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MODERN FOREIGN GOVERNMENTS



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MODERN FOREIGN GOVERNMENTS

REVISED EDITION

FREDERIC A. OGG

LATE PROFESSOR OF POLITICAL SCIENCE,
UNIVERSITY OF WISCONSIN

HAROLD ZINK

PROFESSOR OF POLITICAL SCIENCE,
OHIO STATE UNIVERSITY

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PREFACE

There are few fields in which the authors of a textbook find more difficult problems than in that of comparative, or foreign, government. The number of governments to be included, the actual governments to be dealt with, the emphasis to be placed upon historical background, the balance to be sought between details and interpretation, the stress to be given structural and functional aspects, and the rôle of small countries, are but a few of the thorny questions demanding attention.

The authors of this particular text recognize the widely divergent ideas prevailing among their colleagues who undertake the arduous but important task of teaching courses in comparative government. They have no illusion that they have proceeded along lines which will meet the approval of everyone; but, by way of explanation, they offer a few comments which may be of interest.

It has seemed to them that in determining the number of governments to be studied, a middle course is most promising. Too wide a coverage is likely to make it impossible for the student to gain a substantial understanding of any particular government. On the other hand, the world in which we live, and the wide contacts of the United States, would seem to make it almost imperative that students have at least some introduction to both European and non-European governments, to governments democratic and authoritarian, and, if at all possible, to political institutions of both large and small countries.

While stress may properly be placed upon the current structures, functions, and problems of governments, the authors believe that a reasonable amount of attention to historical development is essential if anything like a well-rounded knowledge and understanding of modern political institutions is to be expected. An effort has been made, also, to provide a text which is not only descriptive and

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PART ONE



ENGLISH GOVERNMENT

AND POLITICS

CHAPTER I



THE PANORAMA OF ENGLISH CONSTITUTIONAL DEVELOPMENT

The starting points of English political institutions and procedures lie scattered along a high road of national history stretching thirteen or fourteen hundred years into the past; and before turning to some analysis of the resulting system as found in our own day, it will be useful to pass these earlier centuries in rapid review, observing when and how different characteristic features like kingship, privy council, ministry, cabinet, law courts, Parliament, and political parties—various basic principles, too, like limited monarchy, representation, ministerial responsibility, and civil liberties—came into the ever-widening constitutional stream.

THE DEVELOPMENT OF STRONG ROYAL GOVERNMENT

The first scene disclosed in the panorama is the primitive Britain of the Celts, the Romans, and the Saxons. The spectator will not need to pay much attention to the warlike Celtic tribes which Caesar, at his famous crossing of the Channel in 54 B.C., found in sole possession of both the larger island and its smaller neighbor on the west. Their Welsh and Irish descendants contributed heavily to the cultural history of that section of the world, and the Irish now have a completely independent political régime under the constitution of Eire (Ireland) adopted in 1937. But neither Welsh nor Irish of earlier times had much to do with building the English government of today. No more did the Romans. To be sure, a hundred years after Caesar, the wide-sweeping boundaries of their empire were extended

to include a province newly formed out of southern and central Britain. But when mounting troubles compelled them to withdraw from the country in 407 A.D., they left behind nothing of lasting political significance.

Anglo-Saxon Beginnings. The case of the Saxons was far otherwise. Swarming across the North Sea after the middle of the fifth century A.D., they and their kinsmen, Angles and Jutes, pushed the vainly resisting Celts westward, took for themselves most of the larger island, and became the founders of modern English civilization. Englishmen of our time are by no means merely twentieth-century Saxons. Celtic, Norman, and other strains are woven deeply into the national stock, and English or British culture and institutions of our time are too often assumed to be simply "Anglo-Saxon." [1] Nevertheless, the basic element in the England that we know is unquestionably Anglo-Saxon; and the first period to which the growth of English political institutions can be traced is that of Saxon settlement and domination, extending from the fifth-century incursions to the Norman Conquest in 1066. The contributions of these centuries were not as extensive as formerly supposed, because it has been shown that, contrary to the views of many English and American historians up to a generation or two ago, representative government did not originate in the German forests and come down through Saxon days into mediaeval and modern England. The period, however, contributed one institution (now the oldest in Europe except the papacy), *i.e.*, kingship, which, although never very strong in Saxon hands, became the core or kernel around which the English constitution developed in later times; also, it left the country covered with a network of areas of local government—especially *burghs*, or boroughs, and shires (later counties)—with which those of our own day have considerable historical connection.[2]

[1] The approximately fifty million people of the United Kingdom today are at all events unlike the population of the United States in containing almost no elements of non-European origin—no Negroes, no Orientals, no Indians. There is, nevertheless, a good deal of diversity. The Welshman is quite different from the Scot; the Yorkshireman is not readily confused with the Devonian; the inhabitants of Cornwall have characteristics quite unlike those of people of the east coast. Even with English the common medium of communication, there are dialects so strange that Americans have almost as much difficulty understanding them as French or Spanish. Cultural and social complexity is, however, counterbalanced by a high degree of political unity.

[2] Descriptions of Anglo-Saxon institutions will be found in G. B. Adams, *Constitutional History of England* (rev. ed., New York, 1934), 5-49, and A. B. White, *The Making of the English Constitution* (rev. ed., New York, 1925), 3-71.

Norman-Angevin Contributions. Saxon kings showed no great genius for state-building, and in 1066 their feebly united realm was wrested from them by a conqueror from across the English Channel, *i.e.,* William of Normandy; and this started a new era in the country's constitutional development.[1] Even on the smaller stage furnished by his Continental duchy, William had proved his claim to statesmanship; and in the new and larger field, his vigor, foresight, and resourcefulness achieved remarkable results. Confiscating the estates of the Saxon earls, he parcelled them out among his followers on a feudal basis so contrived that the tenant's foremost obligation was obedience to the king; without uprooting the local institutions that he found, he readjusted them so as to be consistent with strong central control; the church was brought under royal supervision; and altogether the situation was so maneuvered as to make the king master of the land in a measure never attained by any Saxon monarch. For half a century after the Conqueror's death (1087), the new order was maintained, even though the kings were of inferior caliber; and although a period of confusion under the unfortunate Stephen (1135-54) threatened to wreck the structure, the energetic and astute Henry II (1154-89) retrieved all that had been lost, and gained new ground besides. In the course of a reign covering a full generation, the adroit Angevin curbed rebellious nobles and churchmen, turned locally elected sheriffs into royally appointed agents of the central government charged with enforcing law and collecting taxes in the shires (thenceforth known as "counties"), developed a staff of royal judges who went up and down the country deciding cases according to principles that gradually hardened into the historic "common law," and in other ways toned up and consolidated the new political system created by his great-grandfather.

Great Council and "Curia Regis." No king, however able and industrious, could manage so vast a piece of machinery single-handed. To aid in running the government and to help the sovereign formulate his policies, two main agencies arose. One was the *Magnum Concilium,* or Great Council; the other was the *Curia Regis,* literally, the King's Court. The Council was a gathering of principal men of the kingdom—bishops, officers of the royal household, tenants-in-chief, and others—meeting three or four times a year at

[1] Some writers, *e.g.,* G. B. Adams (*The Origin of the English Constitution,* 16), consider that the English constitution really originated in the Norman-Angevin period.

the call of the king, and relied upon to help decide policies of state, to review the conduct of administration, to sit as a high court of justice, and to bear a share in making and amending laws on the rather rare occasions when such action was considered necessary. Originally, the *Curia Regis* was not strictly a separate body, although in time it in effect became such. The Council did not meet often; moreover, it usually sat only a few days at a time. But affairs called for more or less continuous attention, and the logical plan was hit upon of associating together for the purpose those members of the Council who as officers of the royal household—chamberlain, chancellor, constable, etc.—were already following the king wherever he went; and in time this smaller, more or less professionalized, group—a sort of inner circle of the Council—came to be known as the Curia. No hard and fast rules governed the composition of either body. Still less was there any definite separation of jurisdictions. The king could refer matters to the large council or the "little council," or to neither, as he chose; and he in no wise was bound to be governed by the advice received. The fact is significant, however, that through all the ups and downs of the Norman-Angevin period, strong and weak monarchs alike followed the practice of calling together the leading men of the realm, and of relying upon them not only for assistance in lawmaking and administration, but for information, opinions, and support.

Functional Differentiation. One will not be surprised to learn that with the lapse of time Council and Curia grew farther apart, and that each made its own great contribution to the country's governmental system of later centuries. Take first the Curia. In the days of the Conqueror, that body is seen performing work of many different kinds, with apparently no thought of functional specialization. But this situation could not last. As the volume of business mounted, trained lawyers, expert financiers, and other men of special aptitudes were drawn in, and before long—even in the reign of Henry II—we see evidences of a tendency to split up the Curia's multifarious duties into segments and to develop a distinct branch or section to take charge of each. Nobody planned the thing out, as a modern efficiency and economy commission might do. But by slow and hazardous stages, judicial work was separated from the tasks of general administration; and while one portion of the Curia (known as the "permanent council," and later as the "privy council") went on

as a council for general purposes, another became the parent of four great judicial organs, namely, the courts of (1) exchequer, (2) king's bench, (3) common pleas, and (4) chancery. Meanwhile, the superior aptitude of this expanding mechanism for handling administrative and judicial business left the Great Council with less and less to do in that domain. The Council did not, indeed, die out, or even lose importance. Its development was merely turned in a different direction; and, recalling the nature of its membership, one will hardly be unprepared to find it functioning later in the guise of the upper branch of Parliament, *i.e.,* the House of Lords.

MAGNA CARTA AND ITS SIGNIFICANCE

The Charter Granted. The masterful manner in which Henry II handled affairs, combined with the essential justice of his rule, won for him a very strong position; and if his successors had been men of like capacity, there might be a different story of English constitutional development to tell. Autocratic power, however, in the hands of weak or otherwise unworthy kings—notably Henry's sons, Richard I and John—provoked rebellion; and after John, by a series of high-handed acts and humiliating surrenders, alienated most of his supporters, the strong men of the country took advantage of his predicament to place in his hands a lengthy list of demands for reform, with the alternative of civil war if he refused them. Evasion proved possible for a brief time only; and on June 15, 1215, in the plain of Runnymede, between London and Windsor, *Magna Carta,* the "Great Charter," was agreed to on both sides. The document was not literally "signed"; John could not write his name, and few if any of his opponents were any more proficient. But the same purpose was served by affixing the great seal of the realm and the individual seals of 25 barons delegated to see that the king's promises were carried out.

Its Importance. Bishop William Stubbs [1] once said of the Charter that the whole of English constitutional history is merely one long commentary upon it, and writers and orators often refer to it as the most important political document in all English history, if not in the history of the world. To be sure, a good deal has been read into

[1] A renowned later-nineteenth-century student of early English political and legal institutions. His foremost published work was his *Constitutional History of England* (3 vols., Oxford, 1873-78), covering the subject to 1485.

the instrument in later times that was not really there; it did not, for example, guarantee trial by jury, nor did it provide for anything in the nature of representative government. Wrested from the king, not by the "people" in any proper sense, but only by a group of disaffected barons, it had little to say—at all events directly—about the rights and privileges of humbler folk. And, being intended primarily as an enumeration of rules and principles presumed to be already in operation, it contained little that was new. Nevertheless, its importance, if construed understandingly, can hardly be exaggerated. England was at a point where somebody had to decide whether she was to be a nation ruled according to law or only according to royal caprice—whether if the king proved unwilling to be guided by established principles, he could be coerced into doing so or, in lieu of that, forced to give way to another of more tractable temper. The barons who pressed John to a surrender at Runnymede cast the die on these momentous matters. They were, of course, not thinking of modern forms of constitutional limitations; and anything resembling modern democracy was quite beyond their ken. But by getting the sovereign's solemn agreement to do certain things and not to do others, and by setting over him a sort of baronial guard to see that he lived up to his engagements, they turned the country's steps once more away from absolutism and in the direction of constitutional government. Better means of holding the king in check were later found than a mere committee of 25 nobles; but for the time being the principle was more important than the machinery.

One will not be surprised to learn that as time went on the rights and liberties guaranteed to barons, clergy, and merchants were, in so far as applicable, gradually extended to other classes of people; or that the Charter became a sort of touchstone and palladium of the nation's liberties to which Englishmen habitually harked back whenever they considered that the king was transgressing the bounds that agreement or custom had established for him. More than one monarch in later times found it good policy to issue specific "confirmations" of the historic contract; Parliament likewise "confirmed" it on sundry occasions; and such portions of the instrument as have any modern bearing—relatively few though they are—belong to the accepted law of the British constitution today.[1]

[1] See p. 28 below. An English translation of the Charter will be found in G. B. Adams and H. M. Stephens, *Select Documents of English Constitutional History*

THE RISE AND GROWTH OF PARLIAMENT

1. The First "Parliaments." Meanwhile a line of development was started which in the end not only gave the nation more effectual means of keeping kings under control, but supplied it with an instrumentality through which to govern itself. Hard pressed by both foreign and domestic difficulties, King John, in 1213, called upon every county to send to a meeting of the Great Council four "discreet knights" who should act for the landholding and other substantial elements in assenting to a royal levy upon their possessions. The expedient did not save the situation for John, but it had obvious utility, and later monarchs did not hesitate to avail themselves of it. When such a meeting was convoked by Henry III in 1254, king and barons fell to quarreling, and eventually to fighting, with the result that in 1264 the barons were victorious at Lewes and their leader, the foreign-born Simon de Montfort, emerged as regent of the country. No less in need of funds than the king himself, Montfort thereupon convened a "parliament" [1] in 1265 which was attended not only by the barons, clergy, and two knights from each shire, but also by two burgesses from each of 21 boroughs, or towns, known to be friendly to the barons' cause. The gathering was only a partisan conclave, and to speak of its sponsor as the Father of the House of Commons is to give him rather more than his due. The inclusion of spokesmen even from a limited number of "hand-picked" towns was, however, a significant departure. Various other parliaments were held in the next 30 years, usually with no townsmen in attendance. But a meeting convoked by Edward I in 1295 brought together all elements considered capable of giving help, and proved so similar to the broadly national gatherings of later centuries that it has ever since held a place in history as the "Model Parliament." Two archbishops, 18 bishops, 66 abbots, 3 heads of religious orders, 9 earls, 41 barons,

(New York, 1906), 42-52. The principal special works on the subject are W. S. McKechnie, *Magna Carta* (Glasgow, 1905), and F. Thompson, *Magna Carta; Its Rôle in the Making of the English Constitution, 1300-1629* (Minneapolis, 1948). In addition to Adams and Stephens, convenient collections of texts include C. Stephenson and F. G. Marcham, *Sources of English Constitutional History; A Selection of Documents from A.D. 600 to the Present* (London, 1938), and R. K. Gooch, *Source Book on the Government of England* (New York, 1939).

[1] The term (from the French *parler*, "to speak") was for some time applied indiscriminately to meetings of the Council whether or not attended by knights and burgesses.

61 knights of the shire, and 172 citizens and burgesses from the cities and boroughs—upwards of 400 persons in all—were present.[1]

Thereafter "Parliament" gradually became an accepted feature of the political order. It was, of course, at no time literally "established"; it merely grew up—by nobody's planning in advance—because the kings found occasional meetings of the kind useful for their purposes. Certainly the plan of calling in representatives of the counties and boroughs reflected no popular movement or demand. On the contrary, knights and burgesses took their places along with the magnates grudgingly, under the impact of royal command and knowing full well that all that was expected of them was that they obediently saddle themselves and their kind with new tax burdens. The day came when representation in Parliament was looked upon as an advantage and even a right. But no one so regarded it in the times of which we are speaking.

2. The Representative Principle. From the first, the knights and burgesses who attended the meetings were, in one way or another, "elected"; and to some extent this gave Parliament, even in its earliest days, the aspect of a representative body. The idea of representation was not peculiar to England; nor did it first appear in that country in connection with Parliament. The old notion, however, that the elements of representative government came out of the forests of Germany, found lodgment and growth in Anglo-Saxon England, and carried over into the parliamentary institutions of the thirteenth and fourteenth centuries, has been exploded, and it is now the accepted view that, whatever casual importance may be attached to such earlier practices as the occasional appearance of deputies or delegates in the *motes* of Anglo-Saxon hundreds and shires, the system of representation in Parliament was of mediaeval origin, and is to be accounted for principally, if not entirely, by the desire of needy kings for revenue.[2] Representative government, in any full and

[1] For a vivid description of the way in which an early fourteenth-century parliament was carried on, see G. L. Haskins, *The Growth of English Representative Government* (Philadelphia, 1948), Chap. 1.

[2] The evidence is presented in C. A. Beard, "The Teutonic Origins of Representative Government," *Amer. Polit. Sci. Rev.*, Feb., 1932. Cf. C. Stephenson, "The Beginnings of Representative Government in England," in C. Read [ed.], *The Constitution Reconsidered* (New York, 1938), 25-36, and especially H. J. Ford, *Representative Government* (New York, 1924), Chaps. i-ix. Useful critical comment will be found in E. M. Sait, *Political Institutions; A Preface* (New York, 1938), Chap. xx.

proper sense, existed neither in England nor anywhere else until well down into modern times. The foundation for it was, however, laid in England by the joining of elected county and borough members to the magnates of the Council. And this arose from no mysterious "Teutonic genius" for representative institutions, no inherent and irrepressible love of liberty and self-government, but solely because, at a relatively early date, the kings of England were strong enough to reach down to increasingly numerous and prosperous classes of the people and draw them into the orbit of royal taxation.

3. Development of the Bicameral System. In 1295, and for some time thereafter, the three orders, or estates—barons, clergy, and commons—met first as a single body to hear the king's requests and afterwards sat separately to deliberate upon them; and out of this might conceivably have arisen a parliament of three branches or houses instead of the present two. Had this occurred, the barons and clergy would always have been able to outvote the commons, and England would have experienced the same difficulties that a three-house Estates General produced in France. Happily, however, practical interests led to a different development. On the one hand, the greater barons and more important clergy were drawn by community of interests into a single body; on the other, the lesser barons joined forces with the county freeholders and burgesses, while the minor clergy, finding their most serviceable place in the convocations (ecclesiastical assemblages) of Canterbury and York, dropped out altogether. The upshot was two houses, and only two—one, the House of Lords, virtually perpetuating the Great Council, and consisting of persons who attended in response to individual summons, and the other, the House of Commons, bringing together all members who, elected in counties and boroughs, attended in a representative capacity. There was no crystallized opinion that two houses were better than some other number, nor indeed any plan or intent in the matter at all. But within less than a hundred years after the Model Parliament, the bicameral system was an established fact. Profoundly influencing the course of English history from the fourteenth century onwards, the arrangement eventually spread to all parts of the world; and although in later times there has been a good deal of doubt about whether two legislative houses are better than one, the plan still prevails, in one guise or another, in the great majority of countries.

4. Growth of Powers: (a) Finance. Parliament today is a decidedly powerful body; legally, indeed, it is omnipotent. But in the beginning it was far otherwise. When it met, the king, personally or through his chancellor, indicated what he wanted, and usually the three estates—perhaps with little discussion—simply assented. After the bicameral form arose, the two houses started making formal "replies" through designated spokesmen (the speakership of the House of Commons sprang from this practice), yet rarely evidencing much hesitation or objection. Gradually, however, the potentialities of the situation dawned on the various groups of members, especially the commoners. The king *needed* parliamentary grants of money and perchance other support; otherwise, Parliament would not have been brought into existence in the first place. And this fact was capitalized upon—first of all, as might be surmised, in the domain of finance. "No taxation without representation" did not at once become a clearly visualized or defined principle. But hardly had Parliament definitely settled into its bicameral form before the formula appeared which in substance is employed to this day in voting supplies to the crown, *i.e.*, "by the Commons with the advice and assent of the Lords Spiritual and Temporal"; and in 1407 Henry IV definitely pledged that thenceforth all money grants should be considered and approved by the Commons before being acted upon by the Lords at all. Thus did that mighty lever, the power of the purse, pass into the hands of the people's representatives; and thus was the so-called "lower" branch of all later English-speaking (and many other) legislatures put in the way of achieving its cherished primacy in finance.

