whatever may be the results of its discovery. It has to deal with knowledge the fruits of which are deemed to be of instant political significance. It is fair, for example, to ask a Cabinet which, like that

of Mr. Chamberlain in 1937, has embarked upon a great programme of rearmament to consider now what it will do with the large numbers likely to be unemployed when that programme is complete; it is not fair to ask it to consider what steps it will take to deal with the heavy metal industries if, as seems possible in the next generation, the light metals largely replace the heavy metals for industrial purposes. A Cabinet can be forehanded so long as actuality surrounds its forehandedness; it cannot be expected to be forehanded in a vacuum where most of the factors in the equations involved are either unknown or only half-known.

A variant upon this theme of Mr. Muir's is provided by those who are unhappy at the relation of research generally to Cabinet planning. In recent years, two methods have been tried for bringing the results of new knowledge to the attention of ministers. The first was the Committee on Civil Research instituted by Mr. Baldwin in 1925. The model of that body was the Committee of Imperial Defence. Its Chairman was the Prime Minister, and its members such ministers or others as he might choose to associate with him in consultation. It was, therefore, a flexible body to which reference could be made on any subject the Prime Minister might think desirable. There were obvious advantages in the method, as there were obvious weaknesses. There was no assurance, of course, that the Prime Minister would see that the right questions were discussed or that the right persons would be asked to discuss them. The flexibility had the decisive weakness that it made both the volume and character of the research dependent upon the will and energy of the Prime Minister. Obviously, it was likely that he would refer to it questions of short-term significance rather than of long-term importance; and

there was no assurance, save his personal feeling about them, that the findings of the Committee would become the basis of Cabinet action when they were made.

The Committee on Civil Research was replaced in 1929 by the Economic Advisory Committee—a device of Mr. Ramsay MacDonald. This body, of which the Prime Minister was nominally Chairman, was given a definite body of members, chosen by the Prime Minister, and provided with a small but permanent secretariat. The members consisted of eminent business men and trade unionists, like Sir Josiah Stamp, Sir Walter Citrine and Mr. Bevin, economists like Professor Pigou and Mr. G. D. H. Cole. It worked in two ways. Some problems were referred to it as a whole; others were referred to sub-committees which drew upon advisory panels of experts who were not necessarily members of the full Committee itself. The Committee made a number of reports; and some of the work of its sub-committees is said to have been of high value. But after 1931 it fell into semi-obsolescence; and in recent years there does not appear to have been any effective revival of its activities.

It is, I think, clear that the Economic Advisory Council was ill-conceived for the purposes Mr. MacDonald had in view. It was futile to expect a large mixed body to arrive at agreed conclusions upon large general issues about the very premisses of which they were not agreed. It was a mistake, further, to superimpose a general advisory body of this kind, charged with no administrative responsibility for its findings, upon a civil service which was, in a number of departments, already duplicating its work. No proper organic relation was ever established between the Council and its committees; and none was established, either, between the Council and the departments. It was, in fact, no more than a per-

manent Royal Commission, of highly miscellaneous membership, unlikely, therefore, to agree upon any fundamental matters referred to it. When, moreover, it did report, it could do no more than offer a body of advice which required to be dissected, from an administrative point of view, in the departments before it was ready for submission to the Cabinet. It was an ideal body, for example, to investigate the problem of a protective tariff which became significant in 1931. The fact that the Cabinet never referred this to the Council is evidence enough that it never acquired an effective status in our administrative system.

More recently, Sir William Beveridge has sought to meet this problem by the device, originally put forward by Mr. H. D. Henderson, of an Economic General Staff. Exactly, it is urged, as the Imperial General Staff plans in peace-time for all the problems that may arise in the emergency of war, so we need a body of economists who will work out for the Government the large general problems with which neither the Cabinet nor departmental officials have time to deal. The Economic General Staff is, it appears, to be a body of permanent officials without departmental duties; it is to be free, so to speak, for long-time planning and research. It is to be an advisory body; but it is to have sufficient authority to be able to compel attention to its findings. In this way, we are to presume, the Cabinet will be made aware of those large secular changes, all the problems, for instance, raised by the fall in the birth-rate, to which, at present, neither itself nor its advisers are able to give adequate attention.

Superficially, the conception is an attractive one; but it can hardly be said that its protagonists have seriously thought out the administrative problems involved. Is the

Economic General Staff to decide what questions it shall investigate? Or is it to decide the questions referred to it by the Cabinet? In either case it is clear the value of its findings depends upon the view taken by the Cabinet of their practicability; and this, in its turn, is partly a matter of their immediate urgency, and partly of the political complexion of the Government of the day. These findings, moreover, become relevant to action as they are examined by the different departments in the light of the consequences they will have for each. A fall in the birth-rate, for instance, may mean, from one angle, fewer schools and fewer teachers; from another it may be a maintenance of the present number of teachers with a smaller number of pupils in each class. The decision upon the findings of the Economic General Staff must be based, that is, upon financial and social considerations to which the views of the Economic General Staff are largely irrelevant. And findings of this general kind are, in fact, being made every day by economists, both within and without the Civil Service, without the device of a quasi-department of State for their discovery. The problem we confront is not the problem of discovering new knowledge; it is the problem of clothing that new knowledge in appropriate form for Government action.

It is difficult to see that Sir William Beveridge has attempted seriously to discuss this question. Nothing in his scheme explains the relation the Economic General Staff is to bear to the appropriate Government departments. Every recommendation it can make involves their views; it is hard to see why its recommendations are more suggestive, in the form in which they are bound to be made, than the recommendations of the Royal Commission. Nor can I see how the Economic General Staff is to be clothed with the authority to "compel" attention

to its findings. If it is to be a normal Government department, it must be advisory to the minister who is charged with its direction. It can no more "compel" him to take action upon its views than can any other body of officials compel a minister to do so; it is indeed incompatible with the idea of civil service neutrality that its members should be in a position to do so. If it is to be a body resembling the Statutory Unemployment Insurance Committee, with a quasi-independent status, and the right to publicity for its findings, it is clear that its power to "compel" attention to itself will be partly dependent upon the public support it elicits for those findings, and, in part, upon their coincidence with the general views of the party in power. An Economic General Staff, for example, might well work out proposals for the reorganization of the Coal Industry akin to those of the Samuel Commission of 1925–6. But, however able the report it makes, that is no guarantee, and should be no guarantee, that its findings will be accepted by the Government of the day. Not even an oligarchy of economic experts, supposing them to be agreed, is entitled in effect to have the sovereignty of the State transferred to its hands.

The truth is that the conception of an Economic General Staff is false in its analogy with the Imperial General Staff, on the one hand, and based upon a complete misconception of the relation of thought to administration on the other. The Imperial General Staff, or, for that matter, the Committee of Imperial Defence, is set a series of definite and concrete problems. Granted, they are told in effect, that such and such are the objectives of our foreign policy, what defence forces do we require for their maintenance in the light of any possible combination of powers against their attainment, and how can the proportions of those defence forces best be distributed

among the different branches of the services and organized both within themselves and in their inter-relationships? The vital fact about the problem of war is that the objectives of foreign policy set the boundaries, at any given time, of the equations to be solved. The naval experts reach their conclusions on the size of the navy needed to maintain imperial communications and the volume of armament that navy requires. Within the postulated size, they make their recommendations upon the number of ships of each type which, in their judgment, will produce the required result. So, similarly, with the army and the air force. It is, indeed, not impossible that the experts of the General Staff are inexpert in their measurement of the economic repercussions of their recommendations; that is an issue which raises interesting questions about the type of training they receive. What is important in this context is that, granted their recommendations are unanimous—and this is rare—the civilian Cabinet has still the problem of evaluating their cost, on the one hand, and their social and economic consequences upon the other. The vital fact is that they remain recommendations until the Cabinet has made up its mind about them. If they did not, the defence forces would be masters of the State in the sense in which they are its masters in Japan and Germany.

Obviously, there is little analogy between work of this kind and that which Sir William Beveridge proposes should be undertaken by the Economic General Staff. The work it would undertake would be no more than very generalized preliminaries to the more detailed examination of principles which, as they claimed application, would have to be undertaken by the departments themselves. In so far as the proposed General Staff attempted that detailed application it would either require a

large investigating personnel of its own, or would have to depend on the intelligence sections of the different departments; and either of these would result both in friction and the unnecessary duplication of work. The kind of research Sir William Beveridge has in mind is, no doubt, of high importance. But it is certainly not the type which is now undertaken by the Imperial General Staff or by the Committee of Imperial Defence. It is not concrete; it is not definite; it is introductory to the making of policy. It assumes that thought in a vacuum divorced from responsibility for action directly clarifies the work of men who have to take decisions. It mistakes, in short, academic arguing for Government investigation. The importance of the former needs no emphasis; the work done, for example, by the University of Liverpool in its report on Merseyside, by the London School of Economics and Political Science in its Survey of London Life and Labour, or by the University of Manchester in its enquiry into juvenile labour, is all of it of the highest importance; and the more of it that can be undertaken the wider will be the basis of knowledge upon which policy is built. But the whole point of such enquiries is that they form the groundwork for policy; they are not policy itself. A Government which receives such reports has material upon which to build action; it has still to relate that material to a hundred different considerations which academic investigators do not, because they need not, take into account. But it is exactly those considerations which are vital to the formulation of a Government decision.

A simple illustration will clarify this point. The Imperial General Staff may be alarmed at the decline in recruiting for the army. It expresses its alarm, through the appropriate channels, to the Cabinet, and indicates

possible ways of enlarging the supply of men. It may urge the desirability of conscription; it may suggest improved conditions of service for recruits; it may suggest compulsory enrolment in the territorial forces; and so on. The point of importance is that, when all the possibilities have been put forward, there still remains for the Cabinet the vital task of considering their implications, social, economic, political, psychological, and evaluating them. The Cabinet does not simply have to take an expert report and say yes or no to its conclusions. It has first to make up its mind about the premisses upon which the conclusions are based; it has to set the result in the proper relation to its political policy; and it has to judge, as best it can, the probable impact of that policy as so shaped by the conclusions put forward upon public opinion. Moreover, it may not be dealing with experts who favour one point of view and one only. During the war, says Mr. J. A. Spender, "from beginning to end civilian ministers found themselves compelled to choose between rival and competing military plans, each of which had highly expert authority behind it, and to adjust whatever plan was chosen to the policy and strategy of the Allies. . . . In whatever way the ministerial pack was shuffled, it was not to be supposed that active and conscientious men who accepted responsibility for the results would remain mere spectators of the conflict, or refrain from expressing opinions which they held with conviction."

Sir William Beveridge, in short, has forgotten the significance of Burke's famous remark that "the ideal lines of politics are not like the ideal lines of mathematics: they are broad and deep, as well as long." This has led him wholly to mistake the relation of thought to administration. In the world of politics there does not

itself unless they are urgent, or, where they are so, to be no more than a supplementary aim of research to already existing bodies, to which it will have secondary importance just because it is not responsible. If, on the other hand, it investigates problems assigned to it by the Cabinet for study, it will have to work through and with the departments to be effective; and it will then be found that, in order to carry its proper weight, it will require to embody the personnel of the departments. And it is worth while noting that such a body offers no guarantee, once it is a staff of officials, that it will not develop a line of its own unreceptive to what it may well consider heterodoxies from outside. Just as, in the post-war years, the British Treasury has been hostile to great schemes of public works, such as those advocated by Mr. Lloyd George, so an Economic General Staff would, if it were organized like a Government department, tend to develop "isms" of its own, and to be hostile to other "isms" which contradicted its own outlook. From this angle, the more distinguished its personnel, the greater the difficulty it might well create for new ideas of which the Cabinet ought to be seised; for its temptation would be great to use its authority to stifle innovating doctrine. If, on the other hand, its members did not constitute an hierarchy, and were independently free to put their ideas before the Cabinet, the position would be simply that which now exists in the Defence Ministries, where the Cabinet has to choose between the rival views of experts. That would not, of course, be a novelty; but it is difficult to see that the result it proposes is precisely that which the advocates of an Economic General Staff have in mind.

The real truth surely is that the relation of ideas to policy is both different from and more complicated than anything Sir William Beveridge appears to have realized.

New theories in the field of social politics do not make their way as they do in the natural sciences. A discovery like Einstein's has the kind of immediate relevance in its own nature which assures it of consideration from his fellow-physicists. A book like that of Adam Smith, a theory of banking like that of Mr. Keynes, has to meet a wholly different universe of discourse before it emerges at the level where it acquires political significance. Like the theory of Einstein, it is an endeavour to predict the behaviour of phenomena; but unlike Einstein's theory, its adoption demands an alteration in the way in which Governments will respond to the interests they encounter. The considerations involved in the acceptance of such ideas are obviously different from those which apply in the world of natural science. A Government is not, in the parliamentary system, a dictator which can announce truths to be applied independently of the public opinion which receives them. It has to make sure of the support it requires to carry its proposals. It has to recognize that, if it is to receive this support, it must work within the framework of the expectations its party will expect it to satisfy. For it to announce, especially in a matter of first-class importance, that, whatever those expectations, they must be completely disappointed, is always a difficult adventure. They must, normally, either wait for a sufficient conversion among those upon whom they depend, or, alternatively, leave the problem involved as one which the nature of their support does not enable them to tackle. If it is urgent enough, its discussion will produce among their opponents the claim that the failure to deal with it is a proof that the Government is unfit for its task. Out of that claim will emerge public discussion of the kind that makes the issue of that level of importance where the idea becomes a policy. So it has been, at least,

with all considerable changes in social constitution, whether in the tariff, or currency, in the problems of industrial regulation, or those connected with an issue like birth-control. The climate of opinion their appearance produces must be such as to impose upon a Government the need for decision before they have the "pungent sense," as William James termed it, of effective reality about them.

Above all, it is important to remember that there is no field of social policy in which, as I believe Sir William Beveridge unconsciously assumes, the specialists have an esoteric body of truth in their possession the importance of which politicians fail to recognize or which, from the exigencies of party conflict, they suppress even when they recognize their importance. Most specialists feel that they have remedies for our social ills which are insufficiently recognized by the Government of the day. Most of them are tempted to feel that if only they could bring them to the attention of the Cabinet—even better, if they could, as Cabinet ministers, apply the remedies themselves—the world would be a better place. In fact, there is no such body of esoteric truth; and the specialist who is insistent that government needs the aid of "thought" usually means that the politicians do not place upon the remedies the same importance as he attaches to them. But at the point where he makes this judgment, he in fact ceases to be a specialist; for he is then establishing a scheme of priority in value for ideas—a matter in which wisdom and not specialism is the test of validity. It is the essence of our parliamentary system to make the responsibility for such priority in value one that the Cabinet must take. Any alternative would destroy that system because it would ultimately place the responsibility for action outside the area where it can be controlled by Parliament and

the electorate. That road, ultimately, leads to dictatorship, however benevolent in purpose. For it rests upon the assumption that, whatever the popular will, it must accept the specialist's conclusion of what is good for it. It is a view, no doubt, capable of powerful defence; but, so far, it is contrary to the traditions upon which the governmental system of this country has been built.

I believe myself that what is valid in criticisms of this kind about the operation of the Cabinet system is more likely to be corrected by a device like the Committee on Civil Research than by either of the alternatives we have explored. The value of such an experiment, no doubt, depends upon the will and energy of the Prime Minister under whose auspices it operates; but so, also, will either of the others. His chairmanship of the Committee gives the one effective assurance available that, when he is impressed by its enquiries, their result will be properly considered by the Cabinet. Its composition under his presidency, moreover, is the best guarantee we can have of two important things: first, that the subjects it considers will be sufficiently actual in character as to be directly relevant to foreseeable policy; and, second, that, apart from outside experts, the men who will be called into consultation will be those who, under their respective ministers, will be responsible for applying the results of its deliberations. Lord Baldwin's proposal of 1929, in fact, was administratively better conceived than any other that has been so far suggested. It would prevent the danger, inherent in and fatal to Mr. MacDonald's Economic Advisory Council, of a large and fixed body of miscellaneous composition, incapable directly of research, and so composed as to be unlikely to reach agreement about its evaluation. It would avoid further the weakness of the proposal for an Economic General Staff by refusing

to separate research and administration. The channels through which its results would reach the Cabinet are those which can alone attach proper weight to their substance.

One further remark it is perhaps worth while to make. It is at least unlikely that such an institution will be able to do its work adequately until the Government is, both within and without the departments, far less niggardly in its attitude to research than it has been in modern history. It is clear that much important work, especially of a statistical character, remains to be done which cannot be even attempted with the funds at present available for social enquiry. It has been known, for instance, for years that the Government cost-of-living index was hopelessly out of date; yet it took a generation before its reconstruction was determined upon. We probably need a body in this field like the Council of Medical Research which can allot in detail an annual grant to research bodies which are now inhibited by lack of funds from embarking upon large schemes of enquiry, especially those which, like the *London Survey*, transcend the possibilities of individual investigation. If such a Committee were given a grant of, say, half a million pounds a year, and planned investigations, in conjunction with the Committee on Civil Research, on the basis of a five- or even ten-years' programme, there is little doubt that it could achieve results of extraordinary importance which would rapidly require legislative attention. The economics of housing, the implications of the population problems, the measurement, along the lines so notably begun by Gray and Moshinsky, of educational opportunity, the results of our system of workmen's compensation, the economics of agricultural re-settlement, these are merely illustrations of the kind of problem about which we know little, and about which,

also, we need to know a great deal. Our inattention to them is largely the outcome of the fact that while, over an increasing area, State-intervention is forced upon us, we still largely have to research the attitude of mind characteristic of the *laissez-faire* period. We think of it, that is, as a gentlemanly pursuit, undertaken by amateurs in quest of knowledge out of a spirit of detached and disinterested curiosity, instead of conceiving it as an integral part of the function which the State must make it possible to perform if its intervention is to be wise. Partly, also, no doubt, our investigators are anarchic and haphazard because we have not seen, in a civilization of which the predominant spirit of those who govern is still individualist, that knowledge, to be effective, must be harnessed to social purposes. The best example of this attitude is the fact that nowhere within the framework of our legal institutions is there any body whose business it is seriously to concern itself with the results of the operation of the law, and of its reform in terms of those results. That a country like Great Britain should lack both a serious criminology and a serious penology is a sufficient index to the cultural lag between the needs we face and the provision we make. Not until we bring ourselves adequately to confront the costs implied in the positive state will the Cabinet be in a position effectively to deal with the problems it has to decide.

6.

The second part of Mr. Muir's indictment of the Cabinet was its inadequacy for its task of departmental co-ordination and, in particular, of overcoming what he calls the "vice of departmentalism." In one way or another it is a common accusation. Cabinet ministers, we are told, come to their departments with but little know-

ledge of them; they are ruled by their civil servants whose puppets they really are. Within the large outlines of party policy, what ministers really do is what the officials tell them to do. The minister, at best, is in his department for a few brief years. For most of his time there he is an amateur in the hands of professionals. Above all, he is anxious not to make mistakes; and he must largely depend upon his officials if he is to be saved from mistakes. The result is that, in most cases, the policy he will adopt is their policy. All Chancellors of the Exchequer become imbued with the Treasury outlook; all First Lords of the Admiralty get the naval point of view. "In a majority of cases," writes Mr. Muir, "he (the minister) has no special knowledge of the immense and complex work of the department over which he is to preside. . . . He has to deal with a body of officials who may be, and often are, men of far greater ability than himself, and who have been giving their whole time in quietness to the study of the problems of the office, during the years when he has been making his position in the world, or talking hot air on platforms. They bring before him hundreds of knotty problems for his decision; about most of them he knows nothing at all. They put before him their suggestions, supported by what may seem the most convincing arguments and facts. Is it not obvious that, unless he is either a self-important ass, or a man of quite exceptional grasp, power, and courage (and both of these types are uncommon among successful politicians), he will, in ninety-nine cases out of a hundred, simply accept their view, and sign his name on the dotted line. . . . On the whole, the policy of the 'Office' will nearly always prevail; its powers of quiet persistence and of quiet obstruction, and its command of all the facts, are irresistible except to a man of commanding power."

This view is superficially plausible. But, before I examine it from the angle with which this chapter is concerned, there is one preliminary observation it is worth while to make. Mr. Muir's own remedy for the danger of that bureaucratic power he here paints in such lurid colours is the restoration to Parliament of its control over the Cabinet. But it is surely obvious that if the rigorous selective process of the House of Commons does not throw up enough men with the grasp, capacity, and courage and knowledge (even when they have as Cabinet ministers the formal power) to control their officials, the remainder of the House, who have not been selected for leadership because they have, *a priori*, not convinced their party that they possess those qualities in the same degree, are unlikely to display them. What Mr. Muir's case, if it were true, would really prove is that we have either passed beyond the stage where anyone can control the Civil Service or that, on his own showing, it is better to have it controlled by men who are likely to possess the qualities necessary to control, and will, therefore, be unlikely to control wisely than to have no control at all.

We need not, indeed, face this dilemma at all, for the simple reason that in the form in which Mr. Muir poses it, it is quite remote from the facts. There are certain truths in his indictment. Most departments do have a policy of their own which evolves naturally out of their experience in the course of years; just as writers grow a style, actors a favourite gesture, doctors a favourite remedy, and so on. Able men, and, as Mr. Muir rightly says, most high officials are able men, cannot spend years dealing with a subject without developing views about the best method of its disposition. It is also true that every Cabinet contains ministers who are either not particularly able men, or devoid of any particular direction

in which they desire to move in the realm of policy. The temptation, to either class, to live by official suggestion is clearly great. Where such ministers are in charge of a department the hand that guides the helm will be only nominally theirs.

The real question involved must, clearly, be differently framed. It is, at bottom, a twofold question. Can a Cabinet which takes office with a policy which it desires to carry out, and for which it has the requisite support in the House of Commons and the country, carry that policy to the statute-book? Can a minister, secondly, who goes to a department impose his personality upon his officials when he has made up his mind what he wants to do? I shall discuss the second question first because the issues it raises admit of a fairly simple and direct answer. In the history of British administration it is, I think, quite clear that any minister who has known with any precision what he wants to do has been able, if he had the will to do so, to become the master of his officials. In our own day, to take obvious examples, that has been true of Lord Haldane and Mr. Lloyd George, of Mr. Churchill and Mr. Wheatley, of Sir Kingsley Wood and Mr. Herbert Morrison. Ministers, broadly speaking, may be divided into three classes. There are those who come to office with a pretty detailed picture in their minds of the policy for which they propose to be responsible. There are those who come to it with no particular direction, but with a desire to make a name as ministers. There are those, thirdly, who may, without offence, be described as somewhat startled to find themselves in office at all, and mainly anxious to live their lives there with the minimum of adventure.

Of the first type I have given six examples; Mr. Arthur Henderson's tenure of the Foreign Office is another

notable illustration of the type. In each case there has never been any question of the minister's power to dominate his officials. He knew what he wanted and he knew how to get what he wanted. In at least three of the cases I have named the minister concerned met all the "persistence and obstructiveness" of which Mr. Muir speaks and had no difficulty in triumphing over them. The case of Lord Haldane is especially famous. In the years in which he held the War Office (1906–11) he converted a difficult department, largely staffed by men steeped in a deep-rooted professional tradition—the type which is of all the most difficult to change—into one which it is fair to call enthusiastic for the new habits to which he re-shaped it. The Foreign Office has rarely had a chief more alien from its classic traditions than Mr. Arthur Henderson; and a good deal of what he sought to achieve ran counter to the policy in which his department had confidence. Yet it is well known that Mr. Henderson emerged from his post with the reputation, among the officials, of having been the best Foreign Secretary in recent years, some would even say the best Foreign Secretary in modern history. I have heard Sir Robert Morant say that the mere presence of Mr. Churchill in a department transformed the spirit of the officials there. There was a new sense of energy, the eager feeling that comes with the recognition that something important is to be attempted. It is said of Mr. Wheatley that in his brief career at Whitehall he contributed a similar drive to the department; and anyone who compares the record of Sir Kingsley Wood at the Post Office with that of his predecessors for something like a generation will see that neither persistence nor obstruction can deter an energetic minister who has made up his mind.

It is, of course, true that this type of minister is the

rarest type encountered in politics; that is surely not surprising since really outstanding men are rare in any political system. The more usual type is the second of the three I have enumerated. He wants to do something; he is not wholly clear what precisely he wants to do. So long as he really desires achievement, and is persistent in his desire, it is not in the least surprising that the contours of his policy should be largely shaped by the departmental tradition. Any department worth its salt has measures in view which it is anxious to promote. It takes the view—it rightly takes the view—that its administrative work cannot be done efficiently without those measures. It is perfectly natural for officials to urge their desirability on a new minister; and it is equally natural that a new minister in search of a reputation should accept the departmental policy as his own and seek leave from the Cabinet to push it to the statute-book. It is said, for example, that the Home Office has, in the post-war years, urged the amendment of the Factory Acts upon each successive Secretary of State. It is wholly right that it should do so; and that Secretary of State who cannot see the significance of this reform in terms of the happiness it brings to individual lives must be a poor person indeed. To elicit ministerial support for the policy of the Department is an official obligation. For it is above all the business of the civil servant to draw the attention of his political chief to the absence of powers he believes to be necessary for the successful conduct of the administrative process. If this is bureaucracy, there is no State that can afford to do without it.

The type of minister who is largely or wholly in the hands of his officials exists, of course, in every Cabinet. Partly he is there because the Prime Minister has chosen him. He may be a "representative" man, as when

a Labour Premier selects an ageing trade union official who, it is felt, should receive official recognition and whose personal status makes the offer of a minor post inacceptable. Or he may be a member of some eminent family whose influence in the Conservative Party is won for the Government by his elevation to Cabinet rank. Every Prime Minister, it is important to emphasize, is trying to make a team which will work as a unity. It is doubtful whether one composed wholly of "strong" personalities, in Mr. Muir's sense of the term, makes the most efficient Cabinet; a ministry of prima donnas, so to say, is usually difficult to keep together. That was the trouble with Lord Rosebery's Cabinet of 1894; once the strong hand of Mr. Gladstone was withdrawn, the Prime Minister's authority was not adequate to his task. His real problem, accordingly, is not merely to find men who are set on an ample programme in every Department of State; the digestion of the public, and the time-table of the House of Commons, may easily be overtaxed by a too luxurious fare. What he requires is a number of colleagues who can think out and carry into effect big measures, sufficient to maintain his support, and others who, satisfied with a relatively secondary position, can nevertheless be expected to keep their departments going at a normal level of efficiency. Their essential contribution to the Cabinet is their common sense, their ability to put before their colleagues that judgment about decisions which public opinion, and especially party opinion, will make after they have been published. A Cabinet that does not contain half a dozen such men is likely both to lack balance, and to fall rapidly out of touch with the opinion with which it needs to keep into contact. For a Cabinet of extraordinary men is always liable to the danger that just because its members are

extraordinary they fail to think as the man in the street thinks. They lose, as it were, the common touch. They fail to realize what is being thought and said about them because they are too set on their own ideas. In quiet times, especially, the parliamentary system requires these "secondary" men in order that Cabinet judgment may not outrun the pace it must keep if it is to satisfy the constituency upon which it depends.

There are many instances of this type in British Cabinets. Lord Althorp, Mr. Walter Long, Lord Bridgeman, were all good examples of it. None of them was a really able man. None of them had any of the dynamic qualities which we associate with Gladstone or Disraeli, Mr. Lloyd George or Mr. Churchill. What each supremely was I can perhaps best put by saying that he was, in his generation, the average House of Commons at its best. He had common sense, a very real shrewdness, an important representative capacity. What he said and did was never distinguished in itself. But what he said and did about his more dynamic colleague's measures was what the lobbies of the House were likely to say when public opinion began to shape itself about those measures. They were, so to speak, Voltaire's *M. Tout-le-Monde* in the Cabinets in which they sat—a type for which, in its proper proportion, no Prime Minister can be too grateful.

For it is worth noting that the most successful Cabinets in our history have always been those in which a number of dynamic personalities have been balanced by secondary men of this kind. Mr. Gladstone had Lord Hartington; Disraeli had Cross; Mr. Asquith and Mr. Lloyd George were, before the war, as useful a combination as were the latter and Mr. Bonar Law after 1917. This, it may be noted, is one of the reasons why, again, above all in

normal times, the most successful Prime Minister is unlikely to be a genius but rather, as Bagehot said of Peel, and, as has been true in our own day of Lord Baldwin, an uncommon man of common opinions. The policy of a Government department is not under the parliamentary system a thing of which the basic outlines ought to be made afresh with each new ministerial chief. Its basic assumption is continuity of general principle; and what is therefore required in any department where great innovations are not in contemplation is exactly these secondary men about whom critics like Mr. Muir are so contemptuous.

That is the inner meaning of a great remark of Sir William Harcourt to which too little attention has been paid. "Political heads of departments are necessary," he said, "to tell the Civil Service what the public won't stand." That, in general, is a function which men like Althorp and Long and Bridgeman perform to admiration. They are not themselves overburdened with ideas. But they have been accustomed by education, by position, and by experience both to expressing judgments on other people's ideas and to giving orders about them. The exercise of authority is not for them a luxury they enjoy for its own sake; *ne pas trop gouverner* is a central maxim of their behaviour. They have a certain large placidity, an innate shrewdness, to which it is rare for the vices of bureaucracy to be able to accommodate themselves. They have been used to dealing with men in long years of country business, affairs in the city, the instructive relations of the House of Commons. They know how men jostle one another in life; and I do not think they are easily taken in. Official "smoothness" is more likely to seem to them an absence of frankness, and official persistence the kind of obstinacy that must be "put down."

I do not think anyone who ever watched Lord Bridgeman dealing with officials would have regarded him as in the mental class of the best civil servants; but I do not think, also, that anyone could have doubted that, when he had decided to have his way, he knew how to get himself obeyed.

The critics, indeed, of the system make, it seems to me, certain erroneous assumptions about the whole ethos of Cabinet government and its implications which vitiate all the conclusions they form about it. They assume, first, that a Cabinet minister ought to be as expert about the material of his department, if he is to run it effectively, as the officials who have spent all their lives in it. That is not, of course, the case. The best type of Cabinet minister is a really intelligent man of the world who can think rapidly and in an orderly way upon the multifarious questions he has to decide. His first quality is common sense; his second, the art of judging men. He must know how to give orders and to see that they are obeyed. The very nature of the competition for political place assures us that most Cabinet ministers will have these qualities; and, when they do, they are rapidly able to adjust themselves to the business of running a great department. I do not mean that every Cabinet will not contain men lacking in these qualities; the system produces, by way of exception, inherently stupid men, like the late Lord Brentford, who are incapable of the qualities this kind of work requires. But, given the selective process, they tend to be the exception. Even when, as with the Labour Party, a new class comes to high political office, its members will have had a valuable training in these qualities in their trade unions, their local councils and—in Great Britain a matter of real importance—in the government of their Churches.

The second assumption made by the critics is that civil servants in this country are a race of exceptionally able men, highly expert in their special fields, and singularly lustful of power. They are dealing, we are asked to believe, with a simple race called politicians who are amateurs in those fields, driven by their ignorance to accept blind-fold the proposals that the civil servants put before them. No picture could be further than this from the truth. There are, no doubt, extraordinarily ambitious civil servants with a will to power so strong that they will stop at little to get their way; just as, equally no doubt, there are both lazy and incompetent politicians who will accept whatever the officials tell them as a gospel. In fact, both types are rare. The heads of departments with whom the politicians deal are not experts in the sense that a great physicist, a great surgeon, or a great artist is an expert; they do not live in a realm into which the ordinary man cannot enter. They have spent their lives working out the ordered details of processes which, in their large outline, any politician of importance handles every day in the House of Commons; their quality is his quality applied to details with which, in so far as he needs them, he can familiarize himself rapidly as the occasion requires. The best analogy is with a first-rate barrister. Anyone who, in our generation, has seen counsel of the quality of Sir John Simon or Sir Stafford Cripps handle the complicated details, say, of a case in contract which turns on the intricate technique of modern manufacturing industry will not feel that he is likely to be at a loss when he comes to cope with the memorandum of a civil servant. Rapid judgment, the eye for the weak and the strong points, the ability to "feel" the impact the whole will make on that outside world which is his judge and jury, these are the qualities the minister requires in his relation with his

department. To display them to advantage is, no doubt, a great art. But it is not a mystery into which common men cannot enter if they have had the experience which trains them for admission to it.

And the politician who becomes a Cabinet minister, let us remember, is himself unlikely to be a simple amateur. He will have spent a number of years in the House of Commons occupied with the large outlines of political problems about which, as to principle at least, he will have to make up his mind in much the same kind of way as when he becomes a minister. Not improbably, he will have been a member of the front Opposition bench; and, as such, he will have helped to work out, with his colleagues, the policy which they will set alongside the decisions of the Cabinet. He will have been in pretty constant contact with the interests outside Parliament which seek to obtain expression there for their views, especially if these are critical of the Government of the day. He will have been, in fact, immersed in a stream of fact and opinion about which he has to make up his mind for public purposes in much the same kind of way as a minister has to make up his mind. My point is not, of course, that any experience compensates for the actual knowledge a man gains as head of a great political department. It is rather that the politician who becomes a minister is, as such, an experienced man of affairs; and that the affairs in which he is experienced set for him a technique of judgment comparable in character to that which he will require as a member of a Cabinet.

Upon one point here it is worth while to make a remark. The critics of the Cabinet system seem to assume that there is little relation between the qualities required to become significant in the House of Commons and those which enable a man effectively to run a department

of State. "A newly-appointed Minister," writes Mr. Ramsay Muir, " . . . has obtained this position because of his achievements in the general field of politics—because he is a good platform performer, or a good parliamentary debater, or commands a great deal of social influence, or is a prominent trade union organizer." We need not argue that any of these qualities is a guarantee of administrative power. But it is at least equally important to insist not merely that they are not incompatible with its possession but that they are not unlikely to offer assurance that administrative capacity might at least reasonably be expected in their possessor. A man does not become a significant debater in the House of Commons, he does not even long remain a good platform orator, unless he has something to say. Not merely this. The effective parliamentary debater is subject to a continuous test of his judgment and critical power which is a preparation of high importance for his later work as minister. The same is true of an important trade union organizer. Most of their work before they come to political office is a training in the art of persuasion, in the ability so to say what they have to say as to make a successful impact upon public opinion. They live by their ability to achieve this success. What, I suspect, the critics forget is that this art is central to the working of a democratic system. The view that it is almost a disqualification, that we should begin by suspecting the minister's ability because he has survived the tests a politician must face, is a cynicism which ultimately leads to the rejection of democracy itself. For it implies the belief that the qualities which enable men to become political leaders are a disqualification for successful government. I know no evidence to support this thesis.

And it is worth noting that we base our confidence in

the administrative class of the Civil Service upon qualities which are not notably dissimilar from those by which we judge politicians. We send men into the Treasury because they have good general minds, not because they are trained economists; so also in the Ministry of Agriculture or the Board of Education. They are valuable as administrators less because they have expert knowledge of a technical subject-matter but because we believe, on the evidence rightly, that their training will endow them with qualities of judgment and initiative without which no Government can be successfully run. But these are exactly the qualities a politician must have if he is to be successful, normally, in the struggle for place. No doubt he has to exercise them at a different, though not necessarily a higher, level. He has to relate their commendations of his officials to the direction in which he (and his party) think that the country ought to travel. That is the meaning in Sir William Harcourt's phrase that I quoted earlier. The judgment and initiative of the official are checked and controlled by the judgment and initiative of his political chief. The latter may succeed or fail; but the system compels him to attempt the exercise of both. It trains him for that exercise by asking him to offer proof that he possesses them as a conditon of attaining office. It penalizes him for his mistakes; and a bad mistake may even cost him (like Mr. E. S. Montagu) his career. No doubt politicians are rarely great men. But the apprenticeship they serve is at least an equal assurance with that we have in the official's case that they will emerge from it competent to the task to which they are called.

I do not mean by this to deny the important influence that civil servants exercise; I am anxious only that it should be seen in its proper perspective. Where it is large, it usually is so for a number of solid reasons.

(i) The policy recommended to the minister is one for which the material itself calls, or is judged by him so to call. (ii) The policy recommended, whether negative or positive in character, is one about which neither the minister nor his Cabinet colleagues has any particular view. If they are satisfied with its *bona fides*, they see no reason to alter the decision that is proposed. (iii) The policy recommended is accepted, not because the minister wholeheartedly approves it, but because, for one reason or another, he is not prepared for an alternative. That alternative may be too expensive; it may entail risks of opposition he is not prepared to take; it may involve a call upon the time-table of Parliament which his colleagues are unwilling to attempt. What, clearly, is involved in the whole relationship is the need for the minister to know his own mind. Once he does, he is in a position to control his officials. Once he is uncertain, he is bound either to rely upon them or so to inform himself as to enable him to discover grounds upon which a different certainty from that of his officials may be attained.

But this is to say two things. It means, in the first place, that a Cabinet must take office knowing what it wants to do and that its Prime Minister must so distribute the posts at his disposal as to constitute the team most likely to effect its purpose. The weakness of a Cabinet in this regard usually arises from the fact that either the Cabinet has not made up its mind or that what it wants to do encounters a body of criticism at the point where the decision to act is being taken which causes it, as it is faced with the responsibility of action, to change its mind. This, at bottom, goes back to the relation of the Cabinet to the party-basis of parliamentary democracy. If a party has not taken office knowing both the major general tasks

to which it wishes to set its hands, and the methods by which it proposes to deal with them, it is, to say the least, not surprising that its ministers should tend to accept the best advice they can get from their officials. Or if, like so many ministers in the Labour Cabinet of 1929, they find, when taking office, that they shrink from the risks of implementing the policy to which they are committed, it is natural that its place should be taken by that which the officials recommend to them. If a Home Secretary, for instance, has never thought about penological methods, it is inevitable that the absence of any important public demand for their revision should lead him to assume that the old tradition of our prisons may reasonably be continued.

Effectively, this is to say, a party must know where it wants to go, if it expects the Civil Service to co-operate with its leaders in going there. And this gives rise to the second consideration it is necessary to bear in mind. The minister, with party decisions, or some personal policy, in mind, may indicate changes he desires to make. It is the business of his officials to see to it that he is aware, as he embarks upon his task, of all that is involved in the action for which he proposes to be responsible. The case for this view has been stated once for all in the Report of the Dardanelles Commission. "It is the duty of the official," it said, "not to resign, but to state fully to the head of his Department, and, should any proper occasion arise, to other members of the Ministry, what is the nature of his views. Then if, after due consideration, those views are over-ruled, he should do his best to carry out the policy of the Government, even although he may not be in personal agreement with it. . . . Undue loyalty would tend to cripple independence of thought, and would leave the parliamentary heads of the various de-

partments without that healthy assistance which they have the right to expect, and which is at times much more likely to be rendered by reasonable and deferential opposition than by mere agreement resting wholly on the ties of discipline."

If there is to be a creative intellectual co-operation between the minister and his officials, that argument is, I think, unanswerable; and the best results of our system have resulted from the fact that this has always been the relation between the able minister and the best officials. Sir Robert Morant and Sir Eyre Crowe, to name only the eminent dead, never hesitated to put their views before their political chiefs with the full vigour of which they were capable. But this leads to the second point I have to make in which, as I think, the critics of the present system have a good deal on their side. There are two situations in which a minister, when dealing with his department, is undoubtedly in a difficult situation. The first is when he wants to innovate rapidly on a big scale. The second is when he wants to pursue a policy that is contrary to the tradition of the department over which he presides. And the position may be even more complicated by the fact that the two situations may well, in a given instance, be combined into one.

Let us take them separately. It is clear that innovation on a big scale requires something more than broad heads of proposals if it is to be effective rapidly. The proposal has to be financially and administratively sound. It has to be looked at from every angle, not least the psychological. The department cannot but be aware that if there are loose ends in the policy as it emerges into a bill, it is bound to suffer a serious loss of prestige. Its temptation, therefore, is to play for delay in order that the bill that emerges may be in all respects as water-tight as possible.