(b) Legislation. Likewise with legislation. Originally, Parliament was not a lawmaking body at all; any laws of statutory character superimposed on the growing body of common law still took the form of royal decrees, assented to by the councillors only. But, starting with merely a right of individual commoners to present petitions, the Commons as a body gained, first the right to submit collective "addresses to the throne," and later the right to take part in giving their requests the form of law. The costs of government and war compelled the king to turn with increasing frequency to Parliament for supplies; before supplies were forthcoming, he was likely to be called upon through petitions for a redress of specified grievances; and this usually eventuated in some kind of legislation, with the

result that not only the taxing power, but lawmaking power as well, gradually passed into parliamentary hands.[1]

CONSTITUTIONAL CONFLICT AND ADJUSTMENT IN THE SEVENTEENTH CENTURY

Government under the Tudors. Next we encounter a stretch of two hundred years of English history during which the nation found its leading constitutional problem in the rivalry of king and Parliament for supreme control. Under a line of Tudor monarchs covering the period from 1485 to 1603, the advantage lay decidedly with the sovereign. The country had lately emerged from the dreary Wars of the Roses, and wanted peace. It knew that peace, and with it prosperity, could be had only through strong royal rule. And Henry VII, Henry VIII, and Elizabeth were statesmanlike enough to supply such rule while yet in the main disguising the fact that they in reality were autocrats. For Parliament, they found very real uses, although only, of course, to the extent that it could be made to do their bidding. When some great project, like the separation from Rome under Henry VIII, was to be carried out, a parliament was called and the desired action embodied in a statute giving it the appearance of flowing from the will of the nation, and not simply that of the king. Members of independent spirit were threatened, bullied, and otherwise coerced into compliance. Until the Tudor period was far advanced, however, the alternative to paternalistic royal rule still seemed to be, not parliamentary government, but baronial anarchy; and the people had no mind to live through that sort of thing again. During this period there was a bitter competition among rural groups of leading county families for representation in the House of Commons.

The Stuarts Precipitate War and Revolution. Then followed (beginning with James I in 1603) the line of Stuart kings, as sadly deficient in tact as the Tudors had been conspicuous for it; and with them came deadlock, civil war, and in the end a fresh start on the road toward popular self-government. James I, rejecting the dictum

[1] The foregoing is true enough, but it was not until later modern times—more specifically, the second quarter of the nineteenth century—that Parliament became a legislature of the nature and on the scale with which we are familiar.

The rise of Parliament is described more fully in G. B. Adams, *Constitutional History* (rev. ed.), 169-215; A. B. White, *op. cit.*, 337-452; and G. L. Haskins, *The Growth of English Representative Government* (Philadelphia, 1948). The best general history is A. F. Pollard, *The Evolution of Parliament* (London, 1920).

of the great contemporary jurist Coke that the "power and jurisdiction of Parliament" was "so transcendant and absolute" that it could not be "confined within any bounds," and openly adhering to the doctrine of divine right, quarreled with every parliament that he convened, and in particular gave offense by insisting upon "impositions," *i.e.*, special duties on imported goods, decreed by his own independent authority.[1] His successor, Charles I, after an initial period of trouble, got along for eleven years without any parliament at all. But in 1640 his Scottish wars drove him to resort to the two houses for funds; and the way was opened for controversies which in 1642 plunged the country into armed conflict. At the outset, the parliamentary party had no intention of setting up a government by Parliament alone, in form or in fact; its only object was to compel the king to keep his promises and govern according to law. Military successes, however, and progressive shifts of circumstance and opinion, carried the victors along on a tide of political experimentation such as the nation had never known and has not witnessed since. Defeated on the field of battle, Charles was executed in 1649; kingship and the House of Lords were abolished; the country was proclaimed a republic; a "commonwealth" government was set up; and in 1653 the first written constitution known to the modern world was put into operation.[2] For several years, Cromwell and the discordant forces of army and Parliament labored to keep the refurbished ship of state from foundering. But like revolutionists everywhere, they found it easier to destroy than to build; and in the end they were obliged to give up. Shrewder men, including Cromwell himself, had recognized from the start that matters had been carried too far, and after the hand of the Great Protector was removed from the helm by death in 1658, a return to traditional arrangements was only a question of time. In 1660, the Stuart next in line, having given the assurances demanded of him, returned from Continental exile and was received with general acclaim as Charles II.

[1] F. D. Wormuth, *The Royal Prerogative, 1603-1649; A Study in English Political and Constitutional Ideas* (Ithaca, N.Y., 1939).

[2] The "Instrument of Government," replaced in 1657 by another document known as the "Humble Petition and Advice." For text of the former, see G. B. Adams and H. M. Stephens, *Select Documents*, 407-416. The above statement as to priority should perhaps be qualified by the observation that an "Agreement of the People," drawn up by members of the army in 1647, partook strongly of the nature of a constitution, but was never in operation; also by mention of the fact that a series of eleven "orders" adopted by the Connecticut towns of Hartford, Wethersfield, and Windsor in 1639 had essential characteristics of a constitution.

The Last of the Stuarts. The Stuarts were to have another chance; and the reigns of Charles II (1660-85) and his brother, James II (1685-88), were essentially a time of experiment with a view to finding out, once for all, whether a member of that imperious house could, or would, keep within the bounds fixed by the vindicated law of the realm. That Charles contrived for the most part to do so may be attributed not only to his somewhat indolent nature but to political acumen enabling him to perceive how far it was safe to go and what the consequences of transgression would be. James was of a different mold—headstrong and intolerant—and hardly was he on the throne before he grievously offended Parliament by seeking to set aside, or at least to suspend, laws that it had made, especially such as imposed disabilities upon Catholics. Foreseeing no likelihood that the monarch would mend his ways, a group of leading members took it upon themselves to invite the Stadtholder of Holland, William, Prince of Orange, husband of Mary, James' eldest daughter, to cross over to England and aid in upholding the constitutional liberties of the realm. The result was the "bloodless revolution" of 1688—bloodless because James found himself practically without support and fled the country. Early in the following year, a "convention parliament" [1] declared the last Stuart to have abdicated and established William and Mary on the throne as joint sovereigns.

The Bill of Rights. With a view to consolidating the results of the Revolution and making evasion more difficult in future, Parliament in 1689 drew up and adopted, in the form of a statute, one of the most significant documents in English constitutional history, *i.e.*, the Bill of Rights. Going straight to the heart of the situation, the new instrument enumerated the unlawful practices of the later Stuarts—somewhat after the staccato manner in which the American Declaration of Independence a century later listed the colonists' charges against George III—and forbade repetition of them as unequivocally as the English language could be made to do it. It branded as "illegal and pernicious" the "pretended" royal power of suspending or dispensing with laws, the levying of imposts without Parliament's assent, the arbitrary erection of royal commissions and courts, and the raising or keeping of a standing army in time of peace unless Parliament agreed. It affirmed the right of subjects to petition the king, the right of Protestant subjects to bear arms for their own defense,

[1] So called because not summoned in the regular way by a king.

the right of members of Parliament to enjoy full liberty of speech and debate. It said that the election of members of Parliament ought to be "free," and that parliaments "ought to be held frequently." It did not, indeed, undertake to define the fundamental bases of the constitution; it seemed rather to take for granted that these were understood. But it called attention pointedly to the principles that had been violated, and forbade future infractions in terse clauses which could be invoked today if occasion should arise.[1]

What the Bill of Rights therefore did was to sum up, very concretely, the results of the Revolution and of the entire seventeenth-century liberal movement, and to put them in a legal form so unmistakable that they could never again be misunderstood or challenged. Much, of course, has been added since; certainly English government is very different today from what it was under William and Mary. But most of what has come after has been merely by way of amplification of the fundamentals sonorously restated in 1689. The sovereignty of the electorate, the supremacy of law, the legal omnipotence of Parliament, the right to personal liberty—no one of these basic principles was ever again called in question by any persons or elements of sufficient force to threaten the long-developing régime that had been achieved. Kingship went on, regarded indeed as a natural and useful institution. But thenceforth the royal tenure, and such royal power as remained, derived from no inherent or absolute right; on the contrary, they rested squarely upon the consent of the nation as expressed in Parliament. For all practical purposes, divine right was dead.[2]

[1] Closely related was the Toleration Act of 1689, providing "some ease to scrupulous consciences in the exercise of religion," *i.e.*, a larger measure of liberty for Protestant Nonconformists. Text in G. B. Adams and H. M. Stephens, *op. cit.*, 459-462.

[2] The constitutional history of the Tudor and Stuart periods is related at considerable length in G. B. Adams, *Constitutional History* (rev. ed.), 249-361. and D. L. Keir, *Constitutional History of Modern Britain, 1485-1937* (3rd ed., London, 1946); political theories of the time are set forth clearly in T. I. Cook, *History of Political Philosophy from Plato to Burke* (New York, 1936), Chaps. xvii-xix. Important works of a more special nature include J. N. Figgis, *The Theory of the Divine Right of Kings* (Cambridge, 1896); G. P. Gooch, *History of English Democratic Ideas in the Seventeenth Century* (rev. ed., Cambridge, 1927); and T. C. Pease, *The Leveller Movement* (Washington, 1916). The text of the Bill of Rights is printed in G. B. Adams and H. M. Stephens, *op. cit.*, 462-469. The principles on which the parliamentary cause throughout the seventeenth century was based, and on which the Revolution of 1688-89 proceeded, were ably expounded and defended by John Locke in his famous *Two Treatises of Government*, published at London in 1690; convenient editions by W. S. Carpenter, in Everyman's Library (London and New York, 1924), and T. I. Cook (New York, 1947).

SOME CONSTITUTIONAL DEVELOPMENTS AFTER 1689

Even though the events of 1688-89 put the stamp of finality on certain great principles of the constitution, many of the most notable features of the English governmental system as we behold it today have arisen since that date—a period longer by a century than the entire history of the United States under the constitution of 1787. There is no need to dwell upon these later developments here; most of them will come to light as our study of present-day institutions, functions, and processes proceeds. Brief allusion to a selected few will, however, further stress the point, often overlooked, that constitutional growth in later days has been almost, if not quite, as significant as in earlier ones.

1. Diminished Powers of the Monarch. Notwithstanding the restrictions by which he was hedged about, the king was still, in 1689, near the center of the picture. Parliamentary supremacy had indeed been established as a principle; but there were as yet no fully adequate means for making it effective in the day-to-day business of government. King and Parliament were left confronting each other, as of old, without the intermediation of any buffer or screen such as nowadays—in the form of ministerial responsibility—shields them from all possibility of conflict. The eighteenth century, however, saw this trouble-breeding situation almost entirely cleared up. William and Mary, and afterwards Anne, wielded powerful control over public acts and policies. But the early Georges, ascending the throne as foreigners and taking little interest in English affairs, permitted the prerogatives which their predecessors had so jealously guarded to slip rapidly into hands eager to receive them, *i.e.*, those of the ministers and the houses of Parliament. George III (1760-1820), although much better acquainted with the country and glorying in the name of Briton, more or less continued to follow the same easy-going course. Thereafter their successors became accustomed to the position of a king reigning but not governing; and although the strong-minded Queen Victoria (1837-1901) had her own ideas about the rights of a monarch even under a cabinet system, her long reign left no room for doubt as to what the position of the sovereign in England was thenceforth to be. A satisfactory way of running the government with a minimum of personal participation by the monarch had been worked out, and no king or queen could have induced or compelled the nation to

give it up. Any effort in that direction would have meant a new dynasty—perhaps the end of monarchy itself.

2. Rise of the Cabinet System. As the king receded into the background, the center of the stage was taken by the ministers—in particular, those of them who, as a group, came to be known as the cabinet. The cabinet came into being slowly, and the *cabinet system,* with all that it at present involves, still more so; and until within our own day both rested entirely upon usage and not upon law.[1] Finding it difficult to procure the kind of assistance that he needed from an overgrown and unwieldy privy council,[2] Charles II, in 1667, drew about himself for advisory purposes a little group of trusted members who, from the initial letters of their names,[3] soon acquired the collective nickname of the "cabal." Less favored councillors not admitted to the charmed circle naturally demurred; leaders of liberal thought attacked it as an instrumentality of intrigue; and for a time the plan had to be given up. Presently revived, however, the device established firm precedent for close working relations between the king and a small select group of competent advisers; and it remained only for the group to be widened to embrace all of the principal ministers to transform it into what we know today as the cabinet.

This step may be associated with the years of William and Mary (1689-1701). Not only did the chief ministers then emerge as a body meeting with and advising the sovereign, with the privy council pushed far into the background, but experience showed that for the sake of harmony and efficiency it was necessary that the ministers at any given time be selected entirely from the political party (for political parties had by that time arisen) commanding a majority in the House of Commons. To be sure, no one quite understood what was going on; and Parliament even sought to interpose obstacles which, if not quickly removed, would have strangled the cabinet system in its infancy.[4] The need for some mechanism, however, through which the houses could vindicate their newly-won supremacy and effectively control the acts of the crown found its only possible fulfillment in an arrangement under which ministers, themselves sit-

[1] See p. 85 below.

[2] As has appeared, the lineage of this body was traceable back through a so-called "permanent council" to the *Curia Regis* of Norman-Angevin times.

[3] Clifford, Ashley, Buckingham, Arlington, and Lauderdale.

[4] The reference is to a clause of the Act of Settlement of 1701 forbidding any officer under the crown to sit in the House of Commons. The provision was repealed before actually going into effect.

ting in Parliament, were not only charged with the performance of those acts, but held directly responsible for them; which is but another way of saying that the cabinet system was the logical and necessary fulfillment of the great constitutional settlement of the seventeenth century. Time was required to ripen the plan. But when, in 1742, Robert Walpole—the first Englishman properly to be regarded as a prime minister—promptly and as a matter of course tendered his resignation solely because of lack of confidence manifested by the House of Commons, the central principle of the system might have been regarded as definitely established.[1]

3. The House of Commons Democratized. The king's personal power would hardly have fallen off so sharply, and the cabinet system as we know it would certainly never have arisen, had not Parliament also undergone some very important changes. Chief among these were (1) conversion of the House of Commons into a body having deep popular rootage, with more valid claim to speak for the nation as a whole, and (2) the gradual shift of the parliamentary center of gravity to that branch from the House of Lords. As late as the opening of the nineteenth century, the lower branch was hardly less aristocratic, and hardly more representative of the nation in any true sense, than was the upper; and until 1832 it was, on the whole, growing less representative rather than more so. Rising discontent, however, gradually brought the country to a new line of policy; and, beginning at the date mentioned, a long series of hard-won statutes extended the suffrage to successive groups of people who had been politically powerless, reapportioned parliamentary seats so as to distribute political influence among the voters with greater fairness, and regulated the conditions under which campaigns were carried on, elections held, and other operations of popular government performed. Culminating in a wartime Representation of the People Act of 1918, enfranchising upwards of twelve million men and women, and a supplementary "equal franchise" law of a decade later adding five million more, these measures brought the House of Commons to

[1] On the rise of the cabinet, see, in addition to the general histories, G. B. Adams, *Constitutional History* (rev. ed.), Chaps. xv-xvi; M. T. Blauvelt, *Development of Cabinet Government in England* (New York, 1902), Chaps. i-viii; E. R. Turner, "The Development of the Cabinet, 1688-1760," *Amer. Hist. Rev.*, July and Oct., 1913, and "The Cabinet in the Eighteenth Century," *Eng. Hist. Rev.*, Apr., 1917. How the cabinet waxed in power until, in our day, its position is sometimes complained of as autocratic, will be brought out in later chapters.

a point where it can easily be numbered among the most democratic parliamentary bodies in the world.[1]

4. Curtailment of the Powers of the House of Lords. For some time after the Revolution of 1688, the House of Lords not only had more prestige but was considerably more powerful than the House of Commons. The future, however, lay with the latter body. Aided by its primacy in financial legislation, the elective branch made long strides in the eighteenth and nineteenth centuries, while the other house, undergoing no popularizing changes calculated to keep it in step with other parts of the government, fell into a decidedly minor rôle. As long as the upper chamber meekly accepted its eclipse, unfailingly passing finance measures as they came to it from the House of Commons and rarely blocking legislation of other sorts, neither its legal parity of power nor its anachronistic membership caused any great amount of trouble. When, however, in the early years of the present century, it began to show a more vigorous and independent attitude, even going so far as to refuse in 1909 to pass the annual revenue bill, a critical situation was produced, whose outcome was the Parliament Act of 1911, sharply curtailing the Lords' powers and bringing to an end the historic parity of the houses.[2] With upwards of nine-tenths of its members still sitting by hereditary right, and with usually only a handful taking part in its work, the House of Lords has become—like upper houses in various other countries in which they survive—not only a second, but also a secondary, chamber. The Labor party was long on record as favoring its complete abolition. So drastic a step was not deemed expedient after the party's rise to full power in 1945. But in 1949, after much discussion Labor insisted that further restrictions be imposed upon the chamber's capacity to obstruct legislation.[3]

5. The Growth of Political Parties. As the country in which representative government first arose, England naturally was the first to have political parties—just as it is probably the country today in which party counts for more in the actual working of the political system than in any other.[4] Even in England, however, genuine political parties hardly existed before the early eighteenth century. Cavaliers

[1] See pp. 193–198 below.
[2] See pp. 221–223 below.
[3] See pp. 226–277 below.
[4] Except, of course, Russia and the Russian satellite states with their one-party systems.

and Roundheads of Cromwellian days, Court and Country under Charles II, Petitioners and Abhorrers who divided on the exclusion of the last Stuart from the throne—these were only factions, mutually regarding each other as enemies of the state and bent upon crushing each other out of existence. Speaking accurately, parties exist only when the people are divided into two or more groups or followings, each with its leaders, principles, and programs, but each recognizing the others as entitled to exist and even as capable of running the government without bringing down the entire political structure in ruins. Whigs and Tories of later Stuart years started as hardly more than factions. Developing clear-cut principles and unified leadership, they, however, gradually adopted the mutually tolerant attitude characteristic of orderly parties in a peaceful society, and one will make no mistake by regarding them as the earliest of English parties. During the eighteenth and nineteenth centuries, the party system ripened simultaneously with the cabinet system; indeed, there was a close and necessary connection between the two developments. It was not merely because most of the great issues of the formative period, *e.g.*, king *vs.* Parliament and Established Church *vs.* toleration, were of such a nature as to divide men into two, and only two, camps, but also because growing cabinet government inevitably tended to identify all political elements at any given time with either the "ins" or the "outs," that England became so definitely a bi-party country. To be sure, the rise of the Labor party a generation ago blurred the picture; for a period, there were three major parties rather than two. Later dwindling of the historic Liberal party has, however, left only two great parties confronting each other, as through long generations past. Whatever the situation at any given moment, party groupings, procedures, and techniques continue among the factors most profoundly influencing the theory and practice of the English political system.[1]

6. Other Developments. Many other significant changes have taken place since the last Stuart "withdrew himself out of the country" and William and Mary were placed upon the throne. Scotland was drawn into a parliamentary union with England and Wales in 1707. Ireland was similarly linked up in 1801, although the creation of the Free State (present Eire) in 1921-22 left only six northern

[1] Cf. Chaps. xiv-xv below. On the rise of political parties, see especially W. C. Abbott, "The Origin of English Political Parties," *Amer. Hist. Rev.*, July, 1919.

counties with a connection in any wise resembling that of previous centuries. A colonial empire, well started in America and India before 1689, developed into a far-flung collection of dependencies entailing important consequences for political machinery and processes at home.[1] Local government was reorganized and democratized between 1835 and 1929, and underwent further changes during the recent war. The judicial system was overhauled during the seventies of the last century. The civil service was profoundly transformed in spirit and method after 1870. Above all, the functions and activities of government have multiplied unceasingly,[2] entailing the creation of all manner of new machinery—executive departments, councils, boards, committees, and what not—and leading not only to new and staggering costs, but to problems of policy and procedure which test the ablest statesmanship of our time. Not all of these developments, to be sure, have entailed constitutional change. But often such change has accompanied them; and far from regarding the constitution as substantially a finished product by the close of the seventeenth century, one must view it as growing ceaselessly from generation to generation—even in the very days in which we live.[3]

[1] During recent years the Empire has assumed a smaller rôle, with Burma the first possession to achieve full independence since the American colonies more than a century and a half ago, and with India toying with the question of complete withdrawal, although for the time being at least apparently adjusting itself to the status of member of the British Commonwealth of Nations.