It wants to investigate the material; it seeks to sound the interests likely to be affected; there is the grim business of drafting; and so on. From the angle of a Cabinet, these delays may be highly dangerous. It loses the advantage of its "honeymoon" period—always a factor of importance in the life of any Government, not least of a Government of the Left. It gives the Opposition, and quasi-political interests hostile to the measure, time to organize attack against it while it is being prepared. The mere fact of delay, moreover, jeopardizes the place of the measure in the parliamentary programme. It is well known, for instance, that the postponement on these grounds of its Education Bill by the Labour Government of 1929 was the main reason of its failure. Its agreement to postpone its introduction meant the loss of the initiative in this field; and when, in the second year of its existence, it was at length brought forward, the vultures, so to say, were already prepared for a creature known to be destined for an early demise.

There is, I think, no remedy for this situation save through the ability of the party organization to be ready when its leaders take office, with proposals in such a form that there can be no question of delays of this character. A simple illustration will serve. A Labour Government which proposed to embark upon a great housing programme which it proposed rapidly to push to fruition would need to have ready when it took office not merely a body of general principles, but all the details of its policy in such a shape as to be able at once to go forward to drafting. It would have had to make up its mind about the financial limits within which it was prepared to act. It would have had to determine how far, if at all, it would depend upon the co-operation of local authorities. It would have had to have settled in its own

mind its methods of compulsory purchase of land, its relations with the building trade unions, its price-policy for building materials, and so on. To come into office without concrete views on each of these matters—to take illustrations only from this particular field—is, in effect, to trust to the ingenuity of the Civil Service to improvise a policy after office has been taken. That position is not, perhaps, so desperate as Mr. Tom Shaw's despairing protest, in 1924, at being asked "to produce rabbits out of a hat." But it is spiritually akin to that protest. It means the replacement of policy-making by that most time-consuming of all administrative processes—departmental discussion to discover methods which will clothe ministerial policy in concrete terms.

It is here, obviously, that the mechanism of party organization is, under the conditions of the parliamentary system, vitally related to the proper direction of the departments by the Cabinet. There cannot be that direction unless, behind the King's Speech, there is not merely a declaration of intentions, a pious hope of fulfilments sought for, but the solid investigation already made which has resulted in a Cabinet effectively prepared to begin its voyage. This predicates, of course, for the modern political party something like a Civil Service of its own. It must have at its disposal not merely men who can write well-sounding propaganda leaflets. If it wants, for instance, to reform the prisons, it must have at its disposal not merely the knowledge embodied in the famous Hobhouse-Brockway *Report*, but also the actual proposals it desires its Home Secretary to operate. He must, this is to say, not merely have the plan in his head; he must have lived with it, argued about it, considered it in such a way that his sense of its implications is deep-rooted enough to withstand the official scepticism he may

encounter. He must be prepared, that is, for action and not for investigation. He must have a plan to be criticized, not a direction to be explored.

And this perspective of the first situation relates closely to the problems of the second. Every department worth its salt has a policy of its own; a body of able men cannot long have direction of an administrative process without seeking to define the latitude and longitude of that direction. It is perfectly proper, also, as the Report of the Dardanelles Commission emphasizes, that they should feel entirely free to urge upon the minister the importance of their views, the dangers and difficulties attendant upon his taking any views but theirs. But it is at least as proper, and certainly as important, that he should be aware that, underlying this sense of direction, there is a body of premisses, not always conscious, which, when brought to the light of day, may be incompatible with the views it is his business, as minister, to impose. In the British tradition, there is no doubt at all that certain departments, while fully living up to the spirit of the Dardanelles Report, have shown remarkable pertinacity in shaping ministers to suit their own conceptions of political wisdom. That has been particularly true of the Foreign Office, the Treasury, and the Defence Ministries, in part because of the special delicacy of the problems they handle, and, in part, also, by reason of the special complexity of the material with which they deal. The power, particularly in the last hundred years, of the British Treasury to impose its own orthodoxies upon successive Chancellors of the Exchequer is one of the most remarkable feats in the history of modern administration; and it has not been due to the weakness of personality in the Chancellors as much as to the energy and pertinacity of the officials with whom they have dealt.

It is easy to see how the tradition can be imposed. The new minister does not inherit a clean sheet; he has to begin making decisions upon policies already in operation from the day he takes office. Many of them relate, necessarily, either to matters about which he is not informed at all, or about which he can only have very general views, formed without relation to vital documents. He has to make those decisions quickly; and he has, as I have said, to make them after discussion with able men who feel pretty confident about the direction in which they want to go out of long familiarity with the problems concerned. If his mind marches along with theirs, his problem, *a priori*, is a pretty easy one; if his decision is challenged, he will be able to defend it in Parliament with all the power and ingenuity they can place at his disposal. But his position, clearly, is far more difficult if they believe that the decisions he proposes to make are fraught with danger, even, in an extreme case, with disaster, to the country. Obviously in such a case he needs to be very certain of himself, to have at his disposal an assurance that is not merely the emotion of conviction that he is entitled to his certainties. In the field of politics the roads to disaster are manifold; and no minister is entitled to innovate upon a large scale without full certainty of his ground.

A single illustration will suffice. Let us suppose a Foreign Secretary takes office who is confronted as Sir John Simon was confronted in 1931 with an incident like the rape of Manchuria by Japan. He has a general faith in the League of Nations Covenant, a genuine desire to implement the obligations his country has assumed under the Covenant. He has never specialized in the details of Far Eastern affairs. He is informed that support under Article XVI of the Covenant for China

may well lead to war with Japan. The degree to which such a war may jeopardize the immense interests of Great Britain in the Far East is emphasized to him. The complexity of the naval and military problems it will raise is put with all obvious force by men able to enlarge with expert knowledge upon their implications. The war, he quickly sees, may blaze into a world-war; in its aftermath may easily come revolution and all its consequences. He may, if he so please, give a full-hearted lead at Geneva. He cannot be certain that the League will stand the strain of his lead. He may incur, he is told, the ill-will of the most powerful Far Eastern State with no commensurable return to this country. There is, of course, much to be said for the League view. But this is a hard and grim world, in which Foreign Secretaries have to be realists. The risks of a League policy, he is told, are incalculable. A sober realism now may not only save a possible war. It will gather goodwill from Japan in relation to British interests it is dangerous to jeopardize. It is far from certain that the British people would favour action in behalf of China that may involve the loss of British lives and British property. Much of the difficulty is less the fault of Japan than of the organized anarchy of China; it is even conceivable that a strong hand in Manchuria will be good for British trade. Some day, no doubt, the policy of sanctions must be tested. But is it not wise to select for that test such a case as will unite behind the British Cabinet the whole force of an opinion as solid as that ranged behind the Asquith Government over Belgium in 1914? The Foreign Secretary will, of course, remember how the instinct for neutrality, so strong in the last days of July, shrank into nothing as the issue of Belgian neutrality came into discussion. Is not this, he is told, the true pattern he ought to see? Can a general faith in

the League transcend the obligation to confront the possible outcome of these grim contingencies? In the quite special circumstance of this instance, is it not the part of wisdom to avoid the risks involved in a warm-hearted but wrong-headed League policy?

I have taken, of course, an imaginary argument. But it is, I think, easy to see how a Foreign Secretary confronted with this persuasiveness can be induced to submit his general faith to the proposition that this is not the time to bring it to the test. He may have an uneasy suspicion that he is wrong, that he is sacrificing the long view to the short view. He may, above all, feel that he would like to hear the case against the departmental recommendation put with the same cogency and persuasiveness. This is, I suggest, the case for the adaptation to British practice of the custom traditional in French politics of the minister bringing in with him, when he succeeds to office, a small and intimate group of men of his own party, or, at least, way of thought, in whose knowledge of his departmental problems he has confidence, and with whom he will feel able freely to discuss them in an atmosphere wholly apart from that of the official hierarchy. That relation has sometimes developed in this country between the minister and his private secretary—between Mr. Asquith and Sir Vaughan Nash, for example, or, it is said, between Viscount Grey and Lord Tyrrell. But the best example of the kind of adaptation I have in mind is provided by Mr. Arthur Henderson's tenure of the Foreign Office. He went there, in 1929, with a fairly definite body of objectives in view, and he was clear, in his own mind, about the way in which he proposed to attain them. He knew, further, that there was a substantial difference between his own principles and those of the department over which he

was to preside. He recognized, further, that if he stood alone in the department he might not find it easy to maintain his own line. He therefore quite deliberately took with him into the department three men who had not only specialized in foreign affairs, but who, as he was aware from long intimacy, shared his own views. They were invaluable to him in the fulfilment of his task. Not only did they give him a sense of assurance about his general direction, they were able to examine official memoranda with a capacity not less than that of the officials themselves. They made possible the maintenance of the general line amid the mass of detail in which a Foreign Secretary can so easily be overwhelmed. It is well known that Mr. Henderson's period at the Foreign Office was an outstanding success; and though, no doubt, much of that success was due to his own sterling integrity and shrewd common sense, he himself did not doubt that this special secretariat was essential to his achievement.

I believe that such a technique has everything to commend it as a method of helping the minister to find his way through the labyrinth he will encounter. A rare minister, Haldane, for example, may not need such assistance; an average minister will almost always be assisted by it. Obviously, there are difficulties. It is not in the tradition; the officials will regard it with scepticism, perhaps, at first, with suspicion. The answer, of course, is that every innovation is so regarded at the outset. Old-fashioned soldiers disliked the Committee of Imperial Defence. Old-fashioned civil servants were critical of the Cabinet secretariat. The scheme implies no lack of confidence in either the capacity or the *bona fides* of the existing civil servants. It does imply the need of surrounding the minister with men who are able to look at official recommendations, to scrutinize official arguments,

from the angle he has adopted and not from the departmental angle. The success of the system in France gives us every right to suppose that it will be successful here also. The very fact, indeed, of the ability of the departmental heads is one of the strongest arguments for its adoption. It gives the minister eyes and ears that are, as near as maybe, his own. It offers him the kind of organization, in supplement to the official world into which he has to plunge, that the experience of men like President Roosevelt has shown to be urgent under modern conditions. It makes possible, particularly, ministerial and party inter-relationships not easy to maintain through the medium of the official hierarchy. It is a safeguard that the minister's line of action will be determined with a full sense of all that it implies. If Sir John Simon, to revert to my imaginary illustration, had adopted his Japanese policy only after its basis had run the gauntlet of a full and frank examination by Lord Cecil—as it would have done, under Mr. Henderson's régime—one would have had a confidence not otherwise easily available that it had been adopted only after rigorous analysis from an independent angle. To subject the departmental tradition to this kind of analysis cannot, I submit, but be both helpful to the minister and healthy for the officials. Certainly it is at present one of the outstanding defects of our system that no such technique is available.

Along lines such as these I believe that the major criticisms of the Cabinet system can be fairly met. I do not, of course, mean that office will not continue to be, for all but the extraordinary man, an intense strain. The evidence of almost everyone who has held high place, from Peel to Lord Baldwin, is too emphatic to make any other conclusion possible. The final answer is the simple one that the governance of interests so massive as those

upon which ministers have to pass cannot be otherwise. When peace and war hang upon their decisions, when a bill may make such changes in our social contours as were effected, for example, by the Unemployment Insurance Act, when a Cabinet has to find wisdom enough to grapple with an issue of the magnitude of the General Strike, Oxenstierna's famous "better be a shepherd and tend one's sheep than meddle with the government of men" comes at once to the mind. There are no institutional devices which will permit a minister the leisure to think out in office in the luxury of silence the policy he ought to have determined upon out of office. There is none, either, that will make administrative co-ordination achieve more than half of what we hope for it. The range and intensity of our problems do not permit us to paint the conditions of government as less grim than the facts inevitably make them. To rule men responsibly has always been a wearing business; and the more sensitive the minister's imagination, the more intimately he will be aware of the gap that separates his hopes from his achievement.

The drawbacks to the Cabinet system upon which the critics have fastened are less, I have argued, drawbacks removable by institutional devices than difficulties inherent in the complex art of ruling men. The direction of affairs is not, under that system, divided, as so many of its critics seem to suggest it is divided, between what Graham Wallas called "an uninstructed and unstable body of politicians, and a selfish and pedantic bureaucracy." Most politicians, with all their defects, not only aim at the general good as they see it, but work hard and persistently for the achievement of that good. The official tradition is one that, in general, will be more fully admired the more fully it has been experienced. The time

the Cabinet lacks for the hard business of thought is not traceable to weakness in men, any more than the "vices of departmentalism" are due to that weakness. Both are limitations set by the material with which we have to grapple. The best we can do is to make all the provision we can to assure ourselves that when a Cabinet does take office it is aware, so far as may be, of what it wants to do on the widest intellectual basis upon which its generalizations may be framed. But not less important is the courage to go on with the policy to which it has set its hand. Parliamentary democracy can outlive a good deal; it cannot survive over any long period a lack of courage in its rulers. For, thereby, the institutions through which it lives are permeated by an energy and purposiveness which elevates the moral stature of the whole people. Good government, in the long run, is always courageous government. But courage in the ruler is not merely a matter of willing what is right; it is also, as Plato said, knowing what it is right to will.

The Cabinet system, as we have inherited it, provides at least the basis upon which that knowledge may be made available. By being set in the context of party, it moves from the plane of concept to the plane of action. No other context, granted the framework of the system, could adequately take its place. Granted all the weaknesses inherent in the party-structure of representative government, we have seen that it alone makes possible such an organization of the people as permits the articulation of preferences. It relates, that is, not merely concept to action; it relates those concepts to action which have behind them the driving power of number. The Cabinet is the trustee of that driving power. It is essentially on the faith of its trusteeship that it becomes a Cabinet; and its power to govern is, at bottom, deter-

mined by the continuance of that faith. Here, no doubt, as in each element of the parliamentary process, the secret of the faith depends upon the degree to which the mutual confidence of parties is maintained. They must, as I have pointed out, speak the same language. More: they must, in their form as Cabinet, speak a language also which their civil servants speak; upon this network of reciprocal understanding depends the power of the system to maintain the goodwill between its parts without which it cannot work.

So far, in large part, this goodwill has been maintained. But it is confronted by dangers to-day which it would be folly to deny are a grave threat to its continuance. They do not, I have argued, lie within the actual machinery itself. There is nothing to support the view either that, in a basic way, the relation of the Cabinet to the House of Commons is wrong, or that the relation of the Cabinet to the departments is wrong. Innovations are possible, even, as I have sought to show, desirable; but they are not innovations which at any point touch the spinal cord, as it were, of the system's anatomy. In particular, I have argued that there is nothing to be said for abrogation of Cabinet control of Parliament; and little to be said for the view that the minister is a helpless *fainéant* in the hands of his officials. Both arguments are based upon an unconscious desire to return to a wholly different environment from ours, governed by the ability to apply thereto rules that would rapidly wreck the system as it confronts its present necessities.

The central danger of the modern Cabinet system lies in the threat to the goodwill upon which its operation depends inherent in the present wide abyss between party purposes. That is not, I add again, an abyss that can be bridged by electoral devices like proportional representa-

tion. It is a factor of disunity produced by the disproportion between the forces of production and the relations of production in our society; it cannot be transcended, within the postulates of parliamentary democracy, save as that disproportion is transcended. It is not met, as Bagehot saw, merely by the constitution of Cabinets of "moderate" men. The danger of that conception is in its invitation to ministers to avoid the action to which their principles call them in the hope that their abandonment may, in some mystic fashion, discover a formula of social peace. Such a conception can only lead to success in periods of economic expansion when capitalist confidence permits the extension of concessions to the masses. Where it does not obtain, the result of the attempt to concede is, as is shown by the experience of England and America and France, the inevitable suspension of capitalist confidence. A Socialist Party, in a word, cannot operate capitalist democracy successfully except upon the postulates of its opponent; and its Cabinet is, therefore, unable to attain the conditions under which it can both know what it wants to do and do that courageously. It, therefore, either becomes a weak government; or, alternatively, by the fact of its courage to act upon its faith, it suspends the confidence of capitalists in its purposes which is necessary to the maintenance of that continuity which the functioning of the Cabinet in a parliamentary democracy requires. I see no escape from this dilemma; certainly no escape that is available in terms of institutional machinery. For at this point we are back, as the earlier chapters of this book have sought to show, at the foundations of our society. We cannot agree about its institutional superstructure until we have agreed once more about the nature of those foundations.

CHAPTER SIX

The Civil Service

I.

THE influence of the Civil Service in Great Britain is a comparatively modern phenomenon. When Bagehot made his analysis seventy years ago, he did not even think it necessary to discuss the influence of the officials; and even the interesting treatise of Sir Sidney Low, now just over a generation old, hardly gives them more than a passing notice. Mr. Lowell's *Government of England*, which made its first appearance in 1908, is, I believe, the first considerable treatise on our political system which recognizes the immense part played by the Civil Service in its functioning. In the thirty years that have passed since its appearance, it is not untrue to say that no other part of the system has received or deserved so much attention from commentators.

That prominence is due to a number of reasons. The first, undoubtedly, is the fact of the greatly increased importance of the service itself. The change from the negative state to the positive state has brought with it so vast an extension of public business that the minister is compelled to leave to his officials all but the largest decisions on major policy. The days when Sir Robert Peel could, as Prime Minister, seek seriously to acquaint himself with the inner working of all departments, or when Lord Salisbury, as Foreign Secretary, could write all important foreign dispatches himself, have gone for ever. The second is the immense improvement in the quality of the service. After the abolition of patronage, in 1870, by Mr. Gladstone's famous Order in Council,

the service was able to attract to its ranks a body of men as able as there is to be found in any walk of life in this country. Their standards of conduct rapidly became a model for the whole world. They were incorruptible. They served the Government of the day, whatever its complexion, with equal zeal. They made possible the organization of knowledge for the business of administration at a level completely different from anything that had gone before. It is not, I think, true to say that they consciously sought for power. Rather the *zeitgeist* created the opportunities for power of which, because they were able men, they naturally took full advantage. And the fact that they demonstrated their efficiency reflected, in its turn, upon the situation they had to handle. From 1870 onwards, there are few failures in the handling of the big problems of civil administration in Great Britain; the officials proved equal to dealing with each issue as it arose. Out of the sense of that ability there grew up, even in men who were dubious about the wisdom of attending State functions, the sense that the official knew how to perform his task. As the new electorates, in 1867, 1884, 1918, asked that the State relieve the pressure upon their lives by an extension of social amenities, it became natural to look to these men to handle the extensions so demanded. And as each extension proved itself by its results, so, quite inevitably, it created the presumption that where defect was found, State action had the means of remedy at its disposal.

No doubt some, at least, of this change from the negative state to the positive is due to the efforts of civil servants themselves. What Veblen has called the "instinct of workmanship" is an inherent part of the equipment of any civil servant worth his salt. You cannot ask an able man to concern himself with questions like

education, public health, factory legislation, safety in mines, without two consequences following. To ask him to discover facts is to ask him to indicate conclusions; and the very fact that he reports conclusions necessarily indicates a theory of action. It is significant that no small part of the Socialist indictment of English industrial conditions in the nineteenth century was based upon the findings of Government documents. Ministers could not escape the meaning of the knowledge for the publication of which they were themselves responsible. And as soon as they began to recognize that there was no escape from it, they were bound to listen to the advice of the men who had dug that knowledge from the raw material, framed it into generalizations, lived with their implications, developed about these that sense of compulsion which, as Plato insisted, is always inherent in knowledge that has become a living part of personality.

There is not, I think, as some of the critics of the Civil Service have suggested, a conscious lust for power on the part of those who direct it. If housing is bad, if standards of public health have to be set, if there are trades in which wages are unendurably low, if the public conscience demands certain minima of sanitation and safety in factories, then there must be the assembling of knowledge to permit action. There must be principles of action decided upon; and the civil servant whose life is passed in dealing with that knowledge will naturally advise upon those principles. Because, moreover, he has ability, he will also have views; he is not, and cannot be, a die to receive without discussion the imprint of ministerial direction. It is his business to tell the minister what, in his judgment, are the probable consequences of any policy for which the minister proposes to be

responsible. He must warn against this line and urge the wisdom of that. The minister must make up his mind; but he cannot, certainly, make up his mind wisely, save as he considers the burden of the experience upon his proposed line as that experience is interpreted for him by his officials. There is nothing in this of conspiracy; it is plain common sense. A policy which was separated from official experience would almost certainly be ignorant and, not seldom, disastrous.

The Civil Service, in a word, has the influence it exercises because that influence corresponds to the needs implied by our political democracy. Once there is universal suffrage, political parties naturally seek to win the largest vote they can. They construct their programmes with a view to its attraction. When, after they gain power, they have to implement their programmes, successful administration means the shaping of policy in terms of a knowledge and experience for which thay are largely, though by no means wholly, dependent upon the departments. For wholesale improvisation is impossible in any society rooted in traditions and accustomed to certain ways of life unless in terms of revolutionary change. A system intended. like ours, to offer uniformity of treatment and satisfaction of established expectations, can only afford to innovate within a framework the outlines of which are known and accepted; and vital alterations in the framework can only be made successfully when the public mind is habituated to the idea of their necessity. What the Civil Service really does is to maintain the Government as a going concern. It corrects the risks of popular election by subduing its results to a medium where ascertainable knowledge is the protective envelope of action. It oils the machinery of politics by relating the popular will, as the party in power reflects the impact

of the popular will to what a detached and disinterested experience believes to be practicable. Its authority is that of influence, not of power. It indicates consequences; it does not impose commands. The decision which results is the minister's decision; its business is the provision of the material within which, in its judgment, the best decision can be made.

This, at least, is, I am confident, the spirit in which all the really eminent civil servants of the last seventy years have approached their task. The change in the perspective of their function is, in part, the outcome of changed electoral expectations, and, in part also, to the important fact that the Civil Service has become, especially since the war, not an inchoate series of departments, but a unified administrative mechanism. The first is the direct consequence of the enlarged electorate. Those who have to be satisfied have different wants to-day from those to whom Russell and Peel, or even Gladstone and Disraeli, sought to respond. The second is due to the fact the necessities of efficient administration have compelled the departments to think of themselves, in Sir Warren Fisher's phrase, as "units of a complete and correlated whole." We have witnessed, above all in the last generation, what he has well termed "the evolution of a service conception in contrast to a departmental one." It is, indeed, far from complete; the struggles between the three defence departments is evidence of that. But the stage is beginning to be reached where the lines of general administrative policy are the outcome of a continuous co-operation, conscious, if informal, between the heads of departments. The machinery of administration moves much more deliberately on a single plane of purpose than at any previous time.

2.

The Civil Service, in its modern form, is now some seventy years old; for the essential character that it now possesses was determined when, in 1870, Mr. Gladstone gave effect to the recommendations of the Trevelyan-Northcote Report by establishing Open Competitive Examination as the central highway of entrance to its ranks. Since then, naturally enough, there have been greater or lesser reorganizations of its structure. But every investigation since 1870 has merely confirmed the wisdom of Mr. Gladstone's decision. To it we owe not merely the abolition of the major evils of patronage. With that abolition has come what is virtually an incorruptible service, and one which has been able, for relatively small reward, to attract some of the ablest men in the country to its membership.

I cannot attempt here even to describe the organization and functioning of so complicated a mechanism. It must be sufficient to draw attention to the chief characteristics only of the service. Of these, two are, I think, outstanding in their significance. The first is the fact that the different classes in the service are roughly co-ordinated with the different stages of the educational system of the country. The second is the fact that the method of examination for entry is a test not of special qualifications for a particular department, but of a general intelligence which, after appointment, is trained and disciplined by practical acquaintance with the problems it is called upon to handle.

It is easy to see how natural was the impulse to that first principle. But its results were far more profound than its makers could have conceived. What, in effect, it did was to divide the service into four great classes which reproduced, in their relations, the social structure

of the general population. There was a large class at the base whose life would be spent in routine work which, while demanding both application and accuracy, would at no real point call either initiative or responsibility into play. There was the great army of clerical officials, for the most part doing routine work, but from whom, save at the apex of the pyramid, little was expected save the application of well-worn precedent to new material. Above them, again, was the executive class, responsible, indeed, but, for the most part, rather preparing the materials for policy than initiating policy itself. Above them, finally, was the administrative class, almost exclusively university-trained, who were the advisers of ministers and the makers of policy. Of some half million persons who are, in one way or another, civil servants, 330,000 are absorbed by industrial establishments, such as the Arsenal and the Dockyards, and the Post Office. Of the remainder there are some 70,000 clerical, some 16,000 executive, officials; and the administrative class comprises some thirteen hundred members. To these must be added, of significant officials, some 2,500 inspectors in different departments, and nearly 7,000 professional, technical, and scientific workers, who range from architects, barristers, physicists and doctors, to experts in old furniture at the Office of Works.

From this pattern, especially in the post-war period, certain things immediately emerge. The effective power in the Civil Service is in the administrative class. That is the brain of the whole; it is there that the decisions which count are made. Effectively, also, that class is composed of men with a university training; and most of its members come from Oxford and Cambridge. An analysis of the social composition of the administrative class will show, further, that its members come mostly from parents

whose range of income permits them to send their sons to the great public schools. This is especially true of the Foreign Office. While, moreover, there is some degree of movement between the clerical class and the executive, there is very little between the executive class and the administrative; perhaps an average of fifty cases in a year. There are, this is to say, gaps between the different grades of the hierarchy which are rarely bridged. For all but an infinitesimal minority of the service, the grade of entrance determines a man's official career. But since his entrance grade is, in its turn, almost wholly determined by his educational opportunities, which are, in their turn, largely determined by his parental circumstances, the official career is mainly settled by the class into which a man is born.

All this, it may be urged, very largely explains the character of the British Civil Service. Those who govern it belong, effectively, to the same class that rules the House of Commons. Largely, they go to the same schools and universities; after admission to the service, they belong to the same clubs. Their ideas, that is, or, rather, the assumptions upon which their ideas rest, are the same as those of the men who own the instruments of production in our society. Their success, as a Civil Service, has been mainly built upon that fact. Their ideas of the margins of possible action are much the same as those of the ministers who have been responsible for their decisions. The kind of society they have naturally envisaged to themselves as attainable is the kind of society similarly envisaged, in more or less degree, by the ministers with whom they have collaborated. There is little or nothing in the experience they bring to the interpretation of their environment which would lead them to question the assumptions upon which our system rests.

This explains, I think, both why the Civil Service has been able, in these sixty odd years, to maintain its neutrality, and why the measures they have recommended have proved equally acceptable to Cabinets of either party. They have been neutral because their ultimate principles of action have been those upon which the policy of both political parties in this country were based before the war; and since, after 1918, neither of the Labour Governments has sought to depart from those principles in action, their neutrality has not been questioned. So, similarly, in relation to policy. No Government, in the period of the modern Civil Service, has embarked upon measures which have called into question the foundations of the State. Succeeding Governments have differed in degree; they have not yet differed in kind. The neutrality of the Civil Service has not yet been tested by the need to support a policy which, like that of a Socialist Party, might well challenge the traditional ideas for which it has stood.

I do not for a moment suggest that the Civil Service would not meet such a test with adequacy; I note only that, so far, the need to meet it has not arisen. But I do suggest that no small part of its remarkable success as a service has been the outcome of the virtual agreement between parties upon the foundations of policy. That has made possible a rapid and harmonious co-operation between ministers and officials which has been built upon the fact that they were united to apply broad principles of policy held in common by them. The real problems will only begin to emerge when this is not the case. Would Sir Maurice Hankey, for example, who has testified before a Royal Commission that he believes the nationalization of the armaments industry would be a "disaster," be able easily to collaborate with a Labour

Government determined upon that policy? Would a Treasury which has been so continuously hostile to a big policy of public works be able easily to collaborate with a Cabinet which had no sympathy with its hostility? Would a Foreign Office so largely responsible for the Hoare–Laval proposals be able to put all its mind and heart behind a minister who built his whole policy upon the Socialist interpretation of the principles of collective security?

It would be excessively naïve to return a simple affirmative to these questions. That the *esprit de corps* of the service has built a strong tradition favourable to collaboration in the letter and in the spirit is undeniable. But there is an important difference to be noted. It is one thing to put through a policy the assumptions of which you accept. It is a very different thing to put through a policy efficiently the very foundations of which you believe to be disastrous. The subconscious tendency, then, is to maximize all the difficulties it will encounter. That attitude acts as a paralysis of the will in a degree it is very important not to under-estimate. And that paralysis inevitably communicates itself to the minister concerned. He begins to see the doubts and dangers which attend his policy in quite special proportions. He has to be a very exceptional man not to play for time, to consider the wisdom of possible concessions which go to the root of his schemes. His officials, in all this, are perfectly sincere; constitutionally, also, they are playing a perfectly proper part. They are simply assuring themselves that the minister does not act until he has looked all round his proposed innovation. They do not want him, quite rightly, to make a mistake; it is their business to secure for him the easiest possible path. What it is vital here to realize is that the problem involved

is not the kind of quantitative adjustment that the normal working of our system requires. The difference is a qualitative one due to a conflict of major premisses; and we cannot judge just what the neutrality of the Civil Service really means until it has been tested on the plane of qualitative difference.

So far as we have knowledge, it does not exist in Whitehall properly so called. Our evidence relates to the army in the Ulster crisis; and, no doubt, both the traditions and the psychology of the army are very different from those of civilian officials. But it is certainly of major importance in this context that Sir Henry Wilson, then the Director of Military Operations at the War Office, did not think it incompatible with his official position to intrigue against the Government he served both with officers to whom that Government was issuing orders and with the Leaders of the Opposition who were seeking, by similar intrigues, to wreck the Government's plans. Nor is it less important that Sir John French, while Commander-in-Chief in France, intrigued with the Press in order to force his views upon the Government which had appointed him to the post. I have taken two instances only; the reader of Sir Henry Wilson's *Diaries* and of Mr. Lloyd George's *War Memoirs* will know that they are not unique. The problem they raise is the grave problem of an army whose officers—so to say its administrative class—have strong convictions directly opposed to those of the Government they serve. Assuming—as parliamentary government assumes—the necessary supremacy of the civil power, can a Government in critical circumstances rely upon the undivided loyalty of its officers? Can it do so remembering the relatively narrow class-horizon they represent, the habits that class-horizon has meant in Russia, in Germany, in Italy, and in Spain?

These are delicate, even dangerous, questions. They lie, no doubt, at margins which no one will desire to reach in political controversies. But because, in a crisis, they are reached, no one who speculates upon the issues of political power can fail to keep them in his mind.

It is, of course, true that the civilian official is schooled both to a detachment of view and an interest in ideas which are far more rare in the soldier. That is because, predominantly, our army is still, as it was in Wellington's time, a class-army in which, as Mr. Lloyd George has said, "the ablest brains did not climb to the top of the stairs . . . seniority and society were the dominant factors in army promotion. Deportment counted for a good deal. Brains came a bad fourth. Men of great intellectual powers are not tempted to join a profession which offers so little scope for the exercise of their powers, and where the awards have no particular reference to special capacity." That is not merely the judgment of a Radical Prime Minister; it was put, also, if with more urbanity, yet with equal emphasis, by so experienced an observer as Lord Esher, who made, in this regard, a significant comparison between the qualities brought out by service in the army and navy respectively. In the latter case, as he noted, the material which was the medium of the profession brought out the highest qualities of character and intelligence; in the former this was not the case. It is at least possible that these criticisms apply, if in a less degree, to the diplomatic service. It is, of course, no longer true to say, as Bright could fairly say, that the Foreign Office is "the outdoor relief department of the British aristocracy"; change in the method of recruitment has, since 1919, brought a slow change in the sources from which its personnel is recruited. But it may still be legitimately doubted whether the impli-

cations of the divorce between aristocracy and government which is to-day characteristic of most States is reflected in the habits either of the Foreign Office or the Diplomatic Service. It is certainly rare for a British embassy abroad to have any wide or continuous contact with sources of opinion outside what Bagehot called the "highest social circles"; and any survey of the Foreign Office personnel will show that its selection is still largely based upon the assumption that about 65 per cent of the natural diplomatic talent in Great Britain is to be found in one or other of eleven leading public schools. "Despite the reforms," writes Mr. Nightingale, "environmental advantages still weight the balance heavily in favour of the propertied and the professional classes."

The point of this is the simple one that all the leading figures in the public services, whether the Civil Service or the defence forces, come, in fact, from an extraordinarily narrow class within the community. With individual exceptions they bring to their work an attitude which accepts the fundamental assumptions of the present social order as outside the realm of controversy. Their range of thought, the limits of the decisions they think wise, are, therefore, largely set by the fact that they arise within the framework given to them by those assumptions. Within them, I do not doubt that they are capable of great imaginative insight. Granted the assumptions, the men who have built the Health Insurance system, the Unemployment Insurance service, and the Factory Inspection system, have little need to apologize for themselves. But the real test comes not when work has to be done within the assumptions, but at the margin where those assumptions are changed. Here we dwell in a twilight world of guesswork simply because the strain involved in the acceptance of new assumptions is one to

which no branch of the service has been subjected. They may survive it brilliantly. But it is vital to realize that, so far, the success of our system is mainly due to the fact that it has not yet been necessary to meet it.

I shall deal in a later part of this chapter with some of the criticisms that may, as I think, be legitimately passed upon the habits of the official world. Here it is worth while emphasizing one other point to which I referred earlier. One of the great qualities of the Civil Service is its flexibility; and this, I have suggested, is due to the method by which the members of the administrative class are chosen. No greater contribution has been made to administrative technique during the nineteenth century than that insight of Macaulay's which insisted that general intelligence, rather than special training, should be the basis of choice. It may well be that the present weighting of examination subjects is, at least in part, educationally obsolete; it may well be, also, as Dr. Finer has incisively shown, that too much importance is attached to the interview in the selection of successful candidates; and I think that a strong case could be made for recruiting a number of candidates at the post-graduate stage upon the basis of an original contribution to the social sciences such as a really able doctoral dissertation; granted all the possible improvements of the present system its main principle is right beyond question. What is needed in the control of the administrative process is the general mind, and not the specialized mind. So large a part of the civil servant's work depends upon judgment, common sense, wisdom—qualities which have little connection with expertize—that the confinement of the highest posts in the departments to men whose training is, in the best sense, humanistic, has, I think, been the salvation of the service. I do not mean, of course, that the specialist is

incapable of these qualities. I do mean that specialism is open to the danger that its possessor loses in width of horizon what he gains in intensity of gaze. It is not accident that soldiers and sailors have rarely made good ministers; it is not accident, either, that engineers, doctors, teachers, have rarely made successful statesmen. And, at the top of the departments, the great official is nothing so much as a statesman if he is to be successful. He has to judge not merely where the material leads, but how it is to be wisely related to that public opinion which will be affected by the result of its translation into statutes. His business as administrator is the art of relevant selection and significant emphasis. I doubt whether any but the exceptional specialist possesses this art. It is, I think, produced by the best kind of humanistic training. I do not mean that such a training is a guarantee of its possession. I do mean that, as between two able men, the specialist is less likely to become a successful administrator in the modern State than, say, one who has been trained in the Honours school of *Literae Humaniores* at Oxford.

On the evidence, this is to say, I believe that, at its best, a humanistic training produces greater flexibility and greater open-mindedness than is the case with a specialist training. The danger of the specialist is that he takes the truth relevant to his special field of knowledge as wider in its implications than the facts will warrant. He takes his postulates for granted; and he is too likely to be unaware that, at its highest, the main art of administration consists in the examination of postulates. A good deal of what I am trying to convey is contained in the subtle change which, in the last generation, has transformed political economy into economic-science. In the one, as the reader of Mill or Marshall

will be acutely conscious on every page of their work, the writer is fully aware both of the fragility of the hypothesis from which he starts, and the degree to which "friction" renders imperfect the conclusions at which he arrives. In the other, the writer tends to construct a logical pattern, an essay in deduction, in which, quite unconsciously, he takes for granted human nature, the legal relations of the modern property-system, the finality of the sovereign State, and other such matters. When, therefore, he comes to transfer the conclusions of his logical pattern to the real world of stark fact, the irrelevance of his conclusions is almost startling. Too often, indeed, they read like nothing so much as the reflections of a saddened believer in the Ptolemaic astronomy who refuses to be aware of the Copernican hypothesis.

I believe that the Civil Service has been safeguarded against this danger by the acceptance of Macaulay's principle as its basis of selection. But that safeguard is not, in itself, enough. There remain two other dangers to which, in the evolution of the last seventy years, I do not think sufficient attention has been paid. The first is implicit in the narrow class from which the highest civil servants are drawn. It is the danger that they are not able imaginatively to penetrate the experience they have to encounter. The ways of life they know, the habits of thought in which they have been brought up, the departmental traditions in which they are immersed, all represent a mental climate so different from that the results of which they have to handle, that it is far less certain to-day than it was a generation ago that they can handle it successfully. There was a grave failure of imagination, for example, in the new scales of the Unemployment Assistance Board in 1934. There has been a similar failure in the whole realm of penal reform. There has

been a similar failure, as the evidence in the Gresford Colliery tragedy makes evident, in the service of mines inspection. There has been, if not failure, at least a lack of requisite persistence, in the development of technical and secondary education. I choose examples only of a whole range of grave problems which have come to the forefront in the post-war years in which the official mind has not, on the evidence, adjusted itself to the scale of the problems involved. Perhaps the most striking problem of all is that of the distressed areas, where it can hardly be said that the Civil Service has begun to grasp either the proportions or the urgency of the issues.

Why? Let us make allowance for the fact that civil servants must adjust their proposals to the political possibilities they confront. Let us make allowance, also, for the fact that, up to some point, the maxim *quieta non movere* is an index to an important part of the art of public administration. Even when these discounts have been made, it is yet evident that a good deal of official thinking is circumscribed by the fact that the experience it encounters does not bring home with adequate pungency the scale of our problems in such a way as to make it think out afresh the implications of that scale. The kind of awareness of which I am thinking does not come from an occasional contact with the unemployed areas, a meeting with a trade union deputation, the occasional friendship that, happily, grows up between high officials and Labour members of the House of Commons, even from the fact that, as a young man, the civil servant has spent six months in residence at Toynbee Hall. What is lacking, despite every device, the advisory committee, for instance, we have so far invented, is continuity of interpenetration of one class-experience by that of another. "A wise system of official training," wrote Graham

Wallas, "would consist in 'seconding' young officials for experience in the kind of work which they are to organize." In an effective and coherent way we have made no such provision on any serious scale in the working of our system.

But the issue lies deeper than the "seconding" of young officials, important though this is. It lies deeper even than the interesting proposals (which, originally, we owe also to Graham Wallas) of leave of absence for officials on full pay to acquire, outside the department, knowledge that may be useful to its work. The issue is the acquisition of those habits of mind which, in a period of rapid change, are capable of going back without fear to the foundations of tradition, and being able, in the light of their examination, to see the full significance of the need for innovation. With all its virtues, I venture to doubt whether our Civil Service possesses this type of mind, or is, indeed, favourable to its emergence. And I am suggesting that the reason why it does not possess it is in the interrelation between the tradition of each department, on the one hand, and the narrow class-range from which officials are drawn on the other.

The tradition of the department makes, in almost every case, for continuity of policy; it tends, therefore, in a period of rapid change, to be a brake on innovation. It looks, therefore, rather to the past than either to the present or to the future. It tends to look at new ideas from the angle of how best they can be fitted into the existing scheme of things when the real need may be to depart from it. There lurks in this the historic danger of bureaucracy—the danger, namely, of unconsciously suspecting all innovation it has not itself originated. That suspicion has been well exemplified in the history of army reform in this country; there, at least, the documents

are on record. But it is not less true, also, of penal reform; it is, I think, true to say that, minor changes apart, every serious impulse to prison improvement in this country has originated outside and not inside the Home Office. It is seen, also, in the fact that, after thirty years, the rules governing workmen's compensation should have remained unchanged, and that it should have taken almost a decade of agitation to persuade the Ministry of Labour to embark upon the revision of the cost of living index. I believe myself—though this is far more controversial ground—that it is seen also in the Treasury's relentless opposition to a great public works programme. The need for far-reaching improvements in electrification, water supply, housing, roads, especially in rural areas, is largely a matter of common agreement. But every attempt at development along these lines has broken down in the face of opposition from the Treasury. It is at least legitimate to doubt, in the face of available foreign experience, whether the postulates of the Treasury position are as satisfactory as successive Chancellors of the Exchequer have been persuaded to regard them.