[2] Most notably of late in connection with the nationalization program of the Labor government since 1945. See Chap. viii below.

[3] For a more detailed treatment of the development of the constitution, see M. M. Knappen, *Constitutional and Legal History of England* (New York, 1942); G. B. Adams and R. L. Schuyler, *Constitutional History of England* (rev. ed., New York, 1934); D. B. Keir, *The Constitutional History of Modern Britain, 1485–1937* (rev. ed., London, 1946); A. B. Keith, *The Constitution of England from Queen Victoria to George VI* (2 vols., New York, 1940).

CHAPTER II



THE MODERN CONSTITUTION AND ITS BASIC PRINCIPLES

From the political and legal experience of many hundreds of years has flowed the rich array of rules, principles, and usages forming what is known as the English—or nowadays more accurately the British—constitution; and our next concern must be to see the sort of pattern that has been arrived at.

Different Meanings of the Term "Constitution." In its political usage, the term "constitution" sometimes gives rise to confusion because of being employed with two quite different meanings. Oftener than not, it is used to designate a written fundamental law of special sanctity (usually a single document, but sometimes a group of interrelated documents) outlining the structure of a governmental system, fixing the powers of legislatures and officers and courts, guaranteeing liberties of person and property, and laying down more or less extensive and detailed principles and procedures to be observed in managing the affairs of state. Such a document may be drawn up by a convention elected expressly for the purpose; or it may be the work of a regular legislative body; or it may be put in shape under the direction of, and promulgated by, a ruling prince or dictator. In a second and broader sense, however, the term denotes, not simply a documentary fundamental law, but, clustering around such a law, the entire array of principles, statutes, usages, and interpretations—many of them not committed to writing at all—which give form and character to the governmental system concerned. One meaning of the term is as legitimate as the other. But when using the word, a speaker

or writer ought always to make clear in which of the two senses he is employing it.

An American Illustration. Questioned as to what is the constitution of the United States, the average person would be very likely to point to the frame of government drawn up at Philadelphia in 1787, put into operation in 1789, modified and expanded by twenty-odd amendments, and printed as an appendix in almost every textbook on American government. He would be thinking of a constitution as a *document,* prepared and adopted at a given time, solemn and weighty in subject-matter, orderly in arrangement, precise in terms, and amendable only by special procedures, on rare occasions, and for urgent reasons. And he would be right. There *is* a documentary constitution of the United States, even if it can no longer be read in quite the twenty minutes that Lord Bryce once allotted to it; and from it one can gain a good general idea of the framework, or skeleton, of our constitutional system. But nothing would be wider of the mark than to suppose that one could get an adequate understanding of American government merely by pondering an array of numbered articles, sections, and clauses printed in a book. From such a study he would never learn that presidential electors have no part in selecting a chief executive except to register choices that the people have already made; that to all intents and purposes the Senate can and occasionally does, in effect, originate revenue bills; that there is such a device as the president's cabinet, a congressional committee, or a political party—or scores of other things of major significance about our actual working governmental system. What has happened is, of course, that, with the passage of time, our written constitution has come to be overlaid and enveloped with principles, rules, devices, understandings, and usages nowhere mentioned in the basic text, yet contributing in many instances quite as significantly to making the government what it is as anything within the four corners of the formal document. Some of these auxiliary features arise from interpretation, supported by judicial opinion. Many rest upon statute. Still others flow only from precedent or custom. But the result is that the constitution of the United States, while in one sense truly enough a document, is also just as truly the entire combination of rules and practices by which the structure, powers, and operations of government are determined, irrespective of whether these rules and proce-

dures are written or unwritten, and (if written) of whether they are to be found in the formal constitutional text.[1]

NATURE AND CONTENT OF THE ENGLISH CONSTITUTION

A Constitution in the Broader Sense Only. What would an Englishman say if asked to show some one the constitution of *his* country? That would probably depend on the degree of politeness with which he sought to conceal his amusement at the naïveté of the request. He could, of course, bring forward scattered documents—many of them, in fact—unquestionably forming parts of the national constitution; we have already mentioned one or two of these, *e.g.*, the Bill of Rights of 1689 and the Act of Settlement of 1701. But he would hasten to explain that no one on the list, nor all of them together, should for a moment be thought of as comprising *the constitution*—that they are only pieces or parts, merely stones in a mosaic, and not sections of a code. For there is no English constitution except in the second, or broader, of the two meanings of the term explained above.

Doubts of Paine and De Tocqueville. For some people, this has meant that there is no English constitution at all. Of such opinion, for example, was Thomas Paine, who flatly declared that where a constitution "cannot be produced in visible form, there is none." "Can Mr. Burke," he asked, in replying to that statesman's powerful defense of the English constitution in his *Reflections on the French Revolution,* "produce the English constitution? If he cannot, we may fairly conclude that though it has been so much talked about, no such thing as a constitution exists or ever did exist." [2] Similarly, a generation later, an acute French student of foreign governments, Alexis de Tocqueville, said of the English constitution that it did not exist (*elle n'existe point*), his line of reasoning being not only (1) that the so-called constitution was unwritten, but, more important, (2) that Parliament could make any change whatever in the structure or nature of the government by procedures differing in no respect from those employed in passing ordinary statutes, and (3) that therefore there really was no constitution at all, in the sense of a superior, fundamental law.[3]

[1] See W. B. Munro, *The Makers of the Unwritten Constitution* (New York, 1930).
[2] *Writings* (ed. by M. D. Conway), II, 309-310.
[3] *Oeuvres Complètes* (14th ed., Paris, 1864), Vol. I (*Démocratie en Amérique*), 166-167.

But a True English Constitution None the Less. Paine's view was one not unlikely to be taken by champions of human liberty in an age when it was the fashion, outside of England, to regard a written constitution as an indispensable guarantee of "the rights of man." De Tocqueville's opinion was an equally natural one to be held by a Frenchman, accustomed to look upon a constitution as a fundamental law or code emanating from some superior authority and immune from alteration by ordinary legislative process. Both critics, however, were wrong; both had their eyes fixed on form rather than on substance. Granted the full legal power of Parliament to make any change, at any time, in the British form of government, and to do it by precisely the same procedures by which the most casual and even trivial statute can be passed, there nevertheless was, and is, a vast body of fundamental public law and practice—"rules," as Professor A. V. Dicey has put it, "which directly or indirectly affect the distribution or the exercise of the sovereign power in the state." [1] The fact that many of these fundamental rules are unwritten no more prevents them from being, in many instances, the very essence of *constitutional* law than, in a different sphere, does the circumstance of being largely unwritten disqualify the historic English common law as law. Nor does the power of Parliament to modify such rules have any such effect; the common law, too, can be modified or abrogated by Parliament in any manner and to any extent, but nevertheless is *law*. Any accepted and enforced body of rules of the kind indicated by Dicey in the above quotation comprises a *constitution;* and certainly long before the times of both Paine and De Tocqueville England had such a body of rules, with Englishmen equally conscious of its existence and proud of its history. That it was largely (although by no means wholly) unwritten, and that Parliament, in lieu of some "higher" authority, could amend it at will, were, to be sure, interesting and significant facts, yet, from the viewpoint of the constitution's *existence,* merely matters of detail.

A Product, Not of Logic, but of Experience. There *is,* then, an English constitution—the oldest and most influential of all constitutions of our time. But, as explained, it exists only in the broader of the two senses of the term. "The child of wisdom and of chance" (as Mr. Strachey has called it in his *Queen Victoria*), the constitu-

[1] *Introduction to the Study of the Law of the Constitution* (9th ed., London, 1939), 23.

tion is an aggregate of principles and practices which one could hope to bring together only by exhaustively surveying a thousand years of history, by laying hold of a statute here and a judicial decision there, by taking account of the hardening of political practices into accepted customs, and by probing to their inmost recesses the mechanisms of lawmaking, administration, public finance, justice, and elections, as they have been in the past, and as they actually operate before the spectator's eyes. Obviously, by no such process of growth could anything approaching symmetry and logic have been attained; and truly enough, as Sir William Anson remarks, the constitution presents the aspect of a "rambling structure." There are, to be sure, great unifying principles which impart coherence and stability; and educated Englishmen have a common and sufficient understanding of what these principles are. Nevertheless, the life of the constitution, like that of all English law, has been not logic, but experience.[1]

ELEMENTS COMPOSING THE CONSTITUTION

1. Law. One undertaking to discover the essential elements of which the English constitution is composed will find them falling into two broad categories or groups: (1) the "law of the constitution," and (2) the "customs or conventions." Contrary to an assumption sometimes encountered, the distinction is not that between written and unwritten parts of the constitution; for, as already intimated, a good deal of constitutional *law* has never been reduced to written form. Speaking broadly, the law of the constitution is, rather, those parts of it which the courts will recognize and enforce; the conventions, those parts which, even though in practice no less actual and operative, are not enforceable through the courts—or, if they should prove so, would forthwith cease to be conventions and become parts of the law.

Principal Elements. Viewed more closely, the law, in turn, is found to contain four principal elements or factors. First, there are

[1] It is interesting to observe that, although England herself has no written constitution, such constitutions abound throughout the British Empire. Northern Ireland, all of the dominions, and nearly all of the lesser dependencies are so endowed; and the Statute of Westminster (see p. 390 below) is to all intents and purposes a written constitution for the British Commonwealth of Nations. The written constitutions of the dominions, however, hardly go beyond tersely outlining machinery of government, with no attempt to translate fundamental concepts into law, and consequently are barren of bills of rights. For a set of texts, see [British] Foreign Office, *The Constitutions of All Countries: I, The British Empire* (London, 1938).

certain historic documents embodying solemn agreements, or engagements, entered into at times of political stress or crisis. Of such nature are the Great Charter (those portions of it, at all events, which remain applicable under modern conditions), the Petition of Right, and the Bill of Rights.[1] Second, there are parliamentary statutes extending or restricting powers of the crown, guaranteeing civil rights, regulating the suffrage, creating local governments, providing for courts, and setting up administrative machinery—obvious examples being the Habeas Corpus Act of 1679, the Act of Settlement of 1701 (as modified by the Abdication Act of 1936), the Septennial Act of 1716, the Reform Acts of 1832, 1867, and 1884, the Municipal Corporations Act of 1835, the Parliamentary and Municipal Elections Act of 1872, the Judicature Acts of 1873-76, the Local Government Acts of 1888, 1894, 1929, and 1933, the Parliament Act of 1911, the Representation of the People Act of 1918, the Government of Ireland Act of 1920, the Public Order Act of 1936, the Ministers of the Crown Act of 1937, and, in respect to the Empire, the Statute of Westminster of 1931. Third, there are judicial decisions fixing the meanings and limits of statutes and charters, very much as do judicial decisions in the United States, with the important difference that in England no act of the national legislature is ever pronounced "unconstitutional."[2] Fourth, there are principles and rules of common law—many of them—pertaining to functions, powers, methods, and relationships of government. These principles and rules grew up entirely on the basis of usage (sometimes reënforced by judicial decision), and were never enacted by Parliament; but they include some of the most fundamental features of the governmental and legal system and are fully accepted and enforced as law. The prerogative of the crown, for example, rests entirely on common law; also the obligation of the courts to be bound by and to enforce the acts of Parliament; likewise many of the basic rights and liberties of the subject, *e.g.*, those of jury trial and freedom of speech and assembly. The first three elements enumerated, *i.e.*, fundamental political engagements, statutes, and judicial decisions, are to be found in

[1] The Bill of Rights was, to be sure, cast in the form of a statute, and hence might be included under the category next mentioned. For that matter, the Great Charter was in 1297 enrolled on what came to be known as the statute-book, although much of it was later repealed.

[2] A convenient collection of decisions is D. L. Keir and F. H. Lawson, ***Cases in Constitutional Law*** (3rd ed., Oxford, 1949).

written form; and it may be added that as constitutional questions more and more reach settlement in statutes and court decisions, the constitution gets increasingly into writing. The rules of the common law, public as well as private, however, have never been reduced to writing except in so far as set forth in reports, legal opinions, and of course judicial decisions.

2. Custom or "Conventions." Finally, there are those portions of the constitution which we have been taught by Professor Dicey to call "the conventions." [1] The "law" of the constitution, composed of the four elements enumerated above, is law in the strictest sense and, whether written or unwritten, is, as we have said, normally enforceable through the courts. It is, for example, a principle of law that the crown may not refuse to be bound by, or to carry out, an act of Parliament, and if a court were called upon to deal with a case involving an attempt at evasion, it would pronounce judgment accordingly. The conventions, on the other hand, although they may, and frequently do, relate to matters of the utmost importance (including, to a very large extent, the interrelations of the different parts of the government), are not so enforceable. They consist of understandings, habits, or practices which, although only rules of political morality, regulate a large proportion of the actual day-to-day relations and activities of even the most important of the public authorities—understandings, habits, and practices which clothe the dry bones of the law with flesh, make the legal constitution work, and keep it abreast of changing social needs and political ideas. Most of these conventions will be found described in textbooks and treatises of scholars, lawyers, publicists, and the like. But they do not appear in the statute-books or in any statement of the law, written or unwritten —rightly enough, because, although parts of the constitution, they are not law. It is, for example, by virtue of conventions of the constitution (not laws) that Parliament is convoked at least once a year, that the king does not attend cabinet meetings, that he always accepts the advice of his ministers, that he invariably assents to bills passed by Parliament, that the speaker of the House of Commons takes no part in politics and in turn is reëlected as long as he is willing to serve, that when the House of Lords is sitting as a court only the "law lords" attend, that nearly all royal prerogatives are actually ex-

[1] The term was first used in this connection in his *Introduction to the Study of the Law of the Constitution*, published originally in 1885.

ercised by ministers, that ministers are responsible to the House of Commons, and that a ministry which has lost the confidence of that body forthwith retires from office unless it chooses to appeal to the country at a general election in the hope of recovering a parliamentary majority.[1] Even the supreme authority of the electorate is merely a convention; for the courts recognize only the sovereignty of Parliament—the people being the *political,* but Parliament the *legal,* sovereign.[2] Of course, as has been suggested, usage or convention plays a very large part in all political systems; certainly this is true in the United States, where, indeed, convention forms, in the opinion of some students, quite as large a part of the actual working constitution as in England.[3] After all, however, England is the classic land of convention; and no one can hope to understand the country's government without paying quite as much attention to customs and usages as to positive rules of law.

Why the Conventions Are Observed. What is it that gives the conventions force? They are not law; no breach of them can result in either a civil action or a criminal prosecution directed against the offender; and yet the government would become something very different from what it is—indeed, could hardly go on at all—if they were not observed. What is the "sanction," as the lawyers would say, behind them?

The question is not an easy one; and it could as properly be asked about conventions, or practices, which in our own country permeate all branches of the constitutional system. In the English situation, Professor Dicey found the principal reason for the conventions' force in the fact that many of them are so bound up with the law that they could not be violated without infraction of the law itself, or at any rate without jeopardizing the purposes for which the law exists; and the illustration which he was fond of using was the maxim (not *law*) that Parliament shall be convened at least once a year. Sup-

[1] Eire has made ministerial responsibility a matter of law, but in Canada, Australia, etc., as in Britain, it remains only a convention.

[2] As indicated below, the cabinet itself rested only on convention until 1937, when the Ministers of the Crown Act gave it statutory recognition, even though somewhat oblique. The same was true of the bicameral form of Parliament until the Parliament Act of 1911 made the existence of two houses a matter of law.

[3] Cf. A. V. Dicey, *The Law of the Constitution* (9th ed.), 28-30. On the conventions of the American constitution, see J. Bryce, *The American Commonwealth* (3rd ed.), I, Chaps. xxxiv-xxxv, and H. W. Horwill, *The Usages of the American Constitution* (London, 1925). It is interesting to observe that both of these discussions of the subject are by English authors.

pose, he said, that Parliament should be prorogued in such a manner that a full year were to elapse without a meeting. The annual Army Act would expire and the government would lose all disciplinary authority over the troops. Furthermore, although most of the revenue is collected and some of it is spent without annual authorization, certain taxes would lapse and there would be no authority to pay out a penny on the army, the navy, or the civil service. An annual meeting of Parliament, although only a custom which no court would attempt to enforce, is therefore a practical necessity; without it, public officials would find themselves performing illegal acts—or the wheels of government would simply stop. The violation of various other conventions would lead to equally bad consequences.[1]

Other and Weightier Reasons. Unquestionably, this is a plausible explanation. But it hardly covers the case. For, as the late President Lowell of Harvard once suggested, England is not obliged to continue forever holding annual sessions of Parliament simply because a new mutiny act must be passed and new appropriations made every twelve months; Parliament, with its plenitude of power, could as easily as not pass a permanent army act, impose the existing annual taxes for a term of years, and charge all ordinary expenses on the Consolidated Fund, from which many charges already are paid without annual authorization.[2] The conventions must be, and are, supported by something more than merely the realization that to violate them might mean collision with the law; the law itself could be changed, and besides there are a good many conventions which could be ignored without any perceptible effect upon existing law.[3] For the really ultimate sanction, we must look mainly to the power of tradition, perhaps better, the force of public opinion. "In the main," continues Lowell, "the conventions are observed because they are a code of honor. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind."[4] The nation expects, and has a right to expect, that Parliament will be convened annually, or, to take a different illustration, that a min-

[1] *Law of the Constitution* (9th ed.), 445-449.

[2] *The Government of England* (New York, 1908), I, 12. Cf. p. 114 below.

[3] For example, the convention that a ministry defeated in a general election shall resign forthwith instead of waiting for the new parliament to assemble.