But I believe that the narrow range from which the administrative class is drawn is still more important in this context. High officials are hard-worked men, immersed in the grim daily burden of their task. Living the same kind of life, meeting, for the most part, people who lead lives similar to their own, seeing problems not in the pit and mine, in the slum house and the condemned school, but in the massive dossiers which come to them in endless procession, it is at least not clear that they are driven by their work to that examination of fundamentals which, as I have argued, is so urgent a task for our generation. They can see the problem of juvenile unemployment as an administrative and statistical problem;

it does not impinge upon them, as parents, as it impinges upon the parents of the working-class boy who, twelve months after he has left school, sees nothing ahead but a choice between different blind-alley occupations. They see that the terms of enlistment must be made more satisfactory if the army is to be maintained at full strength; but they do not see, they do not even think of seeing, that so long as the army is not a career really open to the talents, in this generation a few pence on the day's pay is not going to make the really able and ambitious working-class youth think of the army as a career in the sense that he thinks of engineering or schoolmastering as a vocation that will give his energies their full scope. He does not himself pass through the kind of experience which burns on every page of Mr. Walter Greenwood's *Love on the Dole*. He is rarely visited by the kind of passion which led John Cornford and Ralph Fox to die in Spain as volunteers in the International Brigade.

Men think differently who live differently; and unless we can somehow fuse alien experiences into a common understanding, not the completest body of factual materials is approached from that angle of insight which gives them their proper perspective. The danger of what Graham Wallas called "narrowness and rigidity" in official life is, in this context, painfully real. At the top of the hierarchy, the civil servant hardly knows—no doubt there are exceptions—at first hand what unemployment does, what the Means Test implies, the effect on an able boy of a decision to economize on the number of free places in the secondary schools. He will, indeed, even tend to persuade himself that an insistence that the system he operates should be made to confront its failures not less than its successes is the mark of an extremist or a crank—both words of horrific import in the dictionary

of official practice. He confronts the danger that he will accept the immense pressure of the whole system towards conformity in the essentials of thought—with the knowledge that if he is reasonably efficient and reasonably intelligent the chances are that he will get his promotion and that the system will last his time.

A Civil Service, I am arguing, needs not only the able routineer; it needs also the ardent inventor who can disturb the routine; and my own doubt is whether the system either breeds that type or is able adequately to assimilate it when it rarely discovers one. There is no lack at all in the Civil Service of energy and devotion, of selflessness and public spirit. The degree and quality of the team-work discoverable not merely when some big adventure is on hand, but in the normal round of daily duty, are alike remarkable. But there is, from the nature of its construction, an absence of that ultimate imaginative scepticism, that passion for constructive innovation, which would enable us, in Wallas' noble phrase, "to teach those distant impersonal masters of ours who are ourselves how to prevent the opportunity of effective thought from being confined to a tiny rich minority living, like the Cyclops, in irresponsible freedom." The best way for the civil servant to "teach those distant masters" is for him first to teach himself; and that means, above all, a kind and a direction of intellectual effort and experience which, at present, the service itself tends to minimize.

3.

The Civil Service, as a career, offers certain solid advantages to its members. Granted good behaviour and efficient service, the official has security, a salary with increments which compares not unfavourably with the

best outside employment of a similar kind can offer, modest holidays with pay, sickness leave, and, on retirement, a non-contributory pension which is roughly equal, in normal circumstances, to about two-thirds of his salary in the last years of his career. In all the lower grades of the service, moreover, he has a share, through the system of Whitley Councils, in discussing and, in some degree, determining the conditions of his employment. He can belong to one of the staff associations which function as his trade union, though, since 1927, these bodies are not permitted outside affiliations of any kind. If he is not an industrial worker, he is debarred from political activities; his acceptance of a parliamentary candidature, for instance, has operated, since 1928, as automatic resignation from the service. In some departments, however, he may be permitted, under suitable circumstances, to serve on bodies such as local councils. He may not, however, without express permission of his superiors, express publicly, by speech or article or book, his views on controversial public questions.

Taken as a whole, no one can say that the Civil Service is an expensive service. Three-quarters of its members receive less than four pounds per week; and, throughout the service, there are only some five hundred posts of which the salaries are £1,000 per annum and upwards; even heads of departments only receive £3,000 per annum. There can be no doubt that, at the base of the pyramid, the essential attraction of the service is the security and the pension it offers, at the apex the dignity and influence it confers upon those who reach the highest posts. Except on grounds of age, it is very rare for men to leave the service; in 1929, for example, 2,205 did so. But of these nearly 1,400 left through ill-health or death, and 271 only through inefficiency or misconduct. Of others

who left for no given cause, there were 523, and one must assume that, among them, were those who found, as they believed, the opportunity of a better career outside the service.

Obviously, from this angle, the Civil Service is regarded by the youth of the community as a career which compares favourably with outside vocations. The permanence, the increments on pay to the maximum of the grade, the prospect (even though small) of inter-class promotion, the holidays with pay, and the pension on retirement all constitute solid advantages which are rivalled only by the best of private establishments. The highest class of civil servant, however, apart, there are, I think, two conclusions to be drawn from this. The first is that the service tends to attract to its ranks, at least for the most part, the unadventurous, plodding type who is content, knowing his probable destination from the start, to accept a well-defined routine. The second is that so small a number of departures from the service must mean, compared with outside employment, a general satisfaction with its conditions.

But, again looking only at the service below the administrative class, there is one weakness in its organization which is impressive. In these classes there are some hundred thousand officials of different kinds; the proportion of inter-class promotions is very small. Does this mean that the methods of promotion in the service are so satisfactory that the channels through which men may move from the base to the apex of the pyramid are sufficiently wide to give us assurance that there is no wastage of ability? Are there, to put it in another way, such adequate methods of assessing ability as to make us sure that the lower ranks of the service do not contain men who, given the opportunity, would prove their fitness for work of the highest kind?

Obviously, this is a question of proportion. I can only record my own conviction that is based upon a twofold experience. I have been for ten years a member of the Civil Service Tribunal in which I have come into contact with every grade of the service in a large number of cases; and I have, as a university teacher, had nearly twenty years' experience of teaching civil servants, both as undergraduates and as research workers in their spare time. My own view is definite that there is, in each of the lower grades of the service, a small, but nevertheless significant, number of officials whose ability would fit them for the best class of work, but who remain either undiscovered or unused in the working of the system. Largely, I think, this occurs because (1) the grades of the service are too rigid, (2) because promotion methods below the administrative class are too mechanical, and (3) because not enough encouragement is offered by the system to those who, with such encouragement, would quickly demonstrate their capacity. Each of these conclusions needs a separate word.

The grades of the service are too rigid. The intake is, of course, determined by considerations of public business; and an official's fate must mainly be determined by the educational opportunities of which he can take advantage. But too much reliance is placed upon the opportunity for serving officials to compete, at a somewhat higher age, for better posts; the competition is unreal, partly because they lack the opportunities for the training received by those with whom they compete, and after some such age as twenty-five examinable capacity begins very definitely to decline. It is, therefore, a pity that experiment has not been attempted with alternative qualifications for entrance to that of the competitive examination. I see no reason, for example, why, up to

some such age as thirty, a young official who has taken a good university degree, or qualified himself with distinction for the Bar, or done, as some have done, an interesting piece of social investigation, should not be given a temporary "acting" appointment in a higher grade to see whether he cannot justify exceptional promotion. The burden upon the taxpayer would be small; and the experiment would at least have the important merit of offering to the really able man in the lower grades the knowledge that he has an effective chance of recovering from the handicap of inadequate educational opportunity. At present, as anyone acquainted with the service will be aware, there are in its ranks men who would be eager to make the effort involved in this attempt, did they not believe that the steepness of the hierarchical slope makes the relation between labour and reward too small to justify the sacrifice of leisure involved.

The methods of promotion are too mechanical. It is, I think, a fair estimate that, below the administrative class, an overwhelming proportion of promotions go by seniority; the promotion board is less a real search for merit than a safeguard against the fear of favouritism. Obviously, there is a case for this view where a considerable part of the work to be done is routine work, even if routine work that sometimes calls for a real degree of personal initiative. My point is that, by and large, until one reaches the executive grade, the nature of the material upon which most civil servants are working will not lead to the evocation of the kind of capacity required in the highest grades; with the result that it is only exceptionally, as where a man has made his mark on a Whitley Council or Committee, that the Promotion Board, with its not very illuminating report before it, will really know the full range of the young official's

abilities. The present system is satisfactory for the bulk of routine promotions. It does not touch the problem of the exceptional man with whom I am here concerned.

The system, thirdly, does not sufficiently stress the need to discover exceptional talent. This is due to a number of complicated causes. In part, it is the outcome of the historical fact that, before the war, it was rare for the heads of departments even to think it likely that men of exceptional talent were to be found outside the products of Oxford and Cambridge. That tradition has been discouraged since the war; but it is not, I think, unfair to say that it has been found by no means easy to break it down. In part, also, it is the outcome of the obvious truth that it is not easy, in the classes devoted to routine work, for really exceptional talent to make itself known; and, even when it does, there is always the danger that staff jealousy will view with disfavour any exceptional promotion. In part, therefore, the third difficulty arises that when the exceptional man does, as he moves up the hierarchy, display his ability, unless his movement has been exceptionally rapid, it is far from easy to fit him into the fairly rigid categories of the service. I have known young men of quite first-rate ability in the clerical class who have gone into the service eager to climb up its ladder. After two or three years at a routine job they have become discouraged, simply because its daily performance offers them no real prospect of proving what they can do. Such men tend to find in leisure the chance of self-expression they ought to find in the service; or as in one or two notable cases, they leave it either for private employment or to organize the trade unions which have become so notable a feature of the post-war Civil Service.

It is, of course, clear that, with all the good will in

the world, no great organization can expect not to make mistakes of this kind. The service is a hierarchy; the work is apportioned out with meticulous care in terms of a carefully watched grading; and the staff is quick to note departures from fairly well-settled routines. An establishment officer, no doubt, is anxious, above all, to avoid the accusation of favouritism in promotion; nothing so easily disorganizes the morale of an office. It is, no doubt, for this reason that the elaborate system of reports has been devised that, in the choice of men, there may be safeguards against its intrusion. Granted all this, I can only record my own conviction that the service has been inadequately experimental in this regard. Certainly there are methods of choice it might have explored of which it has not taken full advantage. A considerable number of civil servants have devoted their spare time to taking university degrees; that is, at least, a proof of energy of mind with which it would be worth while to experiment. Others have shown considerable administrative ability in negotiation with the officials above them. Some of these I have known; and the cases they have prepared for the Civil Service Tribunal were able and effective pieces of advocacy. Again, little advantage has been taken to notice the presence in a routine class of ability not being used to the full extent of its powers. And a small number of civil servants in the lower grades have made contributions of distinct importance to the literature of public administration without arousing in their superior officers the sense that such contributions warrant the inference that the talent so revealed demands at least the recognition of a title to experiment.

I emphasize this because it is certain that an infusion of lower grade ability into the upper hierarchy would

do a great deal of good. It would break down that enclosure within traditional postulates which is still too characteristic of heads of departments. It would enable new views to be considered, new points of criticism to be borne in mind. It is very difficult for any upper class Englishman to know what is being thought in the classes below him; and, unless he is a very exceptional person, he is rarely imaginative enough to see the urgency of finding out. And since the administrative class is largely shut off, and the higher in its ranks the more shut off, from contact with those below it, especially in a social way, its knowledge of the psychology which underlies the wants it encounters is all too likely to be external and secondhand. What this affects, above all, is the civil servant's conception of the limits of possible action. The attacks made on his primary conceptions appear to him inacceptable because he has never had direct and continuous contact with the experience that has led to those attacks. Yet there exists within the service itself a good deal of that experience which, if it could only receive expression at the point where policy is formulated, would inject into the traditions of the departments something, at least, of the scepticism about fundamentals it is urgent for the civil servant to possess. At present, I do not think he tends to possess it; and the narrow stratum from which he predominantly comes does not encourage its possession.

It is, of course, clear that there can be no rapid internal change in these matters; alteration must wait upon fundamental changes in the character of the educational system. What we have gives us, at least in most of those mainly concerned, a remarkable capacity for detachment, a disinterested zeal for the success of any measures it is ordered to take, which are both of high importance.

But, even taken together, they are not enough to secure the positive success of any wholesale experimentation with the postulates of a new social order. That cannot be made to work either by detachment or by disinterested zeal. It needs rather a positive conviction not only that the postulates are in themselves worth while, but also that it is imperative that they should work. Just as something, at least, of the breakdown in the administration of the Palestine Mandate was due to the fact that some of the chief civil servants concerned did not believe in its principles or purposes, so a Civil Service such as ours might easily fail because it did not believe in the experiment it was asked to attempt. And were that to be the case, I believe the source of the failure would largely be due to the fact that most of those responsible for the administrative measures necessary to implement it would be at least sceptical and at worst intellectually hostile to the purposes of those measures. And this, in its turn, would be due to the fact that the main personnel in the service is too narrowly class-conditioned in the social experience it represents.

This would not, I must add, be a failure of will on the part of the Civil Service. There can be little doubt in the minds of any who have had contact with the chief permanent officials of the reality of their faith in the central principle of neutrality. But that principle is set in the perspective of an environment far more narrow than they are likely to realize, even less to admit. Their notions of what I have called the limits of the practicable are set by their experience of the present system as a going concern. Their minds have rarely bent themselves to the speculative task of considering its transformation. Interventionism, regulation, even the planning of some specific area of the national life, these they fully under-

stand. A fundamental change in social motivation is a different matter. How hard it is for that change to be appreciated came out with clarity in Sir Maurice Hankey's evidence before the Royal Commission on Armaments. It came out, again, in the evidence of the Board of Trade before the Royal Commission on the Localization of Industry, where the effect of the department's evidence was the insistence that any control of the right of business enterprise to determine its own geographical habits was economically unthinkable. It is implicit, once more, in the difficulty of persuading the Home Office seriously to confront the problems of penal reform; after the remarkable achievements of the Soviet Union in this realm there is little excuse for the indefensible complacency of recent years. It is evident, again, in the "superior" attitude—far as yet from being broken down—of the Diplomatic to the Consular service. Once again, it is not less true of officials than of politicians that men who live differently think differently. The environment from which the main bulk of the leading officials is drawn in itself creates half-conscious intellectual presumptions against change. Until the road up its hierarchy is in reality an open one, it will be very difficult to overcome the immanent psychological consequences of the present situation.

4.

The ethos of the Civil Service is detachment and neutrality; for that reason a long tradition, extended in recent years to the defence forces, prohibits a civil servant from a parliamentary candidature; and certain departments, the Ministries of Health and Labour, for example, which have special relations with the public, prohibit their officials from candidatures for local govern-

ment bodies. Hardly less strict is the rule which prohibits a public servant from comment upon public affairs by way, for instance, of a book or article. A recent case, in which an official of the Ministry of Health was dismissed from the service for a pseudonymous article criticizing the policy of sanctions in the Italo-Abyssinian War, shows how rigorously the rule is applied.

There is a large body of evidence to suggest that the strictures of these regulations is deprecated, and even resented, by the lower ranks of the service. They appear to admit that they are necessary where the higher ranks are concerned. But they believe that there is no case for their application to the lower grades, and that the virtual deprivation of civil rights for several hundred thousand officials, which the rule entails, is indefensible. In their judgment, there would be no abuse if the matter were left to be determined not by rule, but by the discretion of the individual officer. He would act, it is argued, with all proper regard for the traditions of the service; and, in any case, the numbers affected are so small that they do not constitute a problem big enough to warrant the severity of the present procedure.

A distinction, clearly, must be drawn between political activity in the full sense of the term and written comment, by way of a book or article, on contemporary problems. So far as the first is concerned, the matter seems to rest upon the paramount principles, first, that the confidence of the public in the neutrality of the service must be maintained; and, second, that the administrative discipline of the departments is not interfered with by the freedom in politics that is permitted. It is, I think, clear to everyone that no civil servant engaged in the making of policy could possibly be permitted the luxury of a parliamentary candidature. The relations between, say, a Labour Govern-

ment and Sir Maurice Hankey would, to say the least, rapidly become strained if he were, at one and the same time, the Secretary to the Cabinet and a Conservative candidate for the House of Commons. No public could be induced to believe in the *bona fides* of any service whose leading officials were engaged in the promotion for themselves of a political career.

It is, therefore, clear that down to some point in the hierarchy of the service, there must be prohibition. How far should that extend? The Treasury itself agrees that it does not extend to industrial workers in, for example, one of the dockyards or in Woolwich Arsenal; though postmen, whose work is more or less comparable in character, are excluded from the non-prohibited area. I do not myself believe that the presence among the fifteen or sixteen hundred candidates at a general election of a score or so of civil servants would jeopardize public confidence in its general neutrality, so long as they were not members of the higher classes of the service. But I think the situation would become very different if the great bulk of the great army of officials were allowed, without actually becoming candidates themselves, to participate in the general activities of party warfare. Even a clerical officer in the Unemployment Assistance Board would become a centre of wholly undesirable discussion if, on a Labour platform, he were to denounce the regulations of the Board; and the Labour Party would, I am confident, rapidly begin to ask angry questions if, at the Annual Conference of the Conservative Party, an official of the Mines Department were to denounce with bell, book, and candle the policy of nationalizing the mines.

I see no way in which, in the field of party politics, it is possible to draw lines between one grade and another in any logical way. That impossibility seems to me to

imply that to leave the matter to individual discretion would mean the danger that any grave lapse on the part of an official would tend pretty easily to be regarded, if it were punished, as a case of political victimization. The present rules, therefore, stringent as they are, seem to me to represent the necessities of the position. Anyone who is aware of the pressure brought to bear upon members of Parliament, even local councillors, to take up individual cases will, I think, realize that the greater the degree in which the official is separated from this pressure, the more likely is the public to feel confidence in the justice of the system. Granted all the historic *esprit de corps* of the service, it would not be difficult to lose that quality if its members took, on any wide scale, a full part in the party battle.

The administrative problem, moreover, raises real complications. If civil servants were permitted to embark upon a political career, grave difficulties would arise if, at any time, they were defeated in their election. Are they to have the right, in that event, to return to the service? Is the right to be absolute, and without regard to the time an official has been in the House of Commons? It seems to me obvious that the relations of a department are too delicate to make this kind of re-absorption a possible adventure. A Foreign Office clerk, who had spent some years in the House ardently attacking his department, would not easily go back to the discipline it imposes; and the situation would be still more difficult if he continued to hope, as he well might, for a return to active politics.

The problem of the written word is much more complicated. It is, I think, clear that a civil servant could not easily be permitted publicly to criticize the policy of the department of which he was a member. A strong

attack on Mr. Eden's foreign policy by a junior official of the Foreign Office would strain relations to the breaking point. Even an anonymous attack would be incompatible with the loyalty and detachment that are the hall-mark of a competent official. From the angle of the kind of confidence a minister must be able to feel in his permanent officials, it is not, I think, debatable that a vow of external silence imposes itself by the nature of his task.

There is, however, a middle ground in which I believe that the right to self-expression is a wholly desirable thing. No one, for example, would object to the works in which an eminent Treasury official, Mr. R. G. Hawtrey, has revealed himself as one of the best English economists of the present time. So long as a civil servant is contributing generally to the structure of knowledge there is, so far as I can see, no reason why any official ox should tread upon his tongue. Provided that he is reasonably discreet, the contribution his experience can make may be of exceptional value; and it would be a pity if prohibitions compelled him to silence. Just as I think there is everything to be said for allowing naval and military officers to develop in print their view of strategy and service organization, so I think that as full a liberty as may be for the civilian officer to develop his theories of social and administrative organization is desirable. No doubt there ought to be an imprimatur from his superiors. But a treatise, for example, on Treasury control by one who has practised it, or on the relation of Government to industrial arbitration by an officer with experience of the conciliation department of the Ministry of Labour, has everything to recommend it. We under-estimate, I think, the importance of encouraging civil servants to think organically and fundamentally, as it were, about

the problems with which they have to deal; and excessive discretion in this realm is a hindrance, and not a help, to the discovery of truth. To allow a civil servant to write a book, for instance, on the prison system without allowing him to discuss the major criticisms that have been made of its functioning is almost worse than to allow him to write no book at all. We run the very real danger, unless there is a measure of genuine freedom in this regard, that Civil Service work is written about and criticized by men who do not know the facts, and tend therefore somewhat easily to misjudge the habits upon which they have to pronounce. After a certain point, the quasi-anonymity with which the service surrounds itself is harmful, rather than beneficial, to its proper relations with the public.

Something of this has been realized in recent years, though the method adopted to meet it has not, in my own judgment, been a wise one. The method is that of appointing a "public relations officer" for the department whose business is to explain, or to explain away, its procedures to the public. The title is a formidable one. It covers a reality which may extend from the wholly proper communication of news to handling the Press so that the criticism of the department therein may be minimal in character. My own feeling is strong that this is the wrong kind of development. It has led to efforts to hinder criticism, to the retailing of inspired gossip, to the conversion of what is in fact propaganda into what appears to be genuine news, for which there is nothing to be said. Where a department seeks to explain what it is doing, or to defend itself from attack, the proper person to explain or defend its policies is the minister responsible for them; and nothing justifies the modern method of allowing hints to appear in the Press which

are intended indirectly to create what the public relations officer regards as the "right" attitude on the part of the public. No department, in the long run, loses anything by the maximum possible openness in its relations. The modern publicity expert, whatever he may specialize in, is hardly a specialist in straight-forward dealing. Like an advertising agent, he has a commodity—the policy or the personality of his department—to sell; and he takes the quickest means he can to that end. Above all, I suggest, he takes the utmost pains to convey the impression that the chief characteristic of the department he represents is infallibility.

Civil servants, like other human beings, do in fact make mistakes, even grave ones; and the best method of convincing the public of their *bona fides* is the fullest openness about their habits. A failure in this is bound, in the crucial instance, to have serious repercussions. The suspicions of the police which followed on the Savidge case have not yet died down. The public is far from feeling that it has heard the real facts about the Dartmoor prison mutiny. Sir Samuel Hoare's attitude to the dockyard dismissals of 1937, where men of blameless record were sacked upon unknown charges formulated by unnamed accusers whose description seemed uncomfortably close to that of Oliver the Spy, may have convinced the Colonel Blimps of this world; they have certainly failed to convince the trade union movement. And when, in 1937, Mr. Frank Griffin formulated a series of specific charges against the army, one cannot help feeling that the proper way to deal with those charges was not to dismiss the man who made them from the Reserve—a clear endeavour to create the public impression of his undesirability—but to have the charges investigated by a small committee in whose impartiality the

public would have had full confidence. Sir Warren Fisher's notable enquiries into the Gregory case and the Bullock case are classic examples of the kind of forthright dealing with the public out of which the right kind of confidence develops. It is, I think, a pity that this method of full communication is not followed in the rare, but usually significant, instances in which the public is left dissatisfied by the course taken by the department concerned.

And this leads me to the insistence that just as the maximum publicity is desirable for what may be termed official thought, so is the maximum relation between Civil Service and public desirable wherever the exercise of a discretionary power, especially one that is secret in its nature, is entrusted to a department. The whole difference between public and private administration consists in the fact that in the first sphere the citizen is entitled to know the reasons for any decision by which he is affected. That is why the Lord Chancellor's committee on Ministers' Powers recommended the publication of the Inspectors' Reports to the Ministry of Health in such matters as slum clearance. That is why I should like to see the conference upon aliens of a right to appeal, say to a judge in chambers, against any decision of the Home Secretary to refuse a certificate of naturalization. The present system, in which the grounds for the refusal are always denied, is unsatisfactory simply because there are many instances in which the friends of an alien may get the decision reversed by appealing from one Home Secretary to his successor. The argument that Parliament has conferred an absolute discretion in this realm does not really take us very far. For the purpose of Parliament is that the discretion should be rationally used; and there are certainly many instances in which the curious habits of a particular official, wholly screened

from the public view, are allowed a weight which a judicial-minded scrutiny would destroy in a few minutes' close examination.

I have already, in an earlier chapter, urged the desirability of advisory committees of members of Parliament in connection with each of the departments of State. I believe that not the least service they could render lies in the continuity of contact they would afford between the responsible legislator and the administrative specialist —a contact which, for reasons given earlier, I believe to be of great importance. But every reason for committees of this character seems to me a reason also for building about the departments advisory committees of citizens whose interests are relevant to the work the departments have to do. We already have committees of this character; and some of them, most notably the Consultative Committee of the Board of Education, have done very valuable work. Not its least valuable aspect is the kind of bridge it builds between lay opinion and the administrative process. The real danger that confronts the official is his constant liability to be separated from this lay opinion. He lives seeing his problems so largely through the miasma of files that he may easily lack a sense of proper proportion unless they are translated into the eager, palpitating lives of the men and women whose needs they embody. It would be a good thing for Home Office officials to see representatives of the Shop Assistants' Union not on an occasional deputation when two or three speeches are followed by the polite promise of further consideration but in an organized monthly meeting in which both sides learn in personal contact the range of their common problems. It would be a good thing, too, if there were an advisory committee on slum clearance at the Ministry of Health

where in continuous exchange of criticism and idea the officials had a constant sense of the urgency of the issue. I should like, indeed, to see the changes in Army Regulations, as they affect the common soldier, promulgated, not from on high as the Army Council has of itself seen fit to make them, but after they have passed through the sieve of criticism and suggestion of a really good committee of ex-soldiers who learned where the shoe pinched during their years of service; this applies, of course, to the Navy and Air Force as well. I do not think, to take an obvious example, that Invergordon would ever have occurred if the Board of Admiralty had been made to feel the repercussion of its decisions as they would be felt by the men to whom they applied. So, also, I believe, it is a pity that the Ministry of Labour has made no effort to associate the unemployed with its local Labour Exchanges and the trade unions with their central administration. There is an immense fund of social experience, deeply relevant to the process of administration, that, under the present system, is never brought into organic relationship with the men who direct that process. It is important to bring it into that relation. Were that to be done, it would, I venture to believe, do more than a score of public relations officers to make the work of the Civil Service fully understood by the public.

For despite all the eulogies that are passed on the service from time to time, it is important to emphasize that little of its real work is yet understood by the citizen. That is partly due to our defective education; we still do not realize the importance of what Aristotle called a "training in the spirit of the Constitution." Most of the population grows to maturity with little conception of even the purposes, let alone the methods, of modern

administration. They believe (quite wrongly) that all officials are well paid, that they have security and short hours of work, and that they are enmeshed in a red tape which makes them slow and cumbersome about getting things done. Even a committee like the Anderson Committee on Pay showed itself, as its comments on inspection work made clear, quite unaware of the nature of the civil servant's work; and it is a habit with some critics of the Civil Service to move deliberately from ignorance to misrepresentation. There is far greater interest displayed in an occasional instance of administrative pathology, like the Bullock case, than in the steady performance of tasks upon which a very large part of the public welfare depends.

The urgency of effective civic education speaks for itself. Ignorant democrats will not be able to defend democracy, simply because they will not know what they have lost until it is too late. But I think it is important to remember that the more people we can actively associate with knowledge of the administrative process on its positive side, the more fully the value of the work will be grasped. That was, it is worth remarking, one of Lenin's major insights. He realized that the larger the public actually associated with the process of administration, the profounder would be the quality of its performance simply because it would meet so much wider an area of responsible criticism. Here, as I think, has been one of the great failures of imagination in British democracy. It has failed to see how wide a public there is to be interested in its processes if it will only invent the institutional devices necessary to elicit that interest. We have been able to do that successfully in other walks of our national life. The co-operative movement, the trade unions, the Labour Party, to a lesser extent the

friendly societies, have literally lived upon their ability to exact voluntary service from their members. I believe that the advisory committee, both centrally and locally, is, properly organized and fully used, essentially the device that could elicit the same kind of service for the process of public administration. It would be necessary, of course, to convince the committees that consultation with them mattered; to allow them to degenerate into formalism would be worse than not using them at all. But it is so important to prevent the modern citizen from degenerating into what the French call *l'administré* that all the effort and burden it would involve is amply worth while. The citizen knows that he pays taxes; he ought to be made far more continuously aware of what he pays them for. Unless he has that realization as an intimate and living part of his personality, he is not, in a full sense, seised of his citizenship. For few people, outside the really active members of the political parties, will feel that they are really citizens if their part in the process of politics is confined to marking a ballot paper once in three or four years.

I am not, let me emphasize, seeking in any way to depreciate or to diminish the central principle of ministerial control by anything this argument implies. Decision must still remain the minister's task. But it is surely obvious that the wider range of experience that can be collected for him as the basis of his decision, the more likely it is that what he decides will be wisely decided. In a sense, what I am suggesting is only a logical extension of the part played in our political life by the Royal Commission; and the aid that device has given to clarity in both policy and administration is literally beyond estimation. My thesis is, after all, the essentially simple one that democracy is government in terms of the con-

sumer's choice, and that the best way to get at the consumer is to organize him for the purpose of consultation. No amount of paper knowledge, hardly any amount, even, of skilled administration, will compensate for the absence of effective interest in the results of policy. The civil servant too easily assumes that the absence of criticism is the presence of satisfaction. That is far from being the case. The real way to know what the public wants is to organize it to say what it wants; no amount of expertize will ever compensate for the absence of that pronouncement. And the real way, too, to get to know what it wants is to associate it with criticism of what it is receiving. The more fully that, again, is organized, the more effective will be our safeguards against the major ills of bureaucracy.

5.

The daily experience of the average citizen testifies to the growth of executive power in this country. Some of it has been achieved at the expense of Parliament; the increase in delegated legislation is one of the most notable procedural changes of the last thirty years. Some of it, also, has been achieved at the expense of the Courts of Law; ministers have been increasingly entrusted with quasi-judicial, and even fully judicial powers, which have partially, or even fully, excluded the operation of the rule of law. We have been offered grave warnings against the consequences of this evolution. It is the "new despotism"; it is "bureaucracy triumphant." So eminent a protagonist as the Lord Chief Justice of England has descended into the arena to insist upon the importance to public liberty of a return to the ancient ways.

The protest against the growth of delegated legislation collapses as soon as it is submitted to serious scrutiny.

There is everything to be said for seeing to it that Parliament confers no rule-making powers which, an emergency like Foot and Mouth Disease apart, it has not the opportunity to scrutinize before they go into operation. That is not, as the Lord Chancellor's Committee on Ministers' Powers pointed out, a difficult matter to arrange. It would be easy to set up a Standing Committee of the House of Commons to which all Orders and Regulations were submitted before they went into effect; it would be easy, also, for that Committee to draw the attention of the House to anything exceptional in their character of which the House should be aware before it confirmed them. Granted such scrutiny, granted, also, the assurance—which has not so far been lacking—that no department makes regulations without full consultation with the interests likely to be affected by their operation, there is everything to be said for, and little effective to be said against, the process of delegated legislation. Anyone who examines the kind of subject-matter with which it deals, will find that it saves a good deal of valuable parliamentary time which can be better used for other matters. An extension of the list of poisons, a change in the schedule of fares for taxi-cabs in London, these, to take typical illustrations of the use of regulatory powers, are not really a threat to our freedom if they are done, under suitable safeguards, by a body of ministers, rather than by the House itself. The vital thing is that Parliament should be in a position to take objection to any use of the power when it deems fit; and that it should be so able to examine what is done in its name as to make it certain that nothing to which objection can be taken escapes from its purview. That achieved, the system of delegated legislation, which is, in fact, far older than its critics like to make out, is an elemen-

tary procedural convenience essential to the positive State.

The conference of quasi-judicial and judicial powers upon the departments raises far more difficult questions. Englishmen schooled in the famous doctrine of Professor Dicey have been taught to believe that no issue of law is properly settled until it has been disposed of by a Court of Law independent of the executive of the day; and they tend to look with suspicion and, in the case of the Lord Chief Justice, even angry dislike upon the growth of a ministerial jurisdiction which ousts the authority of the Courts. Lawyers, particularly, obviously resent the notion that any issue can be properly determined outside a Court of Law into which justiciable matter enters. They complain, therefore, that the growth of this jurisdiction is proof of an intent in the Civil Service to make ministerial policy supreme over legal power. This, they argue, is the new despotism in all its arrogant panoply. The rule of law has been, at least since the time of the Stuarts, the essential safeguard of Englishmen against arbitrary authority. To relax its vigour is to risk the intrusion of discretion into a realm where it ought never to enter.

This, obviously enough, is a realm where every student of the new tendencies must tread delicately. There are certain types of power the conference of which upon the executive would, quite certainly, place public liberty in danger. It would be a dangerous surrender of principle to allow the executive to denominate certain behaviour as an offence and to decide whether a given individual's conduct fell within the category so established. It is essential, further, that when any type of quasi-judicial power is conferred upon the executive, its methods of decision shall be such as to establish reasonable confidence

in their *bona fides*. It is important, again, that the grounds for any executive decision in this realm shall be public and that a full assurance shall be available of proper scrutiny by the officials concerned of all the material relevant to the making of a fair decision.

Where these criteria are satisfied, the fact that power of a judicial kind is conferred upon the executive ought not to create the alarms and excursions upon which so much attention has been concentrated in the post-war years. There is no reason, in experience, to suppose that a Court of Law is better or more fairly able to decide a dispute between School Managers and the Local Education Authority than is the Board of Education;[1] on the contrary, granted that the latter body is fully seised of the facts, the presumption is all the other way. There is no reason, either, to suppose that a Court of Law is better able than the Minister of Health to pass upon the validity and wisdom of a closing order made against the owner of an insanitary house by a local authority;[2] on the contrary, once more, granted the character of the issues involved, the presumption is again the other way. What is really involved in the jurisdiction of these ministerial tribunals is the evolution of adequate administrative standards; and the root of such standards is, by its nature, far more a matter for the executive than for the Courts. In the conference of such a jurisdiction, the requirements of the rule of law are amply met when Parliament, in conferring the jurisdiction, sees to it that the standards of investigation observed in such tribunals are such as to ensure fair play. This has been put by Kelly, C.B., in the classic case of *Wood* v. *Wood*.[3] "They are bound," he

[1] *Board of Education* v. *Rice* [1911] A.C. 179.
[2] *Local Government Board* v. *Arlidge* [1915] A.C. 120.
[3] (1874), L.R. 9 Ex. 190.

says of such tribunals, "in the exercise of their functions by the rule expressed in the maxim *Audi alteram partem* that no man should be condemned to consequences resulting from alleged misconduct unheard, and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

Nothing in the history of administrative tribunals suggests that this principle is flouted in application. So far as our knowledge extends, though their methods may be different from those of a Court of Law, they are not less scrupulous in the protection of private rights. Very largely, they are concerned with technical matters the decision of which requires a special knowledge rarely available either to magistrates or judges. Their work is swift and cheap. Anyone who compares its results with the unhappy consequences of allowing the ordinary Courts to have jurisdiction over workmen's compensation or the powers of the district auditor will, I suggest, be inclined strongly to the view that, in the positive state, the ordinary courts of law are rarely suitable for work of this kind. Their canons of statutory interpretation are wholly defective for the purposes of the modern State;[1] and they lack the knowledge necessary for the construction of proper administrative standards. It must be remembered that most of this jurisdiction is concerned with questions of "reasonableness" in policy; and it is difficult to see why a judge's view of "reasonableness" is more likely to be right than that of a minister who may have to answer for his view in the House of Commons. If, more-

[1] Cf. my memorandum of dissent in the Report of the Lord Chancellor's Committee on Ministers' Powers (1932).

over, every case involving such questions could be transferred to a Court of Law the process of administration would become impossible, and the Courts would be overwhelmed with business. One instance of this must suffice. Under the Widows', Orphans' and Old Age Pensions Act of 1926 there were in the first eleven months of 1926 some 4,000 appeals under the procedure provided by the statute. It is surely obvious that reference of these to an ordinary Court would be a fantastic procedure.

The truth is that Professor Dicey's conception of the rule of law and his profound hostility to *droit administratif* were both based on the postulates of an historic period which have now passed away. His rule of law was the expression of an atomic individualism in which State and citizen were regarded as antithesis, an objective and impartial court holding the balance between them in terms of the eternal principles of the Common Law. But, in fact, those "eternal principles" were no more than devices adopted to protect the owner of property from arbitrary interference by the State-power; and their character, so far from being permanent, shifted, as the evolution, most notably, of the law of torts makes evident, in terms of the social pressure to which they were subjected. His account, moreover, of *droit administratif* was a caricature even when he wrote it; certainly since the Third Republic, the administrative Courts of France have given to its citizens a protection against abuse of power by the executive far more ample than anything they receive in this country. But, until quite recently, Dicey's strictures on the French system have been accepted by English lawyers and, above all, by English judges as a conclusive argument for the view that the conference of judicial power on officials is bound to bring freedom into jeopardy.

Under suitable safeguards, there is no reason to suppose that this is the case. It is important to see that officials who exercise this type of jurisdiction are free from the pressure of their political superiors to decide in one way rather than another; and it is important, also, to ensure that their methods of investigation are fair as between the parties to the issue. Obviously, also, the question of *vires* is fundamental; a department ought not, as a general rule, to have an absolute and final right to determine the limits of its own authority. Granted that the growth of administrative law is implicit in the nature of the modern State, the problems it raises turn upon the institutional answers we make to these questions.

The second of them is comparatively simple, and the evidence already suggests that it has been satisfactorily solved. Granted a full opportunity to state a case, granted, also, that the decision made reveals the grounds upon which it has been built, on this side the citizen is at least as likely to obtain full consideration before an administrative tribunal as before a Court of Law; and he is likely to receive it more swiftly and at far less cost. The real heart of the problem is in the first and third of the questions I have noted. A jurisdiction entrusted to a minister is, of course, one that he cannot exercise in person. He merely confirms a finding that will be made by his officials. They are pretty certain to be unknown to the general public; and it is a good rule that a judicial function should be entrusted only to known persons. Since, further, there enters into the exercise of this function an element of law, it is important, also, that their administrative knowledge should be linked to a legal training. It is, I think, important, also, that the public should be assured that they have some security

of tenure in their performance of a function which, on any view, has judicial attributes in its exercise.

From this angle, it seems clear that we are driven to the conception that those who advise the minister in the exercise of his judicial powers shall be set apart for this work by special nomination. Their experience of it should be continuous, and they should have the normal legal qualifications as a precondition of their appointment. The interested public should be as aware that X or Y advises the Minister of Health about closing orders as it is that a particular judge is the vacation judge. The more difficult issue is the problem of *vires*. "It is," said Scrutton, L.J., "of great public importance that there should be prompt and efficient means of calling in question the legality of the action of Government departments"; and he has passed severe strictures on the haste with which they "take prompt action without any nice consideration as to whether it is legal or not."[1] The generalization, indeed, is probably far too sweeping; most of the strictures passed by the High Court on administrative action build on the exceptional case rather than the habitual practice. But it is clear that such strictures are the basis of a suspicion against which precautions are necessary. It is, obviously, an evil thing for the *bona fides* of Government departments to be subject to criticism of this kind, even though it seems disproportionate to the weight of evidence.

I should myself, therefore, like to see the question of *vires* put in the hands of a judge or judges whose independence and detachment are beyond question. It is urgent that they should be able to arrive rapidly and cheaply at their decisions: this, I believe, rules out the ordinary High Court with its slow and costly procedure

[1] *Marshall Shipping Co.* v. *Board of Trade* [1923] 39 T.L.R., at p. 417.

and its immense hierarchy of possible appeal. It leaves us, I think, with one of three possibilities: (1) a question of *vires* should be referred at once to the House of Lords directly, with the power to secure a prompt decision upon a certificate of urgency from the Attorney-General; (2) alternatively, a special Supreme Administrative Tribunal could be created, staffed by two members of the legal Civil Service and presided over by a lawyer of administrative experience with the status and tenure of a High Court judge; or (3) a question of *vires* could be sent directly to a High Court judge, set apart for this type of case, as the judges in the Revenue and Commercial Courts are specialized to this type of problem. The first and the third of these methods satisfy, I believe, the classic requirements of the rule of law; and they have the important advantage, in this country, that they involve no serious break with the ordinary judicial position. The second method would prove, I think, the most satisfactory, for it would enable the interpretation of statutes to be kept free from the narrow tradition of construction characteristic of the common law in recent times. We need to go back to the full implications of the rule in *Heydon's* case, to look, that is, to the defect the statute seeks to remedy as the basis of its interpretation. The Common Law judge is so accustomed to look at public need only after private property rights have been amply protected as to make it dubious whether he would not, as in the first or third of the methods I have proposed, come to his task in a background unsuitable to its adequate fulfilment.