[4] *Ibid.*, I, 12-13.

istry, finding itself without majority support in the House of Commons, will resign or appeal to the country; and the outburst of feeling that would follow if these expectations were not met is a very good guarantee that they will be met. Violation could be countered by no existing legislation, but political consequences might easily be serious. There are perhaps other guarantees; but the popular basis of government in the past fifty or seventy-five years has weakened, and of late almost completely shattered, the monopoly which the aristocracy of birth, wealth, and education formerly enjoyed in managing the nation's affairs, and some apprehension has been felt lest, under the changed conditions, the conventions will come to be less scrupulously upheld and observed than in the past. Especially was there fear at this point when the Labor party took over the reins of government. To be sure, during two remoter periods of Labor tenure (1924 and 1929-31), the ministries of Ramsay MacDonald enjoyed no independent control of affairs and could not have broken with the past in matters of constitutional usage if they had wanted to do so. A Labor government with heavy parliamentary backing and no lack of power to change the old rules was, however, organized under Clement Attlee in 1945, and bore the responsibility for government during a period of six years without any perceptible effect upon established constitutional practices; and one may safely conclude that the sanctions of tradition and custom are still in full force and effect. After all, Labor men are themselves Britishers.[1]

HOW THE CONSTITUTION DEVELOPS

Change and Continuity. From what has been said, it is manifest that the British constitution is not fixed and static, but on the contrary flexible and subject to continual change. Rarely, however, is change—regardless of how far-reaching its consequences may eventually prove—either sudden or extreme; indeed, looking over the entire stretch of the constitution's history, one finds transitions usually so gradual, deference to tradition so habitual, and the disposition to cling to familiar names and forms (even with the spirit altered) so deep-seated, that the over-all impression imparted is one of continuity. At no time, as the historian Freeman once wrote, "has the

[1] "The traditions of our constitution, like those of our parliamentary life, are, indeed, strong and pervasive, and tend to imprint their mould on even the most revolutionary elements." L. S. Amery, *Thoughts on the Constitution* (London, 1947), 48.

tie between the present and the past been rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory." [1] Even in the seventeenth century, when war and revolution seemed utterly to have disrupted the country's orderly constitutional progress, what was actually happening, as we can see plainly enough now, was merely by way of vindication and firmer establishment of principles that had been developing for two or three hundred years. If one may be permitted a paradox, the Englishman is conservative even in his revolutions.[2]

Contrasts of Theory and Practice. So far does this deference to the past prevail that curious things result. Venerated forms and names survive long after ceasing to correspond to realities. Take, for example, current phrases harking back to a period, seven or eight centuries ago, when the king was still a personal ruler. The law is the "king's law"; justice is the king's, and dispensed by the king's judges; the ministers and all their subordinates are "servants of the crown"; no parliamentary election can be held except by the king's writs; no parliamentary enactment is enforceable until it has received the king's assent; no civil or military officer may be appointed except in the king's name. The fleets form His Majesty's navy; government documents are published by His Majesty's stationery office; the people are His Majesty's "loyal subjects." All this, of course, is fiction, or at best outmoded legal theory; for it is Parliament that enacts laws, makes and unmakes ministries, controls the army and navy, levies taxes and appropriates money; where the king acts at all, he with scant exceptions acts only through his ministers; and even in the case of nearly all of the exceptions, he acts only on ministerial advice. The wary student will not be misled by terms and expressions that are historical rather than realistic. But in threading his way through the constitutional system of today he has constantly

[1] *The Growth of the English Constitution* (4th ed., London, 1884), 19. Englishmen, it has been remarked, have "an instinctive dislike for declaring their political philosophy in terms of law." E. C. S. Wade and G. G. Phillips, *Constitutional Law* (3rd ed., London, 1946), 1.

[2] All of this, of course, contrasts sharply with the experience of modern France, which in a century and a half has had at least nine widely differing constitutions; with that of Germany, which passed from empire to republic in 1918, from democratic republic to Nazi dictatorship after 1933, from Nazi dictatorship to Allied military government in 1945, and on to a West German Federal government in 1949; and certainly with that of Russia, where the revolution of 1917 almost completely erased all previous political institutions.

to be on his guard against being deceived by things that represent only the glacial drift of history. There are plenty of contrasts of theory and fact in all governments; certainly we have them in America. But in none do they enter so deeply into the very warp and woof of the fabric as in the British.

Modes of Constitutional Change: 1. Judicial Interpretation. What are the ways in which the actual, working constitution—one of the most flexible on earth—is progressively adapted to changing ideas and needs? Three can readily be discerned—judicial interpretation, the growth (or decay) of conventions or customs, and parliamentary legislation. In the United States, where the courts habitually pronounce upon the constitutionality of statutes and (less frequently) of executive actions as well, the Supreme Court is, as every student of our system knows, a major interpreter of constitutional law; and by its interpretations it powerfully influences the course of constitutional growth. In Britain, the courts do not go behind the statutes to question their constitutionality; acts duly passed by Parliament are accepted as valid and enforceable. In deciding cases, however, there is opportunity to construe the meaning and intent of statutes (as well as of common law) upon which they turn; and in doing this the judges often have some opportunity to influence the scope and purport of constitutional principles.[1] In the main, however, the modes of constitutional growth are custom and legislation.

2. Custom. Enough has been said about the conventions of the constitution to make it plain that their development is not merely something historical, a chapter that is closed, but a continuing process still actively molding constitutional principles and practices. Statute, however, as a mode of constitutional growth requires a word of comment—the more by reason of the fact that nowadays it probably is the most important of all. It involves, of course, constitutional amendment by act of Parliament.

3. Statute. It may strike the American student or other reader as strange that Parliament can amend the national constitution at all. In this country, we have proceeded on the theory that constitution-making and amending powers should be kept distinct from the powers of ordinary lawmaking and entrusted to different hands.

[1] Officials engaged in administering laws have a certain amount of such opportunity also.

Great Britain, however, draws no such distinctions. A cardinal principle of her constitution is the unrestricted legal sovereignty of Parliament; and from this attribute flows authority to make constitutional changes precisely as if ordinary statutes were being enacted. "Our Parliament," observes Anson, "can make laws protecting wild birds or shell-fish, and with the same procedure could break the connections of Church and State, or give political power to two millions of citizens, and redistribute it among new constituencies."[1] Parliament has, of course, actually enfranchised many more than two million citizens and has more than once rearranged constituencies throughout the length and breadth of the land; and it might have been added that it could depose the king, abolish the monarchy, deprive all peers of seats in the House of Lords, or suppress that chamber altogether, or, in fact, do any one or all of a score of other things that would render the British scheme of government unrecognizable by those who know it best.[2] It was mainly this extraordinary fact that betrayed De Tocqueville into voicing his dubious observation about there being no such thing as an English constitution. As a Frenchman, he was accustomed, as is an American, to think of a constitution as a document or related group of documents, not only promulgated at a given time and setting forth in logical array the framework and principles of a scheme of government, but subject to amendment, not by the government itself through its ordinary processes, but only by the same ultimate authority, superior to the government, which had made the instrument in the first place. He could discover nothing of this kind in England; on the contrary, the governmental and legal system there was open to change at any time, to any extent, by simple action of the government—in effect, by only one branch of the government at that, *i.e.,* Parliament. Hence it seemed to him that there was nothing in England deserving of being considered a constitution.[3]

Practical Limitations on Parliament's Amending Power. De Tocqueville would not have been so far wrong save for one important consideration, namely, that legal power to amend and actual,

[1] *Law and Custom of the Constitution* (5th ed., Oxford, 1922), I, 380.

[2] Although not enacted as an operative clause, the preamble of the Statute of Westminster (1931) affirms, however, that the royal succession and royal "style and titles" ought to be changed only with the consent of the parliaments of the dominions.

[3] Interestingly enough, a leading English student of government arrives at the same conclusion, although with him it is a matter of there being no *written* constitution. W. I. Jennings, *The Law and the Constitution* (London, 1933), 38.

practical power to do so are two very different things. It does not follow that merely because kingship and jury trial and private property and the suffrage are legally at the mercy of Parliament, they are in danger of infringement or subversion. Parliament, after all, is composed of men who, with few exceptions, are respected members of a well-ordered society, endowed with sense, alive to their responsibility for safeguarding the country's political heritage, and accustomed to live and work under the restraint of powerful traditions. Legally, the constitution is as flexible as any on earth; actually, it is less fluid than might be inferred from what some writers say. History shows that few systems of government are more grudgingly and conservatively reconstructed by deliberate act.

Illustrations of Constitutional Change by Statute. Hardly a session of Parliament, however, fails to yield legislation introducing some sort of constitutional change. Sometimes a genuine innovation results, as when in 1911 the House of Lords was stripped of legal parity with the House of Commons, or in 1918 when the parliamentary suffrage was conferred upon women. Oftener than not, however, statute merely translates convention into law, perchance with some elaboration or other refinement. Down to 1931, for example, it was entirely by convention that Canada and the other self-governing dominions were dealt with differently from colonies of other categories. Their status, however, having become involved in a good deal of doubt and controversy, the Statute of Westminster undertook to clarify the existing situation and make it a matter of law.[1] Down to 1937, the very core of the governmental system, the cabinet, rested only on custom. But in regulating salaries and making other arrangements, the Ministers of the Crown Act of the year mentioned gave it at last definite statutory recognition. Under stress of modern conditions, the tendency, as elsewhere observed, is, indeed, for more and more of the actual working constitution to be invested with legal sanction, and, in the process, to take on written form.[2]

1 See K. C. Wheare, *The Statute of Westminster and Dominion Status* (4th ed., London, 1949).

2 Some recent writers consider the classic distinction between law and convention overworked; and their views are worth considering. Cf. W. I. Jennings, *Cabinet Government* (London, 1936), Chap. i.

A constitutional question of the first magnitude may come to a head at a time when a new House of Commons has not been elected in three or four years; and even if there has been an election within less time than that, the matter at issue may not have been before the voters. It has often been argued that under these circumstances Parliament ought not to proceed with legislation entailing con-

SOME BASIC FEATURES OF THE CONSTITUTIONAL SYSTEM

1. Unitary, Not Federal, Structure. The constitution being what it is, certain major features of the British governmental system naturally follow. The first is its unitary, or non-federal, form. A federal plan of government prevails where the political sovereign (whatever form taken in the particular case) has distributed powers between an over-all national government on the one hand and a set of state or regional governments on the other, and has done so through the medium of constitutional provisions which neither the national government nor any subordinate government has authority to alter. The important thing is not the mere territorial distribution of powers, because some distribution of the kind there must be under any style of government, nor yet the amount or kinds of power distributed, but the fact that the distribution is made and maintained by some accepted authority superior to both central and regional governments. The United States has a federal form of government because the partition of powers between the national government and the state governments is made by the sovereign people, through the medium of the national constitution, and cannot lawfully be changed by the government at Washington any more than by that at Albany or Harrisburg or Indianapolis.[1] On the other hand, the government

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stitutional change until after the people have had a chance to express themselves upon it at a general election. The principle of the referendum, as thus proposed, has not, however, won general acceptance, and Parliament still acts with entire freedom—as illustrated by the enfranchisement of eight and one-half million women in 1918 by a parliament elected eight years previously, and by the creation of the Irish Free State in 1922 under a plan never submitted to the electorate.

Among the best brief discussions of the British constitution are L. S. Amery, *Thoughts on the Constitution* (London and New York, 1947), Chap. 1; A. L. Lowell, *The Government of England*, I, 1-15; W. R. Anson, *The Law and Custom of the Constitution* (5th ed.), I, 1-13; S. Low, *The Governance of England* (new ed.), 1-14; and W. I. Jennings, *op. cit.*, 24-40. More extended analyses will be found in A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (9th ed.), as cited, and W. A. Robson, *Justice and Administrative Law; A Study of the British Constitution* (rev. ed., London, 1947). A highly interesting and significant work on the subject is W. Bagehot, *The English Constitution*, first published as a series of articles in the initial numbers of the *Fortnightly Review* in 1865-66 and brought out in book form at London in 1867. Bagehot was a keen-minded journalist who took pleasure in writing of the constitution as it actually was in his day, rather than of its theoretical and legalistic aspects only, as lawyers like Blackstone were wont to do. The most recent edition of *The English Constitution* (World's Classics series, London, 1928) contains an illuminating introduction by Lord Balfour. Lord Bryce's famous discussion of flexible and rigid constitutions will be found in his *Studies in History and Jurisprudence* (New York, 1901), Chap. iii.

[1] This definition of federalism is somewhat legalistic and may not seem in every case to square with the facts. In all federally organized countries, the powers of the

of England is unitary, because all power is concentrated in a single government, centered at London, which has created (or at all events recognized and validated) all counties, boroughs, and other local-government areas now existing; which by express act or by implication has endowed these areas with whatever powers they possess; and which is free to alter their boundaries, organization, and powers at any time, or even to extinguish them altogether.[1] The governmental systems of nearly all countries except the United States, Canada, Australia, Mexico, Brazil, Argentina, West Germany, and Switzerland are of this same character; and Englishmen generally have never been convinced of the superiority of the federal form.[2] A main reason why Britain has been able to get along without two salient features of the American system—a written constitution and the practice of judicial review—is that her system is not federal.

2. Limited Separation of Powers. A second feature of the British system is the restricted use made of the familiar principle of separation of powers. Influenced by the writings of Locke, Montesquieu, and Blackstone, and following not only precedents in their own colonial charters but also what they understood to be the English pattern as well, the architects of early American constitutions, both state and national, grouped the functions of government into

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central government tend to grow at the expense of those of state or other regional governments, by usage, by legislation, and by judicial construction, and quite apart from formal amendment of the constitution. Certainly this is true in the United States, Canada, Australia, and Switzerland, as it also was in the old German Empire. Nevertheless, from the viewpoint of constitutional law any such growth occurring without formal amendment represents, not accessions of new powers, but only amplifications and proliferations of powers already possessed. Of course, central governments may wax in power also through constitutional amendments directly altering the distribution of authority originally made; and this has been the experience of Switzerland, although not notably of the United States, Canada, or Australia. On the nature, advantages, and disadvantages of the federal form of government, see J. W. Garner, *Political Science and Government*, 417-422, and W. F. Willoughby, *The Government of Modern States* (rev. ed., New York, 1936), Chap. xii.

[1] This statement is made primarily with reference to England alone. Even Great Britain and the United Kingdom, however, are not federal, for the reason that the special positions occupied by Scotland and Northern Ireland rest entirely upon statutes passed by the parliament at Westminster and legally repealable at its discretion. Various proposals for "devolution," "home rule all around," etc., look in the direction of federalism, although if they were to be adopted the result would not necessarily, or even likely, be a true federal system.

[2] For a classic English argument against federalism, see A. V. Dicey, *op. cit.* (9th ed.), Chap. iii, where it is contended that federal government (1) means weak government, (2) tends to conservatism, and (3) entails excessive legalism. A more recent English discussion, K. C. Wheare, *Federal Government* (London and New York, 1947), is considerably more favorable to the system, at least for the countries where it now prevails.

three major categories—executive, legislative, and judicial—and assigned each to an essentially separate division or branch of the governmental establishment. To be sure, executive, legislature, and courts were not placed in water-tight compartments; for at various points one branch was given a check upon another, as seen in the president's veto upon measures passed by Congress and in the Senate's right to confirm appointments. But the three were made sufficiently coördinate and independent to prevent any one of the number, it was believed, from gaining anything like a monopoly of power and thereby jeopardizing the liberties of the people.

When Montesquieu, near the middle of the eighteenth century, presented in his *Spirit of Laws* his challenging and influential characterization of English political institutions, he portrayed the system as one of separated powers, the crown being the executive, Parliament the legislature, and the courts the judiciary. He thought it a good system, essential to the preservation of political liberty, and hoped to see it adopted in his own despotically governed France; and his interpretation was long and widely accepted, especially, as has been intimated, in America. Even when Montesquieu wrote, however, there was less separation in England than he believed; and already, with the cabinet system beginning to develop and executive and legislative organs coming into a new intimacy, the trend was definitely in the opposite direction. Today, the principle of separation finds only limited application, the one point at which it really prevails being with respect to the judiciary. The Act of Settlement of 1701 assured all judges fixed salaries and guaranteed them tenure during good behavior, with removal possible only by the crown on "address," or request, from the two houses of Parliament; and nowhere is an independent judiciary, as a safeguard against abuses of power, more treasured or better secured.[1]

Outside of this, however, there is little or no separation. The effective working executive consists of the ministers, particularly the more important ones who sit in the cabinet. These ministers, however, not only are, but must be, members of Parliament; not only are they members, but they are the leaders, deciding upon the signifi-

[1] The circumstance that one branch of Parliament, the House of Lords, is the highest court of appeal in the judicial system is not incompatible with the judicial independence asserted, since in its judicial and legislative capacities, the body operates with quite different personnel and by somewhat different procedures. See p. 350 below.

cant legislation to be undertaken, determining its content and form, introducing it in the two houses, and piloting it to eventual enactment; for everything, too, they are individually and collectively responsible to Parliament—of itself, a negation of the separation principle. Legally, indeed, the sovereign himself is a part of Parliament, all laws being enacted ostensibly by the king with the consent of Lords and Commons. So far as executive and legislature are concerned, what we find in Britain is therefore not separation, but its opposite, *i.e.*, concentration—"concentration of responsibility" (to use Ramsay Muir's apt phrase), forming the very essence of the cabinet system, knowing no constitutional restraints, and bringing the chief ministers into a position characterized by the same writer (with, however, some exaggeration) as that of an "all-powerful 'government,' " leaving Parliament and the courts merely "to regulate and check its action." [1] In the United States, we have grown accustomed to high concentration of not only executive but also legislative leadership and management in the president. Even with a vigorous chief executive, however—a Lincoln, a Wilson, a Franklin D. Roosevelt—and even in emergency situations created by depression or war, the combination of powers wielded from the White House falls short of that exercised habitually by the British prime minister and his associates. With a less vigorous personality in the presidential chair, or with the national situation permitting relaxation, separation under the American system (although on the whole tending to weaken) still operates forcefully to keep the executive and legislative branches at opposite ends of Pennsylvania Avenue, and often working at cross purposes. In Britain, executive and legislature are dovetailed together in a single working unit; and this is the great merit, or the basic defect, of the cabinet system, depending on the point of view.

3. The Supremacy of Parliament. Potent as the "government" —meaning substantially the cabinet—has come to be, Parliament (in which, of course, normally all cabinet members sit) remains ultimately supreme and legally omnipotent. In the eye of the law, the Parliament of which this is affirmed is, as indicated below,[2] not simply the House of Commons and House of Lords, but rather the

[1] R. Muir, *How Britain is Governed* (3rd ed., London, 1935), 21. Cf. W. I. Jennings, *The Law and the Constitution*, 8-24; E. C. S. Wade and G. G. Phillips, *Constitutional Law* (3rd ed.), 18-27.

[2] See p. 54 below.

"king in Parliament," *i.e.*, the king in conjunction with the two legislative branches. Except that the sovereign's assent is essential to the validity and enforceability of any measure enacted, the concept, however, is more historical, and even mystical, than practical; to all intents and purposes—the king's assent being never withheld—the sovereignty of which we are speaking resides entirely in the House of Commons and House of Lords—indeed, in a sense, in the former singly, since, as we shall see, it is constitutionally possible for legislation to be enacted by the popular branch independently (with, of course, the necessary formal royal assent).[1] As thus envisaged, parliamentary sovereignty means two things chiefly: (1) Parliament has legal power to enact, amend, or repeal any statute whatsoever (even a bill of attainder or an *ex post facto* law), to amend or rescind any rule of common law, to override any decisions of the courts, and to make any established constitutional convention illegal; and (2) no other authority or agency has power to override or set aside anything that Parliament does. To be sure, efforts have been made to show that Parliament legislates under positive, and even legal, limitations —that, for example, it cannot make a law repugnant to the dictates of morality, and that one parliament cannot undo the acts of an earlier one when such acts have been invested with a contractual or other permanent aspect. But while, as a matter of practical fact, it would be impossible to procure passage of an act palpably violating accepted principles of morality, it is impossible to discover any legal impediment to such action; and as for legislation intended to bind succeeding parliaments, instances of such can be found, *e.g.*, an act of 1800 joining Great Britain and Ireland "forever" in a United Kingdom, but with no such restriction ever finally enforceable, since otherwise the supremacy of succeeding parliaments would be impaired. The truth is that while Parliament operates under plenty of practical restraints—moral inhibitions, public opinion, international law, and international agreements—it nevertheless is legally unfettered, with any and all of its actions immune from annulment except by its own action.[2]

[1] Parliament may, of course, and does, delegate legislative power to other agencies; but what it delegates it can always recall.