Nothing in all this lends support to the charges of "despotism" which Lord Hewart thought fit to make against the Civil Service in so sweeping and comprehensive a way. Both the nature of his charges, and the

evidence he adduced in their support, were rather evident of his inability to understand the nature of the modern administrative process than of a deliberate effort on the part of civil servants to get power into their own hands. No one with any grasp of what is implied in the organization and running of social services like our own could assume that rules of law evolved for the *laissez-faire* State would be adequate to their proper operation. We need in our own judiciary a fuller realization than some judges have shown of what the Supreme Court of the United States has termed "the strong presumption that a legislature understands and correctly appreciates the needs of its own people . . . . and that its discriminations are based on adequate grounds."[1] In preserving what there is of truth in the doctrine of the separation of powers, we do not want, by a side door, to make the judges the masters of the administrative process. What that implies has been shown only too clearly in the relations between the Supreme Court and the legislatures of America.[2] The rule of law, in the sense in which Lord Hewart and his supporters use that term, would destroy the prospect of affording great bodies of citizens opportunities for a better life which Parliament, in its discretion, has seen fit to confer upon them. There is nothing in the experience of administrative law in this country that affords ground for suspicion that we are in danger of bureaucratic rule. Rather is the manner of the hostility of the Courts to this development significant evidence of the way in which judicial assumptions are coloured by profound political prejudices of which, often enough, the judges are themselves unaware. I shall deal with the issue this raises in the next chapter of this book.

[1] *Middleton* v. *Texas Power Co.*, 249 U.S. 157.

[2] Cf. for a good summary, I. Feinstein, *The Court Disposes* (1937).

CHAPTER SEVEN

Parliament and the Judiciary

I.

Acts of Parliament are not self-operative; they have to be applied by men. And application involves interpretation by a Court, since it is a principle of the British Constitution that only express and unambiguous words —perhaps not even these—can deprive the citizen of his title to have the meaning of legislative intention settled by a Court of Law. Thereby we have sought to avoid not merely the obvious dangers of unfettered executive discretion in administration; we have sought, also, to assure that the citizen shall have his rights decided by a body of men whose security of tenure is a safeguard against the shifting currents of political opinion. Statutes are not to mean merely what the ministry of the day may be tempted to make them mean. The intention of Parliament is to be discovered by a body of independent persons, free from any direct interest in the result, and trained by long years of practice to standards of judgment by which that intention may be tested.

This is the famous Rule of Law which, for something like two hundred years, has been prized by Englishmen as the safeguard of their freedom. It is not, indeed, intended to make the judges the masters of Parliament; judicial review, in the American sense, is, I think happily, unknown to the British Constitution. It is always open to Parliament to repeal by statute any decision which it considers unsatisfactory or unwise; the Trades Disputes Act of 1906[1] repealed the decision in the *Taff Vale Case*;[2]

[1] 6 Ed. 7, C. 47.

[2] [1901] A.C. 426.

and an Act of Parliament amended the difficulties that seemed likely to result from *Overtoun v. Assembly of the Free Church of Scotland*.[1]

Ever since the Revolution of 1688 the independence and incorruptibility of British judges has been beyond dispute in this country. There have been harsh judges and stupid judges; there have been cynics on the Bench and an occasional figure, like Mr. Justice Grantham,[2] whose prejudice in a case of political flavour was so marked as to be matter for serious concern. There have been judges—since there is still no retiring age—who have remained on the Court long after it was painfully apparent to the interested public that their powers were inadequate to their function. It is nevertheless true to say that, with the single exception of Lord Macclesfield, the integrity of no English judge has been open to suspicion after his appointment to the Bench at least since the Act of Settlement. Even the exhibition of prejudice of an open kind must be regarded as minimal in character; for not half-a-dozen times in that period has judicial conduct been the subject of debate in Parliament.

It is, nevertheless, important to realize that the relation between the legislature and the judiciary is not, and cannot be, a static one. Judges are not separated from the rest of mankind. They are part of, and affected by, the mental climate of the generation to which they belong. They share in the characteristic beliefs by which their age is dominated. A majority of them, in the last hundred years, have played a part in the political life of the country; and these have been the men mostly selected for the

[1] [1900] A.C. 515.

[2] Cf. Mr. Asquith's remarks 22 *Hansard* (5 series), i. 911, p. 366; and see 160 *Ibid.* (4 series), 1906, p. 370.

highest judicial posts, at any rate since later Victorian times. Law, moreover, may be a logical technique; but it is one the primary assumptions of which are always shaped, in their ultimate form, by the great historical forces of an age. The judge is not an automatic and passionless being who, as he does his work of interpretation, finds a meaning in law which is fixed and invariable. For were the law so fixed and so invariable, men would not go to Court; it is the doubt of what the law is that provides the Courts with their work. And this means that the judge is, even if incompletely and indirectly, making law not less than merely announcing it. He has the delicate task of finding how a particular set of facts, the significance of which he has to discover, are related either to intentions set out by Parliament, or, in the absence of those intentions, to a somewhat amorphous body of doctrine, itself the product of a long historic process, known as the general principles of the common law.

When, as we examine this work of finding such relations we speak of judicial "impartiality," we must not be led into the assumption that the judges are unmindful of the bearing of the results they reach. They have what Mr. Justice Holmes has called their "inarticulate major premisses" not less fully than other men. Tradition may separate them from formal participation in the political controversies of the time. But as the deposit of those controversies comes to them in the shape of decisions to be made, it is inevitable that they should read into their making, where they consider they justifiably can, the impact of the private philosophy they hold. Just as a good deal of American constitutional law is inexplicable except upon the basis that the Supreme Court did not like the legislation upon which it had to pass, and substituted its

own view of the Constitution for that of Congress or a State legislature, so the result of a good deal of statutory interpretation in this country is only to be explained upon the assumption either that the judge did not like what Parliament was doing or sought to confine the results of its activity to the narrowest possible area.[1] That is clear in some of the major trade union decisions;[2] it is clear, also, in a good deal of the interpretation of workmen's compensation cases, especially in the first years of legislation which departed widely from the traditional principles of the Common Law.[3] It is now usual to admit that the decision of the majority in *R.* v. *Halliday*[4] was predominantly the outcome of a desire upon the part of the judges not to embarrass the action of the executive in time of war. Both the canons of statutory interpretation and the *rationés decidendi* which the judges may select are sufficiently elastic in their possibilities to leave the judges a wide margin for discretionary manœuvre. The driving force behind that manœuvre is likely, in considerable part, to depend upon the political philosophy which, consciously or unconsciously, they hold.

The tradition of the Common Law, it is important to note, has been predominantly shaped by the need to serve the wants of a business civilization founded upon a doubt of positive action by Government. Acts of Parliament are scrutinized in the terms of that tradition. The "intent" of Parliament is gathered not, as the layman might naturally expect, from *Hansard* and such evidence as the Reports of Royal Commissions. It depends upon

[1] Cf. Sir F. Pollock, *Essays in Jurisprudence*, p. 85, and my note in the *Report of the Committee on Ministers' Powers* (1930), Annex 5; see also the remarkable essay of Sir W. Graham Harrison, *Journal of the Society of Public Teachers of Law* (1935), p. 9 f., and especially p. 35 f.

[2] Cf. my *Studies in Law and Politics*, Chap. IX *passim*.

[3] *Ibid.*, pp. 286–7.

[4] [1917] A.C. 260.

one of three broad canons. There is the grammatical meaning of the words of the statute itself. There is the meaning of those words as they are read in the general context of the statute as a whole. There is the rule in *Heydon's case*[1] which instructs the judge to give heed to the defect the statute was intended to remedy. The judge may use any or all of these methods to reach his decision He may use them in the light of past cases by the bearing of which upon any particular set of facts he has to find he may happen to be impressed. Judges may use any one of these methods in the same case; and they may differ entirely in the results they deduce from their application. They may introduce standards of behaviour upon those who come before them which, in fact, have no other source than their private sense that if Parliament did not improve those standards, it ought to have done so.

That is the only rational explanation of the *Taff Vale* case;[2] the House of Lords thought it impossible that Parliament should have excused trade unions—despite the plain words of the statute—from liability for the tortious acts of their agents. The idea of "public policy" which runs through the *Osborne* case[3] hardly conceals the profound bias of the judges against the paid representation of trade unions in the House of Commons; universal payment of members was the outcome of that selective bias. *Roberts* v. *Hopwood*[4] means, at bottom, simply that the wages paid to the servants of a local authority shall not, as the statute says, be "such wages" as that authority "thinks fit," but such wages as the judges of the House of Lords think it reasonable to pay to working men; though it is doubtful whether they would interfere with the salary of the County Clerk of Lancashire who, the

[1] *Coke Rep.* 7b.
[2] [1901] A.C. 426.
[3] [1910] A.C. 87.
[4] [1925] A.C. 578.

Lord Chancellor and the Lord Chief Justice apart, is, by a curious anomaly, the highest paid public official in this country.

The result of the effort is to make legislative innovation, in Professor Willis' phrase, "moulded into some accord with the old notions." The theory which lies behind a good deal of vital statutory interpretation has no meaning unless it is intended to preserve the common law rights of individuals against invasion by statutes which seek to change those rights. Judicial theory builds upon the assumption that, in the absence of express words, the legislature could not have intended to take away a common law right; on no other ground can the judgment of Lord Halsbury in *R.* v. *Leach*,[1] or that of Slesser, L.J., in *Rowell* v. *Pratt*,[2] be explained. We have seen, in recent years, the discovery of a system of assumptions which have the effect of subduing plain legislative intent to a medium of which the judges approve. In the absence of express words, for example, Parliament cannot have intended to take away property without compensation; the result is to hamstring a good deal of legislation intended to deal with the grim proportions of the housing problem.[3] We are told that all legislation must, if at all possible, be so construed as to give the citizen access to the Courts; and this despite the fact that a large and deliberate tendency in modern statutes is to deprive the ordinary courts of jurisdiction in favour of special tribunals. The decision of the House of Lords in *Minister of Health* v. *R.* ex parte *Jaffé*[4] is an example of this tendency; and it is illustrated again by the same

[1] [1912] A.C. 305. [2] [1936] K.B. 226.

[3] Cf. W. I. Jennings' remarkable article: 49 *Harvard Law Review* (1936), 426, and that of D. Ll. J. Davies, 35 *Columbia Law Review* (1935), p. 519.

[4] [1930] 2 K.B. 90 for the amazing remarks of Scrutton, L.J., affirmed in [1931] A.C. 494.

tribunal's decision that the power of the Wheat Board to regulate the "final" settlement of disputes by an arbitrator did not authorize the Board to exclude a right of appeal from such a "final" settlement on questions of law. This remarkable result was reached by presuming, by reason of the absence of express words, that Parliament did not "intend" to repeal, in this instance, the Arbitration Act of 1889;[1] though what meaning the word "final" can have if this be the case, it is difficult indeed to understand.

The full examination of these tendencies would take us far afield. But it is notable that, in an age of relatively high taxation, the evasion of taxes by rich men has been upheld by the Courts through a technique of interpretation which it would be polite to call sophistry;[2] the recent discussion of the House of Lords in the Duke of Westminster's case[3] is merely the high-water mark in a series in which the judges seem to take the view that tax-evasion is merely an exercise in civic casuistry in which the presumption is inevitably against the State. And all this must be read in the light of a curious tenderness towards the executive power in the type of case where challenge to the executive comes from extreme opinion or is conducted in an atmosphere of political emergency. In *Pasmore* v. *Elias*,[4] Mr. Justice Horridge, it is true rather by way of *obiter dictum* than by direct decision, so whittled away the effect of *Entick* v. *Carrington*[5] as to make it dubious whether that classic monument to English freedom has effective meaning any longer. Judges have done nothing to discourage the grave ten-

[1] *R. W. Paul Ltd.* v. *Wheat Commission*, [1937] A.C. 139.

[2] Cf. Professor Willis' brilliant article 16 *Canadian Bar Review* (1938), p. 1, and especially pp. 25 f.

[3] [1936] A.C. 1. The incisive dissent of Lord Atkin should be noted.

[4] [1934] 2 K.B. 134.

[5] (1765), 19 St. Tr. 1030.

dency in recent years to the prolonged mass-trial arising out of social or political disturbance, in which it is at least dubious whether the jury is able, amid the confusion of numbers, to follow either the relation of the evidence to any particular defendant, or to remember the bearing of the accumulation of detailed testimony upon which they are asked to pass judgment.[1] They are allowing unsworn police, in similar cases, to testify as to the opinions of the accused, even when it is patent that the testimony is itself so highly subjective as to have no point save the creation of prejudice. It is not, I think, excessive to say that the majority of contemporary judges approach the trial of a Communist in something of the same spirit as their predecessors who were responsible for the grotesque treason trials under the administration of the younger Pitt. Certainly it is a lamentable thing that a judge who can speak of Communism as Lord Hewart has thought fit to do, should find no difficulty in trying cases in which the executive has decided to indict the exponents of that doctrine.[2]

The point I am concerned to make is the simple one that the tendencies of the modern State run counter to the main principles upon which the Common Law has been built. The result is an effort upon the part of the judiciary to minimize the consequences of those tendencies in a way which consciously hampers the purpose of the administrator. The judges spare no pains in attacking parliamentary decisions it is not their function to criticize. They are occupied in the construction of what is hardly less than a fundamental law which they use to confine the ambit of statutes within the limit of policies they happen to approve. The result of this process is to

[1] Cf. my remarks in the *Manchester Guardian*, January 28, 1937.
[2] Cf. *English Justice*, by "Solicitor" (1932), pp. 115 f.

slow down the rate of social change—as notably in housing legislation—or more narrowly to confine the area it covers than a survey of the facts would deem to be justified. The theory upon which they proceed is the assumption that they are safeguarding the citizen against the "new despotism"—by which they appear to mean the right of Parliament to confer powers upon the Civil Service the issues connected with which need not necessarily be determined in an ordinary Court of Law. They do not appear to consider that Parliament may have had good reason for the decisions it has chosen to make. They do not appear to consider, either, that the grounds for those decisions may lie, in fact, in the very habits of the judges themselves. The whole ethos of their approach is one of hostility to the process of modern administration. They interpret the "rule of law" as though they are themselves the masters of a "higher law" than that of a sovereign legislature the consent of which they themselves determine and the particular relevance of which they themselves decide. It is at least not excessive to say that they bring to the interpretation of the modern State and its processes habits of interpretation which, at least by implication, deny the validity of many of the ends to which its power is devoted.

And they do that, moreover, in an atmosphere which makes it a dangerous adventure to embark upon the criticism of their proceedings. It was a wise remark of Bentham that when the judge had made his decision he was "given over to criticism." But the modern enlargement of the doctrine of constructive contempt—itself historically dubious—has now reached a point where the frank discussion of the habits of any particular judge is, outside Parliament, a dangerous thing.[1] The reader of

[1] Cf. my *Studies in Law and Politics*, Chapter X.

R. v. *New Statesman*[1] will be tempted to wonder whether such stringent limits of public criticism would have made Bentham's great work possible if it had then been in force. And this is true of a judiciary which has never itself originated any vital reform of the law, despite the fact that it was the deliberate intention of Parliament that it should make proposals for its amendment. It is true of a judicial system the expense of which is, in its costs to litigants, greater than that of any other save the American; and whose hierarchy of appeal and whose centralization in London puts a premium upon all issues where one of the litigants is wealthy and the other poor.[2] It is difficult, in fact, not to feel that the conflict between the premisses of the Common Law and those of the modern State in its more positive aspect, presage the need for a reconsideration of the whole basis of our judicial institutions.

For it is important to remember that, in this country, there is no such thing as a Ministry of Justice. There is no department charged, in a coherent and continuous way, with observation of the working of legal processes and the proposal of necessary amendments. The Lord Chancellor is master of one area of the field; another is in the purview of the Home Secretary; another again belongs to the province of the Attorney-General. The judges do not exercise their right to draw attention to desirable changes; and the Council of the Bar has, so far in its history, almost wholly occupied itself with problems of professional etiquette which hardly touch the bearing of the law upon the general public. Not since Bentham's time have the foundations of our legal system been called into scrutiny. It is yet significant that every other modern

[1] Cf. Verbatim report on 30 *New Statesman*, February 18, 1928, No. 773.
[2] Cf. *English Justice*, Chapter VI.

State has been driven, since that period, to a thorough overhaul both of doctrines and of institutions. In this country, in any comprehensive way, the reform of the law is no one's business. Yet the signs are not wanting that exactly that comprehensive reform is long overdue.

For the danger that confronts our judicial system, so far as the High Court is concerned, is the profound one that it may find itself in conflict with purposes the legislature is determined to further. The result of the ignorance of, and hostility to, the trade unions of the judges of the last age brought the Labour Party into being. The ignorance of, and hostility to, modern social reform of the contemporary Bench may easily make it necessary to build in Great Britain a system of administrative tribunals to prevent it from being wrecked by judges who deny the existence of the defects it seeks to remedy and minimize the power of the efforts made to deal with them. The need is not merely for a greater elasticity in the canons of statutory interpretation; though that is not only great, but mainly unrealized by the judges themselves. The need is great also for a far profounder understanding by the judges that the historic philosophy of the Common Law is in considerable part unsuited by its inherent individualism to the necessary implications of a collectivist age. The fact that the judges are both independent and incorruptible does not excuse the complacency with which they approach the wider issues of change. It is significant that every great age of social reform in this country has been one in which judicial conservatism has been a stumbling-block in the way of social progress. That was the case in 1381; it was the case, again, at the time of Jack Cade's rebellion; it was the case in the Commonwealth period; it was the case, finally, in the epoch of Bentham. It is always the mark of

the advent of a revolutionary age when the ends of the legislature are at variance with those judicial doctrine is prepared to approve.

To some extent, no doubt, the reality of this problem has been obscured by the fact that, since the close of the Great War, no Government has embarked upon a great programme of social reform which it has sought rapidly to implement. But there is much evidence to show that it would not easily encounter sympathy from the judges in that effort. The way in which the Courts approached the application of the Trade Boards Act to the catering industry is the symptom of much that heralds danger.[1] The dubious attitude of Mr. Justice Astbury to the General Strike of 1926—an issue which was not before him but upon which he went out of his way to comment—shows how little the judges have learned the lesson of the Taff Vale dispute.[2] *Roberts* v. *Hopwood*[3] makes it clear that the House of Lords will have no hesitation in imposing its own view of reasonable standards of labour upon a progressive local authority. The activities of the Courts in connection with housing legislation, especially in the Jaffé case,[4] make it clear, also, that the judges prefer their view of the claims of private property not merely to those of the legislature but, also, to those of a Civil Service the most important part of which has no interest in the destruction of those claims. Exactly as the Supreme Court of the United States made itself, above all in its hostility to the New Deal of President Roosevelt, a kind of super-legislature engaged in the enunciation of political doctrine under guise of legal procedure, so the High Court in this country is engaged in a similar task.

[1] C.A., [1931] 1 K.B. 1.
[2] Cf. Professor Goodhart's pamphlet, *The Legality of a General Strike* (1926).
[3] *Ut supra.*
[4] *Ibid.*

Its opportunities, of course, are smaller here; it cannot forthrightly annul an Act of Parliament. But it is at least willing to build up a kind of Fourteenth Amendment in this country, and to use it as fully as it can to set a barrier across the road of any social change which interferes with individual rights of which it happens to approve. Latent in this attitude is a potential conflict between Courts and Parliament of which the result would be the immersion of the judges in political controversy. They would not emerge unscathed from that experience.

What is the root of this attitude? Above all, I think, it lies in three things.

(1) Our judges are recruited from the ranks of successful lawyers; and, overwhelmingly, our system makes the successful lawyer a man who has spent the major part of his life in serving the interests of property. He comes, therefore, almost unconsciously, to accept the assumptions of the economic system in being, and to adopt, without examination, the legal doctrines evolved for the protection of those assumptions. When Parliament seeks to change them, he therefore reads into the "intent" of change a presumption that its consequences must leave legal doctrine as evolved by the Courts as little altered as possible. Workmen's Compensation, Trade Union law, and the principles of taxation are all instances of this. The attitude of the Courts to each of them is inexplicable save by the assumption that, in changing the Common Law, Parliament was going outside a realm the boundaries of which needed the firmest protection the judges could give them.