[2] Translating a convention into law, the Statute of Westminster of 1931 (see p. 390 below) stipulates that no act of Parliament shall be deemed to extend to a dominion as part of the law thereof unless the act expressly affirms that the dominion has requested and assented to it. But even the Statute of Westminster might be amended or repealed; and in any event the provision cited limits only the power of

From this arises a situation different indeed from that with which we are familiar in the United States. Here we have no such sovereign legislative bodies—none which do not operate under numerous and exacting constitutional restraints. With us, any measure enacted by any legislature, Congress included, can be challenged on the score of being *ultra vires, i.e.,* passed by an exercise of power not actually possessed. Any measure can be attacked as "unconstitutional," and if so viewed by the courts when a test is made, will be left unenforceable and in effect null. To be sure, in Britain one sometimes hears measures or proposals criticized as being "unconstitutional." What is meant, however, is only that they are considered to be out of keeping with previously accepted fundamental law, or even merely with the customary English way of doing things. It is not meant to imply that, if adopted, they would not become perfectly valid law; for the word of Parliament, *i.e.,* the latest word, *is* law and is accepted as such by the courts, however far out of line with law previously existing. In Eire, judicial review is expressly provided for in the written constitution; and in Canada, Australia, and South Africa, it has developed (also under written constitutions) on a basis of practice, substantially as in the United States. In Britain itself, however, the principle that whatever Parliament enacts is law until Parliament itself decrees otherwise leaves no room for judicial discretion other than such as may, and often must, be involved in deciding, when enforcing laws, what Parliament intended them to mean.[1] Punctuated at every turn by Supreme Court decisions on the constitutionality of acts of Congress and of the state legislatures, the constitutional history of the United States presents a very different pattern from that of the mother land.

4. Civil Liberties. The foregoing comment on the legally unrestricted powers of Parliament might lead one to wonder what protection the citizen enjoys against infringement of his personal rights and liberties. What is to prevent Parliament from passing measures curtailing liberties, or from permitting other agencies of the government

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Parliament to make an act apply in the dominions, not the power to enact it for Britain itself. The parliamentary sovereignty of which we are speaking applies, of course, only to Britain, not to the Empire.

On the scope and significance of parliamentary supremacy, see E. C. S. Wade and G. G. Phillips, *Constitutional Law* (3rd ed.), 35-44.

[1] There is judicial review of "subordinate" legislation, *e.g.,* regulations laid down by administrative authorities (see p. 126 below); but this does not touch the matter of constitutionality of statutes.

to disregard them? Royal tyranny is a thing of the past. Fascist and Nazi tyranny, where once prevailing, has been stamped out. But what about the tyranny that might be practiced, or condoned, even in democratic Britain, by an omnipotent legislature? For that matter, on what basis does the Englishman enjoy any rights and liberties at all?

Bills of Rights in Other Countries. In all democratic lands, government is only an agency created or assented to by the people, who, in one way or another, have reserved to themselves rights and liberties with which the public authorities may not interfere, or, at most, may interfere only temporarily, and in times of emergency. The means employed for safeguarding liberties vary considerably from country to country. The commonest has been that of enumerating them in the written constitution—either as a formal "bill of rights" or in scattered provisions amounting to the same thing—thereby placing squarely upon the government an obligation to uphold and observe them. Bills of rights of this character are found in the constitutions of all of the American states; and although none was originally included in the national constitution, the defect, as it was widely considered, was promptly remedied by adoption in 1791 of the first ten amendments. A "Declaration of the Rights of Man and of the Citizen," promulgated in 1789, was prefixed to the earliest written constitution of France (1791), and although finding no place in the constitutional laws of 1875, was widely regarded as nevertheless carrying over into the Third Republic's fundamental law. Furthermore, while a lengthy Declaration of similar purport—in 39 articles—failed of adoption in the spring of 1946, when the country's voters rejected the first of two proposed constitutions for the Fourth Republic, a second draft duly ratified in the autumn of the same year and now in operation contains in a one-page preamble a general reaffirmation of the Declaration of 1789, with various additions.[1]

How Guaranteed in Britain. In Britain, too, there is no lack of constitutional guarantees of the kind, even though they are not assembled in any single document. Some, *e.g.*, the privilege of the writ of habeas corpus, the right to bear arms, the right of petition, and immunity from excessive bail and from cruel and unusual punish-

[1] See pp. 521-523 below. The constitution of the new Italian Republic, taking effect at the beginning of 1948, enumerates the people's civil liberties in the traditional manner.

ments, are expressly provided for in great statutes—like the Habeas Corpus Act of 1679 and the Bill of Rights of 10 years later—which from time to time have taken their places in the growing body of written constitutional law. Others, as freedom of speech and assembly and freedom of religion, rest no less solidly upon principles of common law—most fundamentally, upon the principle that one may say or do what one pleases so long as there is no infringement of law or of the similar rights of others. Under this concept, it is not necessary that, in order to exist, a given right or liberty be expressly guaranteed in a statute or other formal act; by common law, it exists if, and in so far as, it is not positively forbidden and does not conflict with the rights of others—for example, freedom of speech in so far as saying what one likes does not involve transgression of the laws relating to sedition, libel, blasphemy, and perjury, or interfere with anyone else having the same privilege. Back of all this, too, stands that most precious of all English constitutional principles, the "rule of law," never indeed enacted as a statute, but implicit in a long line of parliamentary measures and judicial decisions, and in any event securely grounded also in common law. As defined by an English jurist, the rule of law means "the supremacy or dominance of law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals."[1] In other words, under the rule of law, obligations may not be imposed by the state, nor property interfered with, nor personal liberty curtailed, except in accordance with accepted principles of law and through the action of legally competent authorities.[2] Finally, of course, there is the guarantee, or sanction—ultimately the most important of all—arising from the deeply-rooted attachment of the people to their rights, the resulting force of public opinion, the watchfulness of the press, and the power of the electorate in a democracy to discipline, and if need be to oust, any legislature or administration interfering, or permitting anyone to interfere, with civil rights in a manner stirring public disapproval.

Limitations. To be sure, Parliament can, if it chooses, limit, suspend, or entirely annul any given right; if it so chooses, it can, in a given situation, set aside the rule of law itself. Under the stress of

[1] Lord Hewart of Bury, *The New Despotism* (London, 1929), 19.

[2] For an interesting interpretation of the rule of law and what it means, see W. S. Holdsworth, *Some Lessons from Our Legal History* (New York, 1928), Chap. iii.

war-time conditions in 1914-18, it imposed (or permitted other authorities to impose) numerous drastic restrictions upon commonly recognized rights, notably in the famous Defense of the Realm Acts of 1914-15. With a view to restraining persons suspected of seeking to seduce soldiers and sailors from their duty or allegiance, it in 1934 passed an Incitement to Disaffection Act which, although softened considerably before final adoption, imposed more stringent restrictions upon speech and writing than some people thought justifiable. In 1936, it was prompted by disturbances incident to fascist demonstrations to provide, in a Public Order Act, for stringent restrictions upon public meetings and processions. In an Emergency Powers (Defense) Act of 1939 and supplementary measures, it authorized sundry drastic restraints which continued operative throughout World War II. Tradition and public opinion, however, stand wholly opposed to any infringement not manifestly required by national emergency or danger, and certainly to prolonging such infringement beyond the duration of the conditions originally prompting it. Furthermore, it is to be observed (1) that in many countries where rights are supposed to be given special sanctity by being enumerated in a written fundamental law, limitations and exceptions are nevertheless authorized, and (2) that even when no such authorization can be found, guarantees of rights are in no case construed as absolute, but always as subject to curtailment when the national well-being requires.

Yet Effective Protection. The upshot is that, although at first glance civil liberties seem to enjoy no such sheltered position in Britain as in the United States and some other countries, they are, both in law and in practice, as secure as anywhere else in the world. After all, it is not paper declarations that supply the most effective guarantees of liberty, but rather the sanctions of tradition, principle, and public opinion. Freedom of speech is as truly a part of the British way of life as is the responsibility of ministers. Neither rests upon written law; neither would be observed more consistently if it did so.[1]

[1] Full discussion of English civil liberties will be found in A. V. Dicey, *The Law of the Constitution* (9th ed.), Chaps. iv-viii (but see also the criticisms of Dicey's views presented by E. C. S. Wade in his introduction to the book); E. Jenks, *The Book of English Law* (London, 1928), Chaps. x-xii; W. I. Jennings, *The Law and the Constitution,* Chap. viii; and E. C. S. Wade and G. G. Phillips, *Constitutional Law* (3rd ed., London, 1946), Pt. viii. Cf. H. J. Laski, "Civil Liberties in Great Britain in War Time," *Bill of Rights Review,* Summer, 1942.

CHAPTER III



THE CROWN—KINGSHIP AND WHY IT SURVIVES

Close to the center of the picture of English government now to be unfolded stands the Mother of Parliaments; and if in Britain the legislature and the executive were set over against each other as in the United States, we should fix our attention first upon the legislative branch, since, after all, laws are made before they are enforced. Under a cabinet system, however, the relations between legislature and executive suggest, and almost require, a different approach; the two are so interlocked, and the legislature is so dominated by the executive (at least in the English situation), that an understanding of how lawmaking proceeds is possible only after the executive, as the driving force in legislation, has become thoroughly familiar. Accordingly, we start with the sovereign, the privy council, the ministers, the cabinet, and (while occupied with this general sector) the permanent civil service.

KING AND "CROWN"

Hardly has the first step been taken before we come upon a striking illustration of the English constitution's penchant for disguises, namely, the contrast between theory and reality in the position occupied by the king—in other words, the distinction between king and "crown" which Gladstone once pronounced the most vital fact in English constitutional practice. Various writers in times past have intrigued their readers with startling enumerations of things which the British sovereign still potentially may do. In the first book in which the characteristic features of cabinet government were ever clearly explained, the journalist Walter Bagehot, some 85 years ago,

wrote that Queen Victoria could disband the army, dismiss the navy, make a peace by the cession of Cornwall, begin a war for the conquest of Brittany, make every subject a peer, pardon all offenders, and do other things too devastating to contemplate.[1] A decade later, Gladstone himself spoke of the sovereign as receiving and holding all revenues, appointing and dismissing ministers, making treaties, waging war, concluding peace, pardoning criminals, summoning and dissolving parliaments, "for the most part without any specified restraint of law," and under "an absolute immunity from consequences." [2] Legally, these different observations were correct enough; and one would not have to go back many centuries to reach a time when they would have been actually and literally true. But of course neither the journalist nor the statesman meant for a moment to suggest that the Queen (or any British sovereign likely to come after her) would dream of personally doing any of the things mentioned. They intended only to call attention to a basic historic and legal principle of the constitution which, indeed, as a principle, then had—and still has—validity, even though in practice completely obscured by different principles according to which the work of government is actually carried on. Had they been speaking less legally and more realistically, the writers quoted would have said that the acts enumerated could be performed, not by the sovereign, but by the *crown.*

Nature of the Crown. What is the crown? That indeed is a difficult question. Perhaps it can best be met, in somewhat roundabout fashion, by recalling what has happened to English kingship in the course of the centuries. There was a time when each king was an elected and purely personal ruler. When a king died, there was an "interregnum"—a break (even though but momentary) in the continuity of government. Gradually, however, kingship, becoming hereditary, took on the aspect of an institution, an office, a function, which went on uninterruptedly regardless of the coming and going of individual monarchs. "Henry, Edward, or George may die," said Blackstone, "but the king survives them all." The king as a person was one thing; the king as an institution, carrying forward all the accumulated powers and traditions, was quite another. As yet, the king, for the most part, wielded these powers and carried on these

[1] *The English Constitution* (2nd ed., London, 1872), Introd., xxxiii. "Oh, the wicked man to write such a story," the Queen is said to have exclaimed when the passage was brought to her attention; "surely my people do not believe him."

[2] *Gleanings of Past Years* (New York, 1889), I, 227.

traditions personally. But the institutionalizing of the royal function had opened a possibility of saying to the king, in the ripeness of time, that while he might go on wearing the crown and enjoying the prestige, the actual powers and duties were going to be transferred elsewhere; and that is precisely what the leaders of victorious parliamentary forces in the seventeenth and eighteenth centuries said to him. The king as a person did not lose all contact with the government; he still has a significant, even though modest, rôle in public affairs. But appointment of officials, direction of administration, leadership in lawmaking, initiative in policy-framing—all passed into other hands, *i.e.*, partly the hands of Parliament, but mainly those of the ministers, particularly those belonging at any given time to the cabinet. To this day, the activities mentioned are carried on in the king's name; in legal theory, indeed, the king is still the source of all authority. But the king that functions with respect to them is not the personal king, but rather the institutional king; and the institutional king is only a sort of fiction standing back of the actual supreme executive authority embodied in a subtle association of sovereign, ministers, and Parliament. This somewhat intangible synthesis of authority is what we call the crown. Thus understood, the crown may indeed be, as Mr. Sidney Low has described it, "a convenient working hypothesis";[1] nevertheless, it is at the same time an actual, essential feature of the country's governmental system—the keystone, indeed, of the constitutional structure. The most concrete visible embodiment of it is the ministry (including the cabinet) or, perhaps more accurately, the ministry in conjunction with the permanent civil service. The Englishman commonly refers to it simply as "the government."[2]

Thinking, then, of the crown as essentially the supreme executive authority in the state (in somewhat the same broad sense in which the president is the chief executive in the United States), and bearing in mind that even yet the king as a person is not entirely separated from it in actual practice, as he certainly is not in legal theory, we may first look at the origins, scope, and nature of crown powers and functions, and then consider the position which the sovereign himself occupies and the reasons why kingship survives at all in one of the world's most advanced political democracies.

[1] *The Governance of England* (new ed., London, 1916), 255.

[2] This term first received statutory recognition in the Statute of Westminster (1931).

POWERS OF THE CROWN—GENERAL ASPECTS

Sources. As they stand today, the powers of the crown are derived from two great sources, *i.e.,* prerogative and statute. The nature of statute is obvious enough. Any act of Parliament that assigns new duties to the executive authorities, provides for the appointment of new national officials, or in other ways extends the functions of the national government, adds by so much to the powers lodged in the crown; and it goes without saying that such increases are numerous and important. But what is prerogative? As conveniently defined by Dicey, it is "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the crown." [1] Originally, before the days of parliamentary supremacy—when, indeed, there was no Parliament at all—all powers rested upon this basis; all were conceived of as "prerogatives" inhering in the person of the king. Later, Parliament began stripping away powers, even while sometimes also bestowing new ones; in addition, old powers fell into disuse and became obsolete. Such powers, however, as survived on the earlier basis, together with such newer ones as were picked up by usage as distinguished from statute, continued to form the prerogative; and to this day these powers constitute a very large and important part of the sum total possessed—in the main, "those [powers] which are essential for the maintenance of government, for preservation of the realm against internal tumults, for the conduct of relations with other states." [2] Prerogative, therefore, denotes powers possessed without having been granted or conferred—powers acquired by prescription, confirmed by usage (perhaps also by judicial decision), and accepted or tolerated even after Parliament gained authority to abolish or alter them at pleasure. Leading examples include the power to summon, prorogue, and dissolve Parliament, to create peers, to appoint ministers and judges, to declare war and make peace, to maintain a navy (the army and air force are legalized by annual acts of Parliament), to pardon offenders, to create corporations by royal charter, to grant franchises, and to requisition ships in time of national emergency. In point of fact, many crown powers as existing today rest upon neither prerogative nor statute exclusively, being

[1] *Law of the Constitution* (9th ed.), 424.

[2] For lucid comment on the relations of prerogative and statute, see A. B. Keith, *The King and the Imperial Crown* (London, 1936), 54 ff.

instead derived originally from prerogative but later defined or restricted by statute. And, after all, the question of whether a given power is derived from prerogative or from statute is from one point of view of little practical importance; all are potentially subject to parliamentary restriction or abrogation; all are exercised under parliamentary sufferance, and indeed under ultimate responsibility to Parliament, even though they may be, and commonly are, employed without any consultation with Parliament in advance, the ministers merely being subject to criticism afterwards for the advice which they are presumed to have given when a prerogative power was exercised.

Contractions and Expansions. From what has been said, it follows that the powers of the crown are continually undergoing change —now being diminished at certain points and again being carried to new heights at others. Curtailment has come in three principal ways. The first is great contractual agreements between king and nation (or some part of the nation speaking for it), well illustrated by *Magna Carta.* The second is prohibitory legislation, of such nature as the clauses of the Bill of Rights forbidding, suspending, or dispensing with laws. The third is simple disuse, illustrated by the lapse, since the Tudor period, of the power of the crown to add to the membership of the House of Commons by arbitrary enfranchisement of boroughs, and again by the disappearance, since a somewhat earlier period, of the power to create peerages for life except by express authorization of Parliament. On the other hand, the crown's powers have been progressively augmented, both by custom (which may be regarded as contributing new elements to the prerogative) and by legislation—in later centuries chiefly, of course, the latter. When, for example, Parliament adds an air service to the army, establishes a system of old-age pensions, authorizes a new tax, or passes a new immigration act, it imposes upon the crown fresh duties of direction and control, and thereby appreciably enlarges the volume of its power. The powers of the crown at any given moment comprise, therefore, the sum-total of authority resulting from this pull and haul of forces—of processes building up and others tearing down.

The Situation Summarized. The general upshot is (1) that crown authority, instead of being only executive, as is sometimes imagined, permeates all fields and functions of government, and (2) that, far from being less ample than in generations past, it is more

so, and still growing. One of the seeming paradoxes of the British constitution—although logical enough once the true situation is understood—is that the powers of the crown have expanded as democracy has grown. "We must not confound the truth," says Frederic W. Maitland, "that the king's personal will has come to count for less and less with the falsehood . . . that his legal powers have been diminished. On the contrary, of late years they have enormously increased." [1]

In his classic work, *The Law and Custom of the Constitution,* Sir William Anson finds it possible to dispose of Parliament in 425 pages, but requires nearly 750 pages for his discussion of the crown; and in his extended exposition he is found treating of (among other things) the ministry and cabinet, the executive departments, the civil service, the legislative powers of the crown, the crown and civil liberty, the government of the colonies and other dependencies, the conduct of foreign relations, national finance, national defense, the crown and the established churches, and the crown and the courts. How vast a place the crown occupies in the governmental system as a whole is suggested, at least faintly, by this enumeration.

THE CROWN AS EXECUTIVE

To begin with, the crown is the executive. As such, it sees to the enforcement of all national laws; appoints and commissions (with no confirmation or other action by Parliament) substantially all higher executive and administrative officers, all judges, and the officers of the army, navy, and air force; directs the work of administration; removes officers (except judges) and discharges employees; conducts the country's foreign relations, and also its dealings with the colonies and dominions; holds supreme command over the armed establishments; and wields the power of pardon and reprieve, subject only to the restriction that no pardon may be granted in cases in which a penalty has been imposed for a civil wrong or by impeachment.