(2) Partly, I think, the attitude is due to the fact that the education of the barrister (though not of the solicitor) in this country is less an intellectual discipline than a social function. It is significant that it has never occurred to

those who choose the judges that a great teacher of law, Dicey, Pollock, or Kenney, would be a natural occupant of the Bench; nor have the teachers of law in British universities (perhaps because of this) the consideration which attaches to their colleagues in Harvard or Paris or pre-Hitler Berlin. It is worth noting that both legal philosophy and the study of legal administration in this country are at least a generation behind their condition in the United States or in France. Our legal profession is not learned in the sense that it is interested in the examination of foundations. There has been no significant development in English jurisprudence since Austin. There has been no attempt to organize research into the working of legal institutions comparable to efforts abroad.[1] The legal profession itself has displayed no interest in developing law comparable to that of the medical profession in developing medical science or the engineering profession in developing engineering; historically, it has been the least social-minded of all the professions.

(3) The third reason, I believe, for this attitude is more general in nature. The attitude of the Courts has reflected the general atmosphere in which British society has functioned this past hundred years. The Napoleonic wars and the Industrial Revolution compelled a thoroughgoing revision about the time of Bentham which synchronized with the full capture of the State-power by the middle class. Since then there has not been any vital challenge to the system for the simple reason that it was for so long successful in its general results as to appear to be final in at least its major outlines to the main interests

[1] Lord Maugham, L.C., has, however, set up a committee to consider the creation of an Institute of Advanced Legal Studies. Cf. the *Annual Report* of the Society of Public Teachers of Law in their *Journal* for 1936, p. 58.

affected by its working. Nothing else, I think, can explain the long indifference to codification, to the tolerance of a system which has both an unnecessary hierarchy of appeal, and a centralized jurisdiction which is an intolerable burden on the poor litigant. Nothing else, either, would explain the complacency with which both lawyers and politicians have continually postponed the drastic revision of the costs of law proceedings. Nothing else, again, would explain why we allow whole areas of the law, in divorce, for example, in sexual offences, in obscenity and blasphemy, in the relation between crime and mental disease, to limp haltingly behind general social opinion and scientific knowledge. The very absence, indeed, of any effective permanent machinery for the scrutiny of legal processes, the lawyer's sense, that an occasional enquiry is all that is required, reflects the attitude of interests which believed that they had made a final bargain with fate. But just as that bargain is destined to be re-opened in the fields of economics and politics, so, clearly, law, which is, in its ultimate substance, dependent upon these, is certain to be profoundly reconstructed in principle. What will be of outstanding interest is to see whether the lawyer can be persuaded to co-operate in that task, or whether, as in the age of Bentham, he will remain indifferent or hostile to its undertaking.

2.

In every period of social difficulty, the test of public freedom is the quality of the administration of justice. Men must have confidence that those to whom it is entrusted will be scrupulous to prevent such misuse of authority as may inhibit that freedom of expression and association upon which, ultimately, the effectiveness of

parliamentary government depends. For it cannot be too often insisted that the foundation of parliamentary government is ability to respond to the free movement of opinion; and if authority becomes apt to coerce that movement into forms of which it happens to approve, the safeguard of liberty is removed. This is the more particularly the case with a system like our own in which so considerable a part of liberty of expression and association depends upon the habits of the judiciary. The possible range of offences like sedition and seditious conspiracy are so wide in Great Britain that, as Professor Dicey[1] has pointed out, their liberal interpretation would make the kind of political controversy to which we are accustomed practically impossible. "Sedition," says a classic text-book, embraces "all those practices, whether by word, deed, or writing, which fall short of high treason, but directly tend, or have for their object, to excite discontent or dissatisfaction; to excite ill-will between different classes of the King's subjects; to create public disturbance or to lead to civil war; to bring into hatred or contempt the Sovereign or his Government, the laws or the Constitution of the realm, and generally all endeavours to promote public disorder."[2] Obviously, definitions so vague and wide as these may easily become fatal to public freedom in the hands of a reactionary Government unless they are applied with scrupulous care by the judges upon whom their validity depends.

For the most part, since the war of 1914–18, the problems to which these issues have given rise have touched rather the police, the Home Office, and the Courts of minor jurisdiction than the High Court itself. In these realms, the evidence makes it clear that there is

[1] *Law of the Constitution*, p. 240.

[2] Russell, *On Crimes* (ninth edition), I, p. 87; cf. Archibold, *Criminal Procedure* (thirtieth edition), p. 1128.

very considerable ground for dissatisfaction. The impartiality of the police has been questioned in case after case where there is not merely no fragment of counter-proof, but where, also, as in the notorious Urquhart case,[1] the authorities have denied the alleged bias until it was impossible to do so with hope of success. Almost invariably, also, the Home Secretary has supported the police and refused a public enquiry even where, as in the Thurloe Square case,[2] it is evident that his decision has been wholly built upon the partial testimony of the police themselves. The justices of the peace have constantly shown a tendency to accept unconfirmed police evidence to a degree that has gravely undermined at any rate the confidence of the working-class in the proceedings over which they preside.[3] The extent, particularly, to which, with magisterial sanction, the offence of using "insulting words or behaviour" has been extended by the police to secure the suppression of activities from the Left is ominous. Interference with processions and meetings which were otherwise wholly peaceful has been growingly characteristic of the last ten or fifteen years. It is hardly, I think, an exaggeration to say that the famous principle of *Beatty* v. *Gillbanks*[4] has become practically a dead letter in the minor courts of law whenever either the unemployed or the Communists have been concerned.

The costs of litigation have made appeal from magisterial decisions in these cases a luxury hardly open to the majority of those involved. It has therefore been infrequent for the High Court to act upon those decisions by way of appeal. But, in so far as it has been put to the test,

[1] Cf. the account of this case in W. H. Thompson, *Civil Liberties*, p. 60 f.

[2] Cf. the special report of the National Council of Civil Liberties on this case.

[3] Cf. the comments of "Solicitor," *op. cit.*, p. ix and *passim*; and Charles Muir, *Justice. in a Distressed Area* (1937), especially Chapter I.

[4] (1882), 9 Q.B.D. 308.

it can hardly be said to offer reassurance by the care with which it examines the issue. After the notorious Fascist meeting at Olympia in 1934, where many people suffered from the brutality of its promoters, complaints were made that the police did not interfere. The Home Secretary explained that "the law provides that unless the promoters of a meeting ask the police to be present in the actual meeting they cannot go in unless they have reason to believe that an actual breach of the peace is being committed."[1] The defence of the police action is striking, for the violence at Olympia seems to have been known to everyone save the police who were on duty outside, and saw the constant procession of the wounded being brought out from the building. Three months later, a meeting was held in South Wales to protest against the Incitement to Disaffection Bill. Despite the protests of the chairman, the police insisted on entering the meeting, and resisted removal. The police sergeant was summoned for assault, of which, if the Home Secretary was right, he was plainly guilty. The magistrates dismissed the summons on the ground that the police were entitled to enter any meeting if they had reason to believe that, in their absence, there might be either seditious utterance or a breach of the peace. On appeal to the High Court, the Lord Chief Justice upheld the decision of the magistrates.[2] A principle of law, this is to say, that was unknown to the Home Secretary's legal advisers in June 1934, is enunciated without doubt by the High Court in August of the same year. It is impossible not to note that the speakers at the first meeting were Fascists; while the chairman and chief speaker at the South Wales meeting were Communists. *Thomas* v. *Sawkins* may be, as one

[1] Thompson, *op. cit.*, Letter of June 14, 1934.
[2] *Thomas* v. *Sawkins*, [1935] 2 K.B. 249.

writer puts it, "an instance where the Court applied well-known principles to new combinations of facts." It is difficult not to be impressed by the context in which the application was made. The "reasonable apprehension" of the police is curiously selective in its operation; what is certain appears to be that the High Court, as at present minded, will have no difficulty in applying "well-known principles" to those selected issues they have to determine.

I have already referred to *Pasmore* v. *Elias* in which Mr. Justice Horridge deliberately mitigated the rigours of *Entick* v. *Carrington*.[1] It is important to realize the effect of his judgment. There is no doubt, it should be premised, of the illegality of police action in the case, for damages were awarded against them. But Mr. Justice Horridge also held that "the interests of State excuse the seizure, otherwise unlawful, of documents or articles in the possession or control of the person arrested if subsequently it should appear in fact that they are evidence of a crime committed by anyone."[2] This is, in effect, to legalize the general warrant. It would permit the police, once they can offer ground for the arrest of any person, to search the premises of the organization with which he is connected in the hope of finding evidence not necessarily affecting him, but of a nature liable to incriminate others against whom they have no charges to make. In any time of public excitement it is clear that so wide a power puts anybody whose activities the police may find inconvenient at their mercy.

It is important to read the attitude implied in these decisions in the context of the growing body of repressive legislation which has been put upon the statute-book since 1919. The Emergency Powers Act of 1920 enables the Government, subject to parliamentary confirmation,

[1] *Ut supra.* [2] *Pasmore* v. *Elias, ut supra.*

to make such regulations as it thinks necessary if it appears that any body of persons is likely to take action which will interfere with the distribution of food, water, fuel, light, or the means of locomotion or to deprive the community of the essentials of life. The use of those powers during the General Strike of 1926 led to imprisonment of men who stated that "the Government is out to crush the workers."[1] The Trade Disputes Act of 1927 has probably made illegal any widespread sympathetic strike; and it has so extended the definition of intimidation that a man has been sent to prison for the ironical gesture of raising his hat to a blackleg.[2] The importance of the Act lies not merely in the width of its provisions; it lies, above all, in the fact that it will be applied, in periods of public excitement, by judges of whom Sir Walter Citrine has said that, "with the experience of the past . . . . the trade union movement has little faith in either the competence or the impartiality of the Courts in matters affecting organized labour."[3] Nor does Sir Walter Citrine stand alone in this view. Mr. Winston Churchill has said the same thing;[4] so eminent a legal scholar as the late Professor Gildart has insisted upon this thesis with great emphasis;[5] and an ex-Attorney-General of England has said that the Courts are prejudiced in Labour cases. It is difficult not to feel that, if and when the Trades Disputes Act of 1927 is invoked, it will do more than any other statute of recent times to undermine confidence in the *bona fides* of the judiciary.

To these two dangerous Acts, two others must be added. The necessity for the Incitement to Disaffection Act of 1934 has never been clearly explained. The

[1] Thompson, *op. cit.*, p. 15. [2] *Ibid.*
[3] *The Times*, May 7, 1927. [4] 26 *Hansard* (5 series 1911), 1022
[5] *The Present Law of Trade Disputes* (1914), p. 44.

offences with which it deals were already amply covered by existing legislation. Many of its provisions are so widely and ambiguously drawn that it appears possible to bring within its ambit any speech the pacifist tendency of which might have the result of making a soldier doubt the validity of his calling; certainly I think that the distribution of Peace Pledge Union leaflets to members of the armed forces would bring the distributor within the terms of the statute.[1] The one important case so far brought under its auspices is *R.* v. *Phillips*,[2] in which a lad of eighteen was sentenced to twelve months' imprisonment by Mr. Justice Singleton for some wild and irresponsible advice to a soldier; the contrast between this sentence and the six months imposed upon Mr. Tom Mann for the famous "Don't Shoot" leaflet of 1912 (Mr. Mann was released after seven weeks' imprisonment) is striking. Not less drastic in its potentialities is the Uniforms Act of 1936.[3] Most responsible observers will agree that the clauses in the statute which forbade the adoption of uniforms by political bodies were (in the light of continental experiences) salutary. But advantage was taken of the general approval of this prohibition immensely to extend the powers of the police. A wider meaning is given to the offence of "insulting words and behaviour." The Chief of Police may control the route and conduct of any procession about which he has "reasonable ground for apprehending" the possibility of disorder. With the assent of the local authority and the Home Office, he may impose an order banning all processions within the whole, or part, of the area within his jurisdiction for a period not exceeding three months;

[1] W. I. Jennings, *The Sedition Act Explained* (1935).
[2] See *The Times*, March 10, 1937, and March 15, 1937.
[3] 1 Ed. VIII and 1 Geo. V. C. 6.

and the ban may, of course, be renewed. The result is that because Fascist processions have been attended with disorder in the East End of London, Socialist processions, which have been peaceful, have been banned also. Normal political propaganda is thus penalized at the expense of abnormal. The policy, as Mr. W. H. Thompson has remarked,[1] "appears to be equivalent to the prevention of the blowing of all motor-horns because some people blow them unnecessarily."

The cumulative effect of the habits of the post-war epoch in matters concerning public liberty bears an unhappy resemblance to the atmosphere in the period between the end of the Napoleonic wars and the Reform Bill of 1832. In each case there was serious industrial dislocation, and panic among the governing class as its outcome. In each case the panic led to repressive legislation which was used to limit the right of peaceful political activity to make its impact upon public opinion. In each case, also, the sense of alarm communicated itself to the judiciary, which, both in the High Court and in petty sessions, distinguished itself by the severity of its sentences and its tendency to assume that Left Wing agitation was a *malum in se*. In each case, also, the result of all this has been to undermine the public sense of confidence in the impartiality of the Courts. How important is that sense of confidence it is unnecessary to emphasize; upon it rests the ability of the Government to rule with the consent of the governed. "Lack of confidence in the administration of justice," an experienced observer has written, "is rapidly growing."[2] That it should have been necessary to set up a National Council of Civil Liberties, and that this body should have found itself

[1] *Civil Liberties* (London, 1938), p. 37.
[2] *English Justice* (second edition, 1932), by "Solicitor," p. ix.

fully occupied since its creation, this, after all, is a serious matter in a time when the very difficulties of the age make that confidence a safeguard of peace. The sense grows among the masses that the administration of the law is a weapon in the hands of one class for the repression of the other. "The worker," says one careful observer,[1] "leaves the Court . . . . convinced that the Courts are merely a means by which the governing classes grind down working men." That is a temper which implies grave possibilities. There is too little evidence that a willingness exists to deal with its implications.

3.

The greatest of modern American judges has expressed his concern at the tendency of the Courts to read into statutes "acceptance of the economic doctrines which prevailed about fifty years ago and a wholesale prohibition of what a tribunal of lawyers does not think about right."[2] The warning is not less needed with ourselves than with the United States. Our judges need to remember, not less than their American brethren, that legal stability depends upon the power to look backwards for certainty, but also forwards for necessary adaptation. They need, not less, to guard themselves against the danger of substituting for the will of Parliament those social and economic doctrines of which they happen to approve. They have to guard against the danger of equating opinions to which they are not accustomed with a threat to the foundations of order. They have to learn that the way to deal with grievance is not by the repression of its incidents, but by the remedy of its cause. They must refuse to believe, as Mr. Lansbury, then leader of the

[1] *Justice in a Depressed Area* (1936), by Charles Muir, p. 27.
[2] Oliver Wendell Holmes, *Collected Legal Papers* (1921), p. 295.

Opposition, warned the Home Secretary in 1933,[1] "the proposition that a Government which has to put into force repressive measures is the best judge of what constitutes an infringement of the right of freedom of speech and the right of lawful public meeting."

Every period of rapid social change confronts the danger that its legal habits may not keep pace with the political decisions it has to interpret. That is a danger to which our judiciary is particularly susceptible simply because its methods of interpretation are built predominantly upon a philosophy those political decisions may easily seek to reverse. A judiciary which sought to obstruct, even unconsciously, by this means the programme of a Socialist Government would open the door to a challenge which might easily threaten the position of independence it has won. Its safety depends upon its ability to persuade not merely the rich but also the poor that it is capable of transcending those "inarticulate major premisses" which are written so deeply into the fabric of the Common Law. To be capable of that transcendence, it has to be alert—as it is not now alert—to its failures as well as to its achievements. Overwhelmingly, it has to remember, its ranks are recruited from the upper strata of society; it thinks as it lives. Overwhelmingly, also, it is separated in experience and outlook from the great mass of those upon whose problems it decides. The principles it imposes are largely principles intended to protect a social constitution the foundations of which are challenged; it cannot but be dangerous if, under cover of reverence for the past, it aligns its authority unmistakably with those who are defending those foundations.

[1] Letters of January 10, 1933. The occasion was the refusal of Mr. Tom Mann and Mr. Emrys Llewellyn to find sureties against disorderly conduct at a meeting of which they were sponsors. Both were imprisoned for refusing to do so, though no charge had been brought against them.

For so to do would, in the circumstances I have described, inevitably appear as a defiance of popular will. Over a period, at any rate, no judiciary can afford the luxury of such a defiance.

This is not, I should add, to speak in alarmist terms. No one who knows the working-class of this country can help being aware that they do not share the confidence of our governing class in either the adequacy or the impartiality of our legal institutions. They are only too conscious that, in large areas of the law, it applies with grim inequality as between rich and poor. They are only too conscious, also, of the difficulty with which their own institutions of economic defence have won their right to recognition from the Courts. They know how the hierarchy of appeals works to their disadvantage. They are aware of the pompous humbug that is talked of the poor man's rules.[1] They have little of the confidence in the police which is the faith of their betters, especially in the distressed areas. They have long memories; and the sentences inflicted in the Haworth cases in this generation are not unlikely to do for this century what Tolpuddle did for the last. They see judges and magistrates appointed for no better reason than birth or wealth or service to a political party. They see long-needed reforms postponed, or, when passed, so truncated as to be deprived of half their point. They know how inadequate is magistrate's justice, how profoundly the predominant atmosphere of the police-court is resented by the common man. It is a prediction that may be made with confidence that if ever the judiciary sets itself in antagonism to a progressive Government in this country it will arouse a storm of accumulated grievance.

Largely, moreover, it will have brought that storm

[1] Cf. Muir, *op. cit.*, pp. 138–9, and "Solicitor," *op. cit.*, pp. 213–14, p. 241.

upon itself. It has had the opportunity to engage in the task of reform; it has never seriously bent its energies to that task. Even in so relatively unimportant a sphere as legal education, most of the changes under discussion were urged upon the profession seventy years ago by Lord Westbury.[1] True as it is that British judges stand high for both independence and integrity—and these are great qualities—they do not exhaust the needs of the situation. The right kind of judge is statesman not less than lawyer. He sees the problems he has to confront in the perspective of their political consequence. He realizes that he must not equate his private social philosophy with the implied purpose of legislation. Legal technique as such reaches but a little way in the matters with which we are here concerned. To be, in Blackstone's phrase, the "living oracle of the law," is not enough; he must strive to be the living oracle of a living law. And a living law must look always to the defects which the law can assist in remedying. A search for the *ratio decidendi* is something more than a discovery of an appropriate precedent; it is also a determination of the path along which that precedent is to move. He as judge is to move it; and he cannot move it rightly unless the path he chooses is one that is socially adequate. That, I think, is what Mr. Justice Holmes meant when he said that the life of the law has not been logic but experience.[2]

But in the acceptance of that famous phrase it is relevant to enquire whose experience is involved. Law is not merely an historical growth, finding its roots always in its own past. It is also a purposive growth whose frame is deliberately altered to serve new needs. The fulfilment of those needs may be settled by men whose experience contradicts the judicial view of what is safe or wise or

[1] *Hansard*, March 1, 1854.

[2] *The Common Law* (1881), p. 1.

right. The danger of our British system is that it has led the Bench too often to deny the validity of that contradiction; judicial subjectivity of that kind is the gravest disservice a man can render to the judge's function. To misinterpret the effective mind of his generation is to risk always the confidence of men in the relation of law to justice. There is no passionless and objective law for the judge to impose. Marshall's famous: "the judicial department has no will in any case . . . judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law"[1] is a noble myth, but it is still a myth. The judge, even despite himself, cannot but be legislator. His duty is to remember that, as President Roosevelt said, "every time they (the judges) interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy. . . . The decisions of the Courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century, we shall owe most to those judges who hold to a twentieth-century economic and social philosophy, and not to a long outgrown philosophy, which was itself the product of primitive economic conditions."[2]

The call of our time seems likely to be for the enlargement of an old body of legal doctrine with new faith and new principles. That is never an easy task for a judiciary like ours. The influences which have shaped the new faith are alien from those to which they have become accustomed; the logic upon which it is built is opposed

[1] *Osborne* v. *Bank of United States*, 8 Wheat, 738, 866.
[2] Message of December 8, 1908, 43 *Congressional Record*, Part I, p. 21.

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