1. Direction of Administration. Two or three of these executive functions call for a word of comment.[2] First, the matter of directing administration. Precisely as the president of the United States directs national administration in all of its widely ramifying branches, so the composite authority in Britain known as the crown supervises and

[1] *Origin and Growth of the English Constitution,* Pt. i, p. x.
[2] Others are dealt with elsewhere, *e.g.,* in Chap. vi below.

controls the enforcement of national laws, the collection of national revenues, the expenditure of national funds, and the many other things that have to be done in carrying on the work of the national government throughout the realm. In the United States, Congress concerns itself with administrative matters—creating machinery, laying down regulations, conducting investigations—to such a degree that the president and his chief subordinates, the heads of departments, often find themselves seriously restricted and handicapped. In Britain, the cabinet and the individual ministers who supervise administration are allowed a relatively free hand. In the latter country, furthermore, the chief officers of the crown have a very important function with which, on account of our federal system of government, the president and heads of departments at Washington have comparatively little to do.[1] This is the supervision—and at many points control—of the work of local government and administration as carried on by the authorities of counties, boroughs, urban and rural districts, and other areas. In the last half-century or so, this interrelationship of national and local administration has developed on a truly remarkable scale; and the end is not in sight.[2] The only full analogy in the United States is supplied by the control over local jurisdictions exercised by the governments of the states.

2. Conduct of Foreign Relations. The crown also manages the country's foreign relations. All ambassadors, ministers, and consuls accredited to foreign states are appointed in its name, and the diplomatic and consular representatives of such states are received in the same way. All instructions to official representatives abroad go out as from the crown; all delegates to international congresses and conferences, and all representatives in the United Nations and its auxiliary establishments, are accredited similarly; all foreign negotiations are carried on in the crown's name. War is declared and peace made as if by the king alone. Of course it is futile to declare war unless there is assurance that Parliament will supply the funds requisite for prosecuting it; and either house, or both, may express disapproval of the government's policy or in other ways make its position untenable. But Parliament itself has no direct means of bringing about a war or of bringing a war to an end. When on the fateful

[1] More now, however, than in times before "New Deal" measures for national recovery after 1933 and wartime developments after 1941 linked up national and local administration on novel and significant lines.

[2] See pp. 372-375 below.

fourth of August, 1914, Great Britain cast her lot with France and Belgium in their war with Germany, it was the ministers, acting in the name of the crown, who made the decision. Parliament happened to be in session at the time, and the Foreign Secretary explained the diplomatic situation in two extended speeches in the House of Commons, and received impressive evidences of support. But had the ministers chosen to send no ultimatum to Berlin, and to hold to a policy of neutrality, the country would not (at that time, at all events) have become a party to the war. Again, twenty-five years later, it was the ministers who, in consultation with the sovereign, led the country into World War II; and, as always, the declaration took the form of a royal proclamation authorized by order-in-council.[1]

Treaty-Making. From what has been said, it follows that the treaty-making power belongs to the crown; no other authority can negotiate, sign, or ratify any public international agreement. It is true that by their terms treaties sometimes make ratification conditional upon approval by Parliament; also that in these days such approval is regarded as essential in the case of any treaty changing the law of the land (*e.g.*, by reducing customs duties), altering substantive rights of British subjects, ceding territory, or pledging payments of money out of the national treasury. Moreover, any treaty of high moral import, such as the Locarno treaty of 1925, is almost certain to be laid before the two houses. People who assumed, however, that submission of the treaty of Versailles in 1919 would usher in a new era in which no treaties would be made without parliamentary assent have found that they were mistaken. Treaties are still, from time to time, negotiated and ratified by action of the crown alone. In deference to the principle of democratic control over foreign relations, Labor leaders have long urged that all international agreements be submitted for parliamentary approval; yet not even the MacDonald governments of 1924 and 1929-31 or the Attlee government installed in 1945 found such a policy feasible.[2]

[1] F. R. Flournoy, *Parliament and War; The Relation of the British Parliament to the Administration of Foreign Policy in Connection with the Initiation of War* (London, 1927), Chaps. i, xii; E. P. Chase, "Parliamentary Control of Foreign Policy in Great Britain," *Amer. Polit. Sci. Rev.*, Nov., 1931.

[2] R. B. Stewart, "Treaty-Making Procedure in the United Kingdom," *Amer. Polit. Sci. Rev.*, Aug., 1938; A. D. McNair, *The Law of Treaties; British Practice and Opinion* (New York, 1938).

3. Management of Colonial and Imperial Affairs. Another major field of executive control is the colonies. The self-governing Commonwealths—Canada, Australia, New Zealand, and the rest—are subject to little or no restraint from either crown or Parliament; yet even here the governor-general (not found in India) is a crown appointee and, under arrangements adopted in 1926, is regarded as the immediate representative of the sovereign. All crown colonies (such as Jamaica and Hongkong), and all other subordinate areas, are administered by officials appointed by the crown.

THE CROWN AND LEGISLATION

But the crown is not only the custodian of executive power; it also shares in the work of legislation. Technically, indeed, the lawmaking function is vested in the "king in Parliament," which means historically the king acting in conjunction with the two houses; and to this day every statute declares itself to have been enacted "by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same" [1]—even though as a rule the sovereign personally has had little or nothing to do with the matter. In lawmaking, as in other things, king has yielded to crown.

1. Relation to Parliament. The rôle of the latter is, however, indispensable. In the first place, the crown alone can summon Parliament, prorogue it, dissolve it, and set in motion the processes by which a new House of Commons is elected. In a very real sense, the houses transact business only during the pleasure of the crown. Furthermore, ministers of the crown guide and control practically all that Parliament does. They prepare the king's speech, which sets forth their own program—not his—at the opening of a session; they decide what bills shall be introduced, and when; they lead in explaining and defending these bills, and pilot them on their way to enactment. In a word, responsibility for whatever is done or not done at Westminster can always be laid primarily at their door. It is true that the ministers are also members of Parliament. But the circumstance that gives them their power—aside, at all events, from their position as party leaders—is the fact that they are ministers of the

[1] Except that in a measure enacted under the terms of the Parliament Act of 1911 mention of the Lords is omitted. See p. 221 below.

crown. Still further, no bill passed by Parliament gains the status of law, or is in any wise effective, unless and until it has received the royal assent. To be sure, such assent has not been withheld from any public measure in more than two hundred forty years,[1] and the procedure by which it is signified, for bills singly or in batches, is in these days nothing more than a picturesque formality.[2] Assent is, however, an absolute prerequisite; and it still might be refused were it not that, under a cabinet system of government, a ministry finding itself unable to advise final approval of a bill duly passed by Parliament would either step aside in favor of one prepared to take a different attitude or ask for a dissolution and appeal to the electorate.

2. Orders-in-Council. In one other important way the crown touches the field of legislation. Except in the non-self-governing colonies, it no longer makes laws, in the strict sense, by inherent power. Orders-in-council, however, are issued in large numbers by the king-in-council, *i.e.*, the king and privy council—in effect (though not in form or theory) the cabinet; and such orders have equal force with statutory law. Often exercised in pursuance of authority conferred by Parliament, this power of "subordinate legislation" is of steadily increasing importance.[3]

OTHER CROWN POWERS AND FUNCTIONS

The Crown and Justice. There was a time when not only was the "king's law" enforced in the "king's courts," but the sovereign himself did not hesitate to intervene and upset the judgments of his own tribunals. Nowadays a different order of things prevails. Parliament has created (or at all events recognized and validated) all of the existing courts, fixed their organization, provided the methods by which their rules of procedure shall be made, and regulated judicial tenure and salaries. Judges can be removed only on request of both houses of Parliament, and while on the bench they may not be interfered with or controlled in any way. Despite all this, however, the crown remains the historic "fountain of justice"; technically, the courts are still the king's courts—which, viewed historically, is one of the reasons why no action at law can be brought against the monarch; and if justice in these days flows less literally from crown

[1] The last instance was Queen Anne's veto of a Scottish Militia Bill in 1707.
[2] See p. 274 below.
[3] The subject is dealt with more fully on pp. 126–131 below.

agencies and procedures, it still is true that the courts are, in fact as well as in theory, not entirely outside the crown's wide-sweeping orbit. All judges—and even justices of the peace in the counties and boroughs—are selected and appointed by crown authorities; general judicial supervision is exercised by the Lord Chancellor, one of the crown's most assiduous servants; all criminal prosecutions are in the king's name; and all appeals coming from the courts of the dominions and colonies are decided by the crown, on advice of the Judicial Committee of the Privy Council.[1]

The Crown and the Established Churches. Finally may be mentioned the connections between the crown and the established churches of England and Scotland.[2] Churches other than the Anglican in England and the Presbyterian in Scotland are without state connections, and free to regulate their creeds and rituals as they like. But the two bodies mentioned are built (in different ways) into the fabric of the state, and both crown and Parliament have large powers of control over them. In the case of the Anglican Church (whose legal head is the sovereign), the archbishops and bishops are appointed by the crown, which means in effect by the prime minister; for although it is true that when a vacancy arises a *congé d'élire,* or writ of election, is sent to the canons of the cathedral concerned, it is always accompanied by a "letter missive" designating the person to be chosen. Deans, too, are regularly, and canons frequently, appointed by the crown, although sometimes by the bishop. The "convocations" of Canterbury and York—bicameral legislative bodies composed of clergy of various grades—meet only by license of the crown, and their acts require assent of the crown just as do acts of Parliament. Crown functions in relation to the established Presbyterian Church in Scotland are less important, yet not devoid of significance.[3]

How Crown Powers Are Exercised. Such, in outline (and with many omissions), are the powers of the crown today. How are they actually exercised? The answer is, in a variety of ways—some by the cabinet, some by the Privy Council and its committees, some by

[1] See p. 396 below.

[2] The Anglican Church was disestablished in Ireland in 1869 and in Wales in 1920. There are now no established churches in those countries.

[3] Two works devoted especially to the crown are R. Erskine of Marr, *The Crown of England* (London, 1937), and A. B. Keith, *The Privileges and Rights of the Crown* (London, 1936).

this or that board or other group of ministers, or even by a single minister—in almost every way, in fact, except that in which under historical and legal theory they should be exercised, *i.e.*, by the king himself. Two chapters will presently be devoted to some of the machinery through which the crown nowadays functions. The sovereign personally, however, is still far from negligible; and before passing on to other agencies, some further comment may be devoted to him.

THE SOVEREIGN—LEGAL STATUS

Title and Descent. The events of 1688-89 fully and finally vindicated the right of Parliament, acting for the nation, to fix the conditions on which the throne should be held and to determine the rules governing the succession to it. For some two centuries and a half, also, monarchs have been supplied by the present reigning family under terms of an Act of Settlement, dating from 1701.[1] In default of heirs of the then reigning king, William, and of his expected successor, Anne—so the statute provided—the crown and all prerogatives appertaining thereto should "be, remain, and continue to the most excellent Princess Sophia, and the heirs of her body, being Protestants." Sophia, a granddaughter of James I, was the widow of the ruler of one of the smaller German states, the electorate of Hanover. There were other heirs whose claims, in the natural order of succession, might have been considered superior to hers. But the Bill of Rights debarred Catholics, and, this being taken into account, she stood first. Sophia narrowly missed becoming queen, because Anne outlived her by a year. But her son mounted the throne, in 1714, as George I; and the dynasty thus installed has reigned continuously since, the present monarch, Elizabeth II, being eleventh in the line. For a century and a quarter, the sovereign of Great Britain was also ruler of Hanover. At the accession of Queen Victoria in 1837, however, this arrangement ended, because the law of Hanover forbade a woman to ascend the throne of that country. The term "Hanoverian," long clinging to the dynasty, came, therefore, to have only historical significance; and in 1917 anti-Teutonic feeling led to adoption of the unimpeachably English name, House of Windsor.[2] Prior to 1931, there was no question that Parliament could, if it chose, repeal

[1] Text in R. K. Gooch, *Source Book on the Government of England*, 126–130.

[2] A good deal of interesting history is connected with the sovereign's "style and titles." In pursuance of the India Independence Act of 1947, the phrase "Emperor of India" was formally renounced. The exact title of Elizabeth II in the United

the Act of Settlement's provisions and place a different family on the throne, or, for that matter, abolish kingship altogether. In the year mentioned, however, the Statute of Westminster significantly changed this situation, not only by declaring the crown "the symbol of the free association of members of the British Commonwealth of Nations" and adding that it would comport with the nature of this association if any change in the law relating to the succession should henceforth require the assent of the Commonwealth parliaments as well as of the parliament at Westminster, but also by specifying that no law of the United Kingdom should be deemed to extend to a Commonwealth country as part of its law unless declared to have been enacted at the request and with the consent of the country concerned. The first affirmation appeared only in the preamble to the Statute, and therefore is hardly to be construed as having the full force of law. But the second specification appeared in the body of the act and clearly means that no legislation at London touching tenure of or succession to the throne is binding upon a Commonwealth country unless expressly accepted; and in pursuance of this principle, the Abdication Act of 1936 (on the occasion of Edward VIII's renunciation of the throne for himself and his heirs) was, by one procedure or another, formally assented to by all of the Commonwealth countries.

Within the reigning family, the throne descends according to the same principles of primogeniture and preference for males over females that formerly governed in the inheritance of land and other property.[1] When a sovereign dies, abdicates, or is deposed, the eldest son—who by birth is Duke of Cornwall and by letters patent is created Prince of Wales and Earl of Chester—inherits; if he is not living, his eldest surviving son succeeds, or, in lieu of a son, the eldest surviving daughter. If no heir is available in this branch of the family, the late sovereign's second son (or a son or daughter thereof) inherits, and so on, elder sons being always preferred to younger, and male heirs to female.[2] Should there be no one within the specified

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Kingdom is as follows: "Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith." Commonwealth countries (excluding India) have adopted somewhat similar titles, but the non-Christian ones omit "Defender of the Faith."

[1] Certain changes in the law of property, made in 1926, do not affect kingship or other hereditary titles.

[2] The bachelor king, Edward VIII, abdicating late in 1936, was succeeded by his next oldest brother, the Duke of York, as George VI. The latter having no sons, his

degrees of relationship to succeed, Parliament (presumably acting concurrently with the parliaments of the several dominions) would install a new dynasty; and in case of the accession of a minor (under 18 years of age) or incapacitation of a reigning sovereign, a regency would be set up in conformity with the terms of comprehensive Regency Acts passed in 1937 and 1943, the regent being always the next eligible person in line of succession and at least twenty-one years of age. When the throne is vacated by death or abdication, there is no interregnum; on the contrary, the royal dignity vests immediately in the designated heir, and his formal coronation later on adds in no way to his regal rights and powers, even though taking the coronation oath is a necessary constitutional proceeding.

Religious Tests. No Catholic may inherit, nor anyone marrying a Catholic. This is by virtue of the Bill of Rights; and the Act of Settlement goes on to prescribe that the sovereign shall in all cases "join in communion with the Church of England as by law established." If after his accession he should profess the Catholic faith, or marry a Catholic, his subjects would be absolved from their allegiance, and the next in line who was a Protestant would become king. For a long time the sovereign was required at his coronation to take an oath directly abjuring the tenets of Catholicism, and in language (dating from a period when ecclesiastical animosities were still fervid) offensive not only to Catholics but to temperate-minded people of all faiths. An act of Parliament passed in 1910 in anticipation of the coronation of George V softened the phraseology; and in the form in which the oath was taken by George VI in 1937 the sovereign was required merely to pledge himself (1) to maintain in the United Kingdom "the Protestant Reformed Religion established by law"; (2) to "maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England"; and (3) "to preserve unto the bishops and clergy of England, and to the churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them, or any of them." In view of the altered status of the dominions under the Statute of Westminster, the pledge to maintain the Protestant Reformed Religion now holds for the United Kingdom only.

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elder daughter, Princess Elizabeth, became heir presumptive and queen in 1952 upon the death of her father. On the abdication, see W. I. Jennings, "The Abdication and the Constitution," *Polit. Quar.*, Apr.-June, 1937.

Immunities and Rights. The sovereign enjoys large personal immunities and privileges. He cannot be called to account for his private conduct in any court of law or by any legal process—not even, as Dicey whimsically observes, if he were to shoot the prime minister! He cannot be arrested, his goods cannot be distrained, and as long as a palace remains a royal residence, no sort of judicial proceeding against him can be executed in it. He may own land and other property, and may manage and dispose of it as any private citizen. Finally, he is entitled to an allowance out of the public treasury for personal needs and for support of the royal establishment.[1]

THE SOVEREIGN'S POSITION IN THE GOVERNMENT

Theory and Fact. Viewed from a distance, British kingship is still imposing, and at closer range perhaps even more so. The sovereign is furnished a number of castles and palaces, occupies the center of the stage in solemn and magnificent ceremonies, and receives the homage of an empire now shrunken to be sure, but still of world-wide proportions. Examined more realistically, however, his position is found to afford peculiarly good illustration of the contrast between theory and fact which runs so persistently through the English governmental system. Socially and ceremonially, the sovereign is little, if any, less important than in the past; indeed, one has to know England rather well to appreciate how extensive his influence is, and by no means in the upper levels of society exclusively. Of direct and positive control over public affairs, however—appointments, legislation, the church, finance, war, foreign relations—he has virtually none. There was, of course, a time when his personal authority in these fields fell not far short of being absolute. Certainly this was true under the Tudors, in the sixteenth century. But the Civil War cut off a great many prerogatives, the Revolution of 1688-89 severed many more, the apathy and weakness of the early Hanoverians cost much, and the drift against royal control in government continued strong, even under the superior monarchs of the last hundred years —until the king now finds himself literally in the position of one who

[1] The yearly Civil List allowed Edward VII and George V was £470,000, and Edward VIII and George VI, £410,000, with exemption from income tax. A select committee of the House of Commons in 1951 recommended £475,000 for Elizabeth II to be divided thus: privy purse £60,000, household salaries £185,000, household expenses £121,800, alms, etc., £13,200, and future contingencies £95,000. This was authorized by Parliament.

"reigns but does not govern." When we say that the crown appoints public officers, we mean that ministers, who themselves are selected by the king only in form, make the appointments. When we hear of the king riding in state to open a parliament and of his reading the Speech from the Throne, we may be certain that the message has been prepared by these same ministers. To be sure, "government" measures are framed and executive acts performed in the name of the crown; but the sovereign may personally know little about them, or even have little liking for them. Two great principles, in short, underlie the entire system: (1) the sovereign may not perform public acts having any legal effect (*e.g.,* making appointments, giving orders, or signing treaties) except on advice of his ministers, evidenced by countersignature of at least one of their number, and (2) for every public act performed the ministers are responsible to Parliament. The king can "do no wrong," because the acts done by him or in his name are chargeable to a minister or to the ministry as a whole. This tends, however, to mean that the king can do nothing, right or wrong, of a discretionary nature and having legal effect; because ministers cannot be expected to shoulder responsibility for acts which they do not themselves originate or perform.[1]

It would be erroneous, however, to conclude that kingship in England is moribund and meaningless, or that the king has no actual influence in the government. Americans are likely to wonder why an institution which seems so completely to have outlived its usefulness has not been abolished; and most Englishmen are frank to admit that if they did not actually have a royal house they would hardly set about establishing one. Nevertheless, the services rendered by the monarch are significant; his influence upon the course of public affairs may, indeed, at times be considerable.

Some Things That the Sovereign Actually Does. In the first place, the king still personally performs certain specific acts, of which some are so essential that if kingship were to be abolished provision would have to be made for them on some different basis. He receives

[1] Already in the time of Charles II this situation was well enough understood to call out an oft-cited passage of wit. A courtier once wrote on the royal bedchamber:

> Here lies our sovereign lord the King
> Whose word no man relies on;
> He never says a foolish thing
> Nor never does a wise one.

"Very true," retorted the king, "because, while my words are my own, my acts are my ministers'."

foreign ambassadors, even if only as a matter of form and in the presence of a minister. He creates peers and bestows honors. He reads the Speech from the Throne, although the Lord Chancellor may substitute for him. He assents to the election of a speaker by the House of Commons, although this, too, may be done by proxy.[1] He may convoke a conference of leaders to consider ways of handling a constitutional crisis, though such a step is likely to be taken only upon advice received.[2] But two indispensable things, at least, he, and only he, can do. One is designating a political leader to make up a new ministry; the other is authorizing a dissolution of Parliament, entailing a general election. The process of constructing a new ministry will be dealt with in the next chapter, and it will suffice here merely to observe that while the party system has developed to a point where ordinarily the sovereign enjoys little or no discretion in naming a prime minister, there are occasional situations (for example, when no party has a clear majority in the Commons) in which he conceivably might find himself in a position to make a genuine choice. In any event, no one else can take the necessary initial step when a new ministry must be brought into action; a former one having resigned, all executive authority falls back—even though usually for a matter of only a few hours—into the king's hands. The situation with regard to dissolution is somewhat the same. The decision to dissolve is invariably made by the cabinet, which, however, must obtain the sovereign's consent before the plan can be proceeded with; and although consent has not actually been withheld in more than a hundred years, it is commonly considered that in a very unusual situation it might be denied (as it sometimes is by governors-general in the dominions), and even that the sovereign might dismiss a ministry in order to force a dissolution—although there has been no instance of this being done since 1783.[3]

The Sovereign as a Counsellor. But of larger practical importance than occasional formal acts of the kind mentioned is the monarch's day-to-day rôle (in so far as he chooses to exercise it) as

[1] As assenting to bills passed by Parliament invariably is. See p. 274 below.

[2] As, for example, in the case of a conference on the Irish crisis convoked by George V in 1914.

[3] In 1913, Unionist politicians tried to persuade George V to dismiss Herbert Asquith's Liberal ministry and force a dissolution on the ground that the ministers had no "mandate" from the nation on the then critical issue of Irish home rule. But the king very properly refused; compliance would have been a partisan act incompatible with the sovereign's status and function.

critic, adviser, and friend. In the oft-quoted phrase of Bagehot, the sovereign has three rights—the right to be consulted, the right to encourage, and the right to warn. "A king of great sense and sagacity," adds the same writer, "would want no others." [1] Despite the fact that for two hundred years the sovereign has not attended meetings of the cabinet, and hence is deprived of opportunity to influence the deliberations of the ministers collectively, he is supplied with all minutes of meetings and is also kept informed by the prime minister; indeed, cabinet meetings at which important decisions are to be arrived at are frequently preceded by a conference in which matters are talked over by sovereign and chief minister. Merely because the ancient relation has been reversed, so that now it is the sovereign who advises and the ministers who make decisions, it does not follow that the advisory function is no longer important.

It is, perhaps, superfluous to say that the sovereign's suggestions and advice on matters of public policy need not be carried out. Ministers will be slow, however, to disregard them. His exalted station alone would give them weight. But there is the further consideration that a sovereign who has been on the throne for a period of time is likely to have a wider knowledge of public affairs than that possessed by almost any of the ministers. After 10 years, Peel once remarked, a king ought to know more about the government than any other man in the country. Even more important is the fact that the sovereign's personal fortunes are not affected by party politics as those of other people are likely to be, and that accordingly he can usually be depended upon, within the limits of his inherited ideas, to take a dispassionate and impartial view of matters that stir heated controversy in Parliament and press. He, if anyone, should be able to think in terms of the best interests of the nation as a whole.[2]

OTHER USES OF KINGSHIP—WHY IT SURVIVES

A Symbol of Imperial Unity. But the monarchy serves still other important purposes. It furnishes a colorful leadership for British

[1] *English Constitution* (World Classics ed.), 67.

[2] By all odds the fullest and best discussion of the powers and functions of the sovereign is A. B. Keith, *The King and the Imperial Crown*, especially Chaps. v-xv. It would be unreasonable to expect of the hereditary system that successive sovereigns would be more than ordinary men; certainly George V and George VI could not lay claim to more than industry, fair-mindedness, and common sense. But these can be very useful qualities; besides, most ministers—including prime ministers like Baldwin, Chamberlain, and Attlee—are no more richly endowed.

society which, during the past century at all events, has had a generally good effect in matters of taste, manners, and morals. It personifies the nation, as distinct from any party or class, and provides a useful focus of patriotism. In an age of lightning change, it lends a comfortable, even if merely psychological, sense of anchorage and stability; "with the king in Buckingham Palace, people sleep the more quietly in their beds." Further, it provides a symbol of unity, a magnet of loyalty, never more useful than in these days of weakening imperial ties. In far-flung crown colonies and other dependencies dwell millions of people for whom political authority requires to be expressed in terms of tangible, visible personality. In so far as they can summon up loyalty and devotion at all, it must usually be rather to a king or a throne than to a "constitution," a "government," or other abstraction. Not only so, but the monarchy is now more than ever necessary as a bond with the self-governing Commonwealths—"the last link of Empire that is left," as Prime Minister Baldwin reminded King Edward VIII when discussing with him, in 1936, the question of his marriage. Before World War I, while Canada, Australia, and the rest had their own parliaments and cabinets, the parliament at Westminster was an *imperial* parliament, with power in every square foot of territory over which the British flag flew. Great structural changes, however (to be touched upon in a later chapter [1]), have since brought it about that Parliament is now little more than the parliament of the United Kingdom, and that, for practical purposes, no across-seas constitutional bond of union any longer survives except the crown—which, as we have seen, clearly presupposes a monarch in whose name the "powers of the crown" can be exercised. Break the golden link of empire furnished by royalty, and all that is left of the union of autonomous partners in the Commonwealth of Nations disappears.[2]

Other Considerations in the Monarchy's Favor. To the foregoing considerations must be added certain other weighty facts.

[1] Chap. xviii below.

[2] A. B. Keith, *The King and the Imperial Crown*, Chap. xvii. "A great Empire," it has been remarked, "does not live by pageantry alone. Without pageantry, however, it could hardly live at all." *Round Table*, June, 1937, p. 468. The anonymous article from which this quotation is taken, "The King and His Peoples," will be found illuminating. Radio broadcasts by the sovereign to the peoples of the Empire at Christmas and on momentous occasions like the outbreak of European war in September, 1939, and the cessation of hostilities in 1945 have introduced a sense of personal contact which is not without significance.

(1) The continuance of kingship has proved no bar to the progressive development of democratic government. If royalty had been found blocking the road to fuller control of public affairs by the people, it is inconceivable that all the forces of tradition could have pulled it through the past three-quarters of a century. (2) The royal establishment does not cost the nation much, considering the returns on the investment; in actual figures, the outlay is only a small fraction of one per cent of the total British budget. (3) The cabinet system, upon which the entire scheme of British government hinges, has rarely or never proved a workable plan without some titular head, some dignified and detached figure, whether a king or, as in France, a president with some of the attributes of kingship. If monarchy were abandoned in Britain, provision probably would have to be made for a president or other "chief executive," raising all sorts of troublesome questions about his powers and entailing serious possibilities for the cabinet system itself—to say nothing of the obvious fact that no president or other head of the state, different from a king, could possibly so well serve the purposes of a symbol, at home and throughout the Empire.

Little Present Sentiment in Favor of a Republic. Thus it comes about that monarchy, although on its face a glaring anachronism in a country like Britain, remains impregnably entrenched, being, indeed, like the weather, something that the average Englishman simply takes for granted. At a low ebb in popular respect a century and a quarter ago, because of a succession of weak or otherwise unworthy sovereigns, it has regained all that it had lost and is today unquestionably popular. Such republican talk as one might have heard a couple of generations ago has almost completely died away. Throughout the stormy years 1909-11, when the nation was stirred as it had not been in decades on issues of constitutional reform, every proposal and plan took it for granted that monarchy would remain an integral part of the governmental system. In the general bombardment to which the hereditary House of Lords was subjected, hereditary kingship entirely escaped. In the early years of World War I, some criticism was directed at the royal family because of what proved an ill-founded suspicion that the court was a focal point for influences antagonistic to republican institutions in allied or other friendly states. But the misunderstanding passed, and the years of feverish republican experiment on the Continent during and after the

war referred to left kingship as solidly buttressed in Britain as before. Of greatest significance is the fact that the Labor party has never, as a party, advocated the suppression of British kingship. Individual Labor men have declared themselves republicans in principle; and at a party conference in 1923 a motion was introduced asserting that the royal family was no longer necessary as a part of the British constitution. To bring the issue to a head on the occasion mentioned, a vote was taken on the question, "Is republicanism the policy of the Labor party?"—and the answer given was emphatically in the negative. More recently—during the civil-list debates in the House of Commons at the accession of George VI in 1936—Labor members made it clear that their party is definitely not republican. Equally with Conservatives and Liberals, Laborites consider that as long as the sovereign is content with the sort of position that he occupies today—national and representative, rather than personal and privileged—the country will, and should, continue, as now, a "crowned republic." The only real dissenters are the Communists.[1]

[1] In *The King of England, George V* (Garden City, 1936), the editors of the magazine *Fortune* concluded not only that George V (whose death occurred later in the same year) was Britain's most truly successful and popular monarch in modern times, but that "not since the reign of James I has the British throne been safer than it is today, and never in its history has the British crown been more esteemed" (p. 5). Later on, Edward VIII, long popular as the Prince of Wales, gave promise of bringing kingship into even closer touch with the general mass of the people. His abdication, after less than a year on the throne, was by some thought to have weakened the monarchy's position, but his successors command the respect of the nation, and no real harm appears to have been done.

Brief discussions of the position of the sovereign in the governmental system include E. P. Chase, "The Position of the English Monarchy Today," *Amer. Polit. Sci. Rev.*, June, 1935; H. J. Laski, *Parliamentary Government in England* (New York, 1938), Chap. viii; H. R. G. Greaves, *The British Constitution*, Chap. iv; W. I. Jennings, *The British Constitution* (Cambridge, 1945), Chap. v; and an excellent, though brief, essay, "British Constitutional Monarchy," in E. Barker, *Essays on Government* (Oxford, 1945). More extended treatment will be found in W. R. Anson, *Law and Custom of the Constitution* (4th ed.), II, Pt. i, Chaps. i and v, and especially A. B. Keith, *The King and the Imperial Crown*, cited above. M. MacDonagh, *The English King* (New York, 1929), is a readable and informing volume. Cf. E. Acland and E. H. Bartlett, *The House of Windsor* (rev. ed., Philadelphia, 1937). For interesting background material relating to the House of Windsor during the present century, see Duke of Windsor, *A King's Story* (New York and London, 1951).

CHAPTER IV

PRIVY COUNCIL, MINISTRY, AND CABINET

The instrumentalities through which the vast and ever-changing powers of the crown are nowadays exercised include chiefly: (1) the ministers and their subordinates in the executive departments and allied establishments; (2) the Privy Council; (3) the cabinet; and (4) the permanent civil service; and to these interlocking agencies we now turn.

THE PRIVY COUNCIL

The casual observer would hardly fix his attention first upon an institution so rarely heard of amid the hurly-burly of daily affairs as is the Privy Council. On looking more closely, however, he would find the Council not only richly significant historically, but—after its own manner—important, if not indispensable, today; neither ministry nor cabinet, nor certainly the rôle of the crown in general, can be understood without bringing it straightway into the picture.[1]

Membership. As it stands today, the Privy Council consists of some 330 persons. The archbishops of Canterbury and York are members by prescriptive right; a lengthy list of other dignitaries—the bishop of London, the nine lords of appeal in ordinary,[2] various other high judicial personages, ambassadors to foreign countries, the speaker of the House of Commons, etc.—are usually included; and there are always a few representatives of the dominions (mainly

[1] The processes of partition and dévolution giving rise to the Privy Council in the fifteenth century, and in turn to the cabinet in the seventeenth and eighteenth centuries, have been outlined elsewhere. See pp. 5-7 above.

[2] See pp. 216-217 below.

prime ministers), as well as a varying, although not large, number of men of distinction in literature, art, science, and other fields of honorable endeavor, upon whom the sovereign (acting with ministerial advice) has seen fit to confer membership as a mark of honor. Most councillors become such, however, by virtue of the practice of including in the group all members of every incoming cabinet. Indeed, since the cabinet was until of late unknown to the law, it long was only as a privy councillor that a cabinet officer could legally be required to take the historic oath of secrecy which the deliberative and advisory aspects of the cabinet's functions are regarded as entailing. Once a privy councillor, a man normally remains such for the rest of his life; [1] so that the body at all times consists principally of present and past cabinet members. A badge of distinction of all privy councillors is the title of Right Honorable.

Meetings. The rise of the cabinet system has left the Council in a position such that—aside from committee work—its activities are largely formal, and even routine—which, however, does not mean that they are unimportant. Except when a new sovereign is to be crowned, or some other solemn ceremony is to be performed, the full roster of councillors, to be sure, is never called together. Nevertheless, Council meetings are held—many of them every year—even though (with three members sufficing for a quorum) not more than four or five councillors commonly attend. The Lord President of the Council, ranking high in the order of official precedence, will be on hand; likewise, for keeping records, the clerk of the Council, who from 1923 to 1938 served also as secretary of the cabinet; and usually two or three cabinet members concerned with matters to be brought up for action. Some years ago, an order-in-council made it possible for Council business to be transacted, under emergency conditions, in the absence of the sovereign. The authority legally functioning at a meeting is, however, not the Council alone, but the "king-in-council"; and, save when palpably impossible, the councillors regularly meet with the king, at Buckingham Palace or some other convenient place.

Things Done at Meetings—Orders-in-Council. What is there for these meetings to do? As a matter of fact, several things. To be sure, the Council may have no actual discretion concerning many of

[1] The sovereign may, however, remove a councillor by striking his name from the list; or a member may be dropped by order-in-council.

them; but at all events they can be done through no other medium. It is, for example, at Council meetings that ministers, and many other officials, take the oaths required of them and receive their seals or other symbols of office. It is also there that sheriffs are "pricked," or invested with the insignia of their office. By all odds the most important business, however, is the promulgation of "orders-in-council," both in pursuance of royal prerogative and under authority of statute. As will appear later in this book, increasing numbers of administrative rules and regulations are issued by individual executive departments and other agencies acting individually.[1] But many matters are dealt with through the device of orders-in-council; in general, indeed, more important orders or decrees, on whatever subject, even though originating in and drawn up by a department, are cast in this form. Prominent examples are declarations of war and decrees summoning, proroguing, and dissolving Parliament; orders relating to the government of the crown colonies; orders pertaining to the permanent civil service; war-time orders concerning such matters as neutral trade and blockade; and a great variety of orders issued in pursuance of authority conferred in more or less general terms in acts of Parliament dealing with such subjects as health and education. As many as 600 orders-in-council are likely to be issued in a single year nowadays; and under wartime conditions the number may be considerably higher. If wide publicity for an order is desired, a royal proclamation will usually follow.

The Council Not a Deliberative Body. Be it noted, however, that the Privy Council is no longer an initiating, deliberative, or advisory body; indeed, it has not been such since the days of Queen Anne. Its functions of this character have been absorbed to some extent by the departments, which have a good deal of leeway in determining what rules they shall severally promulgate and what ones they shall take to the Council to be assented to and promulgated as orders. In larger degree, however, the Council's earlier deliberative functions have passed to the cabinet. Upon matters of moment, that body deliberates and frames policy. If by their nature the decisions arrived at require parliamentary action, they are carried to the two houses. If, however,—as is frequently the case—orders-in-council will suffice, they go rather to the Privy Council. On its own initiative, or at the request of a department, the cabinet decides that a given

[1] See pp. 126–131 below.

order shall be issued, or that the sovereign shall be advised to perform a given act. It cannot, however, as a cabinet, issue orders; that is the business of the king-in-council, which has, to be sure, surrendered the deliberative and advisory functions of earlier times (the orders issued are not so much as discussed), but nevertheless remains the only authority competent to give certain decisions the force of law.

Council Committees. Further evidence that the Privy Council still has vitality is supplied by the existence of a number of active and important standing committees. Foremost among these is the Judicial Committee, created by statute in 1833, and serving as a quasi-tribunal rendering final judgment (in the guise of advice to the crown) on appeals from ecclesiastical courts, admiralty courts, and courts in the colonies and to a limited extent the dominions.[1]

THE MINISTRY AND THE CABINET

Structural Differences. Manifestly, we must look far beyond king-in-council to discover the men and agencies carrying on the actual work of government; and the quest soon brings us to the ministry and the cabinet. The two terms are sometimes used loosely as if synonymous. In reality, however, they refer to groups of officials needing to be carefully distinguished; and our first concern must be to see what the difference is. Broadly, the distinction is twofold, according as it has to do with (1) composition and (2) functions. The ministry consists of the whole number of crown officials having seats in Parliament, sustaining direct responsibility to the House of Commons, and holding office subject to continued support of a working majority in the latter body. It is this relation to Parliament —in other words, the *political* nature of their offices—that distinguishes crown officials recognized as ministers from the far greater number having no such status, but forming, instead, the permanent civil service. Broadly, the ministers are those officers of the crown who have to do with the formulation of policy and the supreme direction of carrying it out. Yet this is not precisely true, because there are ministers who have very little to do with policy, and others who do

[1] See p. 396 below. Some present executive departments, *e.g.*, the Ministry of Education, originated as Privy Council committees. On the Privy Council in general, see an old but still standard work, A. V. Dicey, *The Privy Council* (London, 1887), and a more recent one, M. Fitzroy, *The History of the Privy Council* (London, 1928). Cf. E. R. Clark, "The Privy Council and the Constitution," *Dalhousie Rev.*, Apr., 1939.

not administer; which is tantamount to saying that the line dividing ministerial from non-ministerial offices has been drawn by usage, and even accident, not by logic.

Composition of the Ministry. Looking over the list of ministers at any given time, one discovers four main groups or categories. The first is the heads, actual or nominal, of the greater and lesser executive departments, *e.g.*, the Secretary of State for Foreign Affairs, the Minister of Defense, the Chancellor of the Exchequer, the Lord Chancellor, the Minister of Health, and the Minister of Labor and National Service. Second, there are other high officers of state, who, however, are not in charge of departments, *e.g.*, the Lord President of the Council and the Lord Privy Seal.[1] Third, there are parliamentary under-secretaries and other "junior ministers," commonly promising younger members of the party in power. Not all under-secretaries in the departments and offices are parliamentary under-secretaries. There are permanent under-secretaries, who are not ministers, are non-political, and compose the topmost level of the permanent service, with tenure unaffected by the ups and downs of politics and the rise and fall of ministries. Parliamentary under-secretaries (of whom at least one will be found in every department and two or three in certain ones) are especially useful as spokesmen of their departments in the House of Commons when the department head is a member of the House of Lords. Finally, certain officials of the royal household, including the Treasurer, the Comptroller, and the Vice-Chamberlain, are still regarded as having a political character, and hence are ranked as ministers.

From the great expansion of governmental activities in the past 75 or 100 years inevitably flowed the creation of new executive establishments containing one or more officials of ministerial rank, and even before World War I the number of ministers reached 50 or 60. War further multiplies activities, with resulting new or reconstructed machinery; and both in 1914-18 and 1939-45 the ministerial lists were swollen to upwards of 100 names. On the basis of

[1] Since these posts ordinarily entail only formal duties, those who hold them are often referred to as "ministers without portfolio." From 1948–51 Lord President of the Council Herbert Morrison was one of the busiest of ministers, coördinating the Labor government's nationalization program. In 1951 when the Conservative party came to power several ministers were appointed to coördinate government activities in such broad fields as transport, economic affairs, and food and agriculture.

experience between the wars, however, the normal quota of ministers may nowadays be considered as between 60 and 70; the Conservative ministry as made up in 1951 contained approximately 80 persons.

Composition of the Cabinet. The cabinet is a different matter. At any given time, it consists of such members of the ministry as the prime minister (who is head of ministry and cabinet alike) invites to join him in "tendering advice to the king on the government of the country." A member of the cabinet has, as such, no office; he merely is a minister who attends cabinet meetings because of having been asked by the prime minister to do so. All cabinet members are ministers, but not all ministers are cabinet members. One should hasten to add that in deciding upon the composition of his immediate deliberative and advisory family the prime minister has considerably less latitude than the foregoing statement might seem to imply, because certain of the ministers occupy posts of such administrative or historical importance that they can rarely or never be left out—except under abnormal circumstances such as attended the creation of the "war cabinets" of 1916 and 1939 and the MacDonald "national" cabinet of 1931. Such are the First Lord of the Treasury (who, however, is now regularly the prime minister himself), the Chancellor of the Exchequer, the recently introduced Minister of Defense,[1] a number of "principal secretaries of state" (including the heads of the Foreign Office, the Home Office, the Commonwealth Relations Office, and the Colonial Office), and—on grounds of historical prestige—the Lord President of the Council and the Lord Privy Seal. In all, the incumbents of as many as 15 or 16 positions may reasonably expect cabinet membership. Beyond this (although if all of these are included, there cannot be room for many more), it is for the prime minister to decide who shall be included, and in doing so he may be influenced by the aptitudes and susceptibilities of various remaining ministers, by the importance of a given department at the mo-

[1] In October, 1946, it was announced that whereas previously the First Lord of the Admiralty and the Secretaries of State for War and Air had quite regularly sat in the cabinet, in future only a Minister of Defense would do so. The change bore interesting resemblance to that made in the United States in the following year when the Secretaries of War and Navy were replaced in the cabinet by a Secretary of Defense. From 1940, Winston Churchill had been Minister of Defense, as well as prime minister and First Lord of the Treasury throughout World War II; and in 1945, Clement Attlee took over the same combination of positions, although in the following year he relinquished the defense post to a separate minister.

ment, by party strategy, or even by considerations connected with geographical distribution.[1]

The Problem of Numbers. Like the ministry as a whole, the cabinet has never had a fixed number of members, and in both instances there has been a tendency to expansion, both in total numbers and in the proportion of members drawn from the House of Commons. Eighteenth-century cabinets contained, as a rule, not more than seven to nine persons. In the first half of the nineteenth century, the number ran up to 13 or 14; the second cabinet presided over by Lord Salisbury. at its fall in 1892, numbered 17; and most of the time from 1900 to 1914 there were 20 members. The causes of this increase included the desire of ambitious statesmen to be included, multiplication of governmental activities calling for creation of new and important departments, pressure for giving every major branch of the administrative system at least one representative, and pressure likewise for giving representation to different elements and interests in the dominant party. As would be surmised, the cabinet grew somewhat unwieldy, with the result not only of increased use of committees, but of a tendency toward emergence of a small inner circle bearing somewhat the same relation to the entire cabinet that the early cabinet had itself borne to the overgrown royal council. For years, this trend was viewed with apprehension by people who feared that the concentration of power in the hands of an "inner cabinet" would not be accompanied by a corresponding concentration of responsibility. British and foreign observers, however, agreed that the cabinet had come to be too large for the most effective handling of business.

"War Cabinets" of 1916-19 and 1939-45. World Wars I and II furnished opportunity for interesting experiments with really small cabinets, although, of course, under highly abnormal circumstances. When, in December, 1916, David Lloyd George succeeded Herbert Asquith as prime minister, he instituted a "war cabinet" of only five (later six and occasionally seven) members, all but one—the Chancellor of the Exchequer—being liberated from administrative responsibilities in order that full time might be devoted to the top tasks of direction and coördination; and as long as the war lasted

[1] Thus at the moment (1952), the Postmaster General is in the cabinet. But a future prime minister might find reasons for including instead the Minister of Food or of Transport and Civil Aviation.

this group devoted itself unremittingly to the tremendous political, military, and economic questions of the day. The proceedings of Parliament became largely perfunctory; ministers, both in and out of the war cabinet, ceased to attend sittings with any regularity, and many were not even members. A useful purpose was served. Hardly was the war over, however, before demand arose for a resumption of normal arrangements; and although considerable effort was made to prevent going back to a cabinet of prewar proportions, the regular cabinet as restored in the autumn of 1919 contained 20 members. Upon the outbreak of World War II in 1939, Prime Minister Chamberlain also replaced the existing cabinet with a "war cabinet," even though containing nine members, and therefore larger than its prototype of 1916. More of the members, too, were burdened with administrative responsibilities; indeed, the heads of four defense departments were included, as similar officials were not on the earlier occasion; and closer relations with Parliament were maintained. A main criticism directed against the group was that it was too large, and after Winston Churchill succeeded to the premiership in 1940 he reduced it to five and likewise, at least for a time, saw to it that, in response to insistent public demand, its members were men having no departmental duties—except for himself as Minister of Defense, a post which he steadily refused to relinquish. Some increase of membership led to another reduction in 1942. On the other hand, when, in 1945, the forces previously supporting the wartime "national" government came to a parting of the ways, entailing a revamping of the ministry on a party basis, the war cabinet (then having seven members) disappeared completely from the scene. Cabinet reconstructions of the kinds indicated are, of course, entirely at the discretion of the executive and entail no statutory authorization; practically, the cabinet at any given time, in peace or in war, consists of such ministers, and in such numbers, as the chief minister, guided by considerations such as those mentioned above, chooses to invite into it. The Labor government maintained a cabinet of 18 members in 1946; the Conservatives started out with a cabinet of 16 members in 1951.[1]

[1] The history of the cabinet through the earlier part of the war period is traced in detail in H. Finer, "The British Cabinet, the House of Commons, and the War," *Polit. Sci. Quar.*, Sept., 1941. For a full history since 1830, see A. B. Keith, *The British Cabinet System* (rev. ed., London, 1952).

Ministry and Cabinet Distinguished Functionally. In personnel, as we have seen, ministry and cabinet differ in that the latter is an inner circle of the former, normally comprising in these days from a third to a fourth of the larger group. Functionally, they differ in that whereas ministers as such have duties only as individual officers of administration, each in his particular portfolio or less exalted station, cabinet members have collective obligations, *i.e.*, to hold meetings, to deliberate, to decide upon policy, to coördinate, and in general to "head up" the government. They also play the most important rôle in the leadership of their party. Of course, all cabinet members are also ministers—"cabinet ministers," they are sometimes called; and as such they (or most of them), like the rest, have departments to administer or other ministerial work to do. But the ministry as such never meets: [1] it never deliberates on matters of policy; it is, indeed, misleading to speak of it as a "body" at all. In sum, the cabinet officer deliberates and advises; the privy councillor decrees; and the minister executes. The three activities are easily capable of being distinguished, even though it frequently happens that cabinet officer, privy councillor, and minister are one and the same person.

FORMATION OF A NEW MINISTRY AND CABINET

Ministry and Cabinet Stand or Fall Together. When a cabinet goes out of office, it invariably carries the entire ministry with it. Non-cabinet ministers, to be sure, may have had little or nothing to do with creating the situation making retirement necessary. But they accepted their posts knowing that, as "political" officers, their fortunes would be linked with those of the cabinet; and the most that they can hope for is that, if the cabinet upset does not entail a change of the party in power, many of them will, after the flurry is over, find themselves back in their old (or similar) positions. In any event, cabinet and ministry stand or fall together, and when a shift comes, the two are reconstituted simultaneously and by a single procedure.

[1] Ministers not of cabinet rank may be invited to sit with the cabinet and also to serve on its committees, but only during the part of a cabinet session when matters relating to their departments are under consideration. They wait in the anteroom until the cabinet is ready to take up the item which concerns their department.

Making Up a New Ministry—The Prime Minister. The first step toward forming a new ministry and cabinet is the designation of a prime minister; because the selection of all other ministers will rest with him. And this brings us to the official who is by all odds the most powerful and important in the entire government—the only one worthy of being compared with the president in our American system. For some time after functions of deliberation and decision passed from the larger Council to the inner cabinet circle, members of the latter recognized no superior except the sovereign, whose position was indeed still such as to leave room for no other primacy. But when, after 1714, the king stopped attending meetings and in other ways discontinued having much to do with the government, the group found itself without a head; and in time a sort of presidency or chairmanship, developing within its own ranks, grew into a genuine leadership—in short, into the prime-ministership as we know it today. It is commonly considered that the first person approximating the status of prime minister was Sir Robert Walpole, First Lord of the Treasury from 1715 to 1717 and from 1721 to 1742; at all events, he was the first to insist upon full harmony (at least outwardly) among his colleagues and to force from office any who ignored or resisted his command. The term "prime minister" was currently applied to him, although only by his enemies and in a spirit of reproach as incompatible with the headship of the king and with the equality hitherto supposed to exist among ministers; and although covetous of the power implied, he always repudiated the title. For half a century, further development was precarious; even the primacy of the Elder Pitt was not very substantial. Practical utility, and even necessity, operated, however, in the premiership's favor; and by the beginning of the ministry of the Younger Pitt in 1782, the prime minister's place among his colleagues as *primus inter pares* not only was an established fact, but was beginning to be accepted as both inevitable and proper. A score of years later, indeed, that towering political leader boldly declared it "an absolute necessity in the conduct of the affairs of this country that there should be an avowed and real minister possessing chief weight in the Council [*i.e.*, cabinet] and the principal place in the confidence of the king; the power must rest in the person generally called 'first minister'." Far greater preëminence was achieved in times nearer our own; but the essentials of the premiership may be regarded as sub-

stantially attained when, during the later years of George III, it became the regular thing for the sovereign, when a new ministry was to be made up, simply to receive and accept the list of nominees prepared and presented by the newly appointed "first minister." [1]

Appointing a New Prime Minister. The one act of primary importance which the king still personally performs (and which can be performed by no one else) is the appointment of a prime minister. It is in the royal hands, and commonly at Buckingham Palace, that a retiring premier places his resignation (along with that of his colleagues), and the move then incumbent upon the sovereign, in order to fill the gap, is to call another political leader to the Palace and empower him to make up a ministry—which is tantamount to naming him prime minister. In earlier days the king usually had rather wide latitude in the matter; he could select as well as appoint. To be sure, the person named must be a leader who could be expected to construct a ministry commanding parliamentary support; in Gladstone's words, he must be chosen "with the aid drawn from authentic manifestations of public opinion." But two or three, or even half a dozen, persons might be presumed capable of meeting the test; and the sovereign could make his own decision among them. As party organization tightened, however, room for choice diminished; for parties came to have definite leaders, and when one party lost control of the House of Commons and another gained it, the king rarely or never could do otherwise than call upon the leader of the newly dominant party, however much his personal preferences might run in a different direction. For generations, under the straight biparty system, the principle worked almost automatically; in 1880, for example, Queen Victoria, although strongly preferring Lord Hartington or Lord Granville, found herself obliged to accept Gladstone (whom she always deeply disliked) because he was the Liberal leader.

When the Sovereign May Have Some Discretion. In only two kinds of situations is it any longer possible for the sovereign to have leeway, *i.e.*, when, with a new ministry required, the majority party

[1] The rise of the prime-ministership is described more fully in J. A. R. Marriott, *The Mechanism of the Modern State*, II, 71-76. Curiously, no systematic history of the office has ever been written, and there is no book devoted expressly to an account of it in its present-day aspects. The earliest mention of the prime minister in an official document was in the Treaty of Berlin (1878), in which Lord Beaconsfield was referred to as "First Lord of Her Majesty's Treasury, Prime Minister of England," and the earliest mention in a statute occurred in 1917.

has no chosen leader to offer, and when no party has a majority and some form of coalition must perhaps be resorted to. In the first case, however, the party is likely to hasten to supply the deficiency, thereby pointing out to the sovereign the proper person to name. Thus when, in 1894, Gladstone somewhat precipitately retired from office on account of physical infirmity, the Liberals in Parliament canvassed the question of whether the successor (as party leader and presumably as premier) should be Sir William Vernon Harcourt or Lord Rosebery. Under guidance of the cabinet, they threw their support to the latter, and he was forthwith appointed by the Queen. He happened to be her personal preference, but that was not the deciding factor. Again, in 1923, when Bonar Law, though backed by a clear Conservative majority, decided for reasons of health to give up the premiership, Lord Curzon aspired to the succession but was passed over in favor of Stanley Baldwin when the king was informed that a peer would not be satisfactory as prime minister. Still again, in May, 1940, when dissatisfaction with the conduct of the war forced Neville Chamberlain into retirement, Winston Churchill became prime minister; he was not yet party leader (at the time, Chamberlain was still leader), but manifestly was soon to become such. Even with the majority party momentarily lacking a formal leader, therefore, or having one but about to make a change, the sovereign may have no actual option except to be guided by information and advice received on the basis of existing conditions. The same may prove true when no party has a majority in the House of Commons. In such a situation, either one of the parties must try to carry on precariously with such added support as it can pick up, or two or more parties must pool their strength in a coalition. After the election of 1924, when the House of Commons was sharply split three ways—Conservative, Liberal, and Labor—King George V had to decide whether to summon the Liberal leader Asquith or the Labor leader MacDonald (their recent defeat barred the Conservatives), and in casting the die for MacDonald he made a genuine and important choice. In 1931, when a later Labor government (also with no majority) resigned, an equally weighty decision was made by the same monarch when Mr. MacDonald was commissioned to make up a "national," or coalition, ministry. In other situations of the sort, however, the sovereign has had little or no freedom of action, for the reason that manipulation or compromise among the

political elements concerned resulted in decisions made, not by the king, but for him.[1] No monarch in twentieth-century Britain would risk rocking the throne to its foundations by insisting upon a choice of his own as against one that could be made by the political elements chiefly concerned.

THE SELECTION OF OTHER MINISTERS

Difficulty of the Task. Once duly commissioned, the prime minister proceeds to draw up a list of other ministers, deciding what post each man shall occupy, and, in cases where there is room for doubt, whether this man or that shall be invited into the cabinet—a job characterized by Disraeli as "a very severe trial," and the only one that is known ever to have caused Gladstone sleepless nights.[2] Theoretically, he has a free hand. In no direct way does Parliament control either his selection of men or his assignment of them to places; and nowadays he can be sure that whatever list he carries to Buckingham Palace will receive the routine—though essential—assent of the sovereign. Practically, however, he works under the restraint of numerous precedents and usages, to say nothing of conditions imposed by the immediate party and public situation. He cannot be guided solely by his personal likes and dislikes; on the contrary, he must consult with this ambitious (perhaps unpleasantly aggressive) party leader, sound out that man for whom no place can be found except of a minor and perhaps otherwise uncongenial sort, plead with A to come in and explain to B why he must stay out, and so at last arrive at a list which will have the requisite qualities of prestige and coherence, even though a product, from first to last, of compromise. It is rarely as difficult to make up a ministry in Britain as it usually is in France and other Continental states, where ministries are always coalitions, and where not only the ministerial

[1] As a matter of practice, the prime minister who is retiring normally suggests to the king—if, as almost invariably happens, he is invited to do so—the person indicated by the existing political situation as the proper successor. This, however, does not preclude the sovereign from "feeling out" the situation directly by talking with other persons involved in it, at all events if (as certainly was true in 1924 and in 1931) there is some question as to the decision that ought to be reached.

[2] It may be assumed that advice and assistance will be sought from other party leaders in whom the new prime minister has confidence; indeed we are told by Professor Harold J. Laski that the Labor list of 1929 was worked out by an inner circle of five persons, including, of course, the incoming premier, Ramsay MacDonald. *Parliamentary Government in England* (New York, 1938), 189-190. In any event, however, the head of the new government must have the final word and bear responsibility for all selections made.

group itself, but also the party *bloc* on which it must depend for support, have to be built up out of more or less jealous and discordant elements. In Britain, furthermore, a leader called upon to organize a ministry is likely to have ample time in which to lay his plans, not only because a change of ministries can usually be foreseen a good while in advance, but also because as a rule the premier-designate has known all along that whenever the change might come it would be he, and no one else, who would have to handle the situation. Consequently, the making up of a new ministry is, as a rule, a matter of only a few days. Even so, it is a task of much delicacy, and a prime minister is fortunate who accomplishes it without incurring embarrassment for himself or his party.

CONSIDERATIONS INFLUENCING SELECTION

1. Membership in Parliament. What are some of the rules, traditions, and practical considerations that the makers of ministries find it necessary to take into account? The first—though, like all the others, a matter only of convention, not of law—is that, with a view to the contacts which cabinet government presupposes, all ministers must have seats in one or the other of the two houses of Parliament This does not mean literally that every man [1] appointed to a ministerial post must at the time be actually in Parliament. If there is strong desire to include a person who does not belong to either house —and the reasons may arise either from party expediency or from general public advantage—he may be named, and may enter provisionally upon the discharge of his duties. But unless he can qualify himself with a seat, either by election to the House of Commons or (in cases of special urgency) by being created a peer, he must give way after an indefinite, but brief, time.[2] With rare exceptions, therefore, the prime minister selects his colleagues from the existing membership of the two houses.[3]

[1] Or woman; because nowadays women occasionally become ministers. Miss Margaret Bondfield was the first such, in the capacity of parliamentary secretary to the Ministry of Labor in the MacDonald government of 1924. In the second MacDonald government, formed in 1929, Miss Bondfield was assigned the post of minister of labor, thus becoming the first woman to sit in a British cabinet.

[2] The matter is usually handled through an arrangement, engineered by the prime minister, by which a loyal party member gives up his seat, thus opening the way for a by-election at which the provisional minister is voted into Parliament by his adopted constituents. The retiring member may be rewarded for his sacrifice by appointment to some public office or even by a peerage.

[3] In the Act of Settlement of 1701, Parliament made ministers and other officers under the crown ineligible to sit in the House of Commons; and if the rule had been

2. Distribution between the Two Houses. Every ministry since the early eighteenth century has contained members of both the House of Commons and the House of Lords. Present law, indeed, requires that at least three ministerial heads of departments, in addition to the Lord Chancellor, be in the upper chamber. Beyond this, there is no positive regulation—except that not more than 20 of the junior ministers may be in the House of Commons. To fill the various posts, the prime minister must bring together the best men he can secure—not necessarily the ablest, but those who will work together most effectively—with only secondary regard to whether they sit and vote in one branch or in the other; although it is so obviously advantageous for a department head to be in the House of Commons that the great majority will always be drawn from that body, and certain of the number invariably. Since under the English system ministers can speak only in the house to which they belong, a department whose chief sits in the House of Commons will be represented in the House of Lords by a parliamentary under-secretary or by a lord designated to speak for several departments.

From the days of Walpole, who himself sat in the House of Commons, to the close of the nineteenth century, the prime ministership was held about equally by members of the two houses. Lord Rosebery (1894-95) and Lord Salisbury (1895-1902) were, however,

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maintained, the later development of the cabinet system would have been frustrated. Security and Place Acts of 1705-07, however, introduced a substitute plan under which Commoners might accept appointment to ministerial posts then existing, on condition of remaining members only if they vacated their seats, sought reëlection, and were duly returned. Appointees to ministerial posts created after 1705 continued barred unless specially exempted by later legislation—as many were. Eventually, in 1919, a Reëlection of Ministers Act exempted new incumbents of the older ministerial offices in cases where appointment dated from "within nine months after the issue of a proclamation summoning a new parliament;" and seven years later an amending measure brought the troublesome restrictions completely to an end. "Offices under the crown" other than ministerial posts continue, however, incompatible with parliamentary membership. Considerable protest was voiced against an emergency act of Parliament passed during World War II permitting members to hold such offices without vacating their legislative seats in any case in which the prime minister should certify it to be in the public interest for them to do so. The objection was raised that members of independent spirit might be silenced by appointments linking them to the "government." By 1948, the emergency legislation had expired and Parliament was again passing occasional indemnity acts for the relief of members construed, in more or less marginal cases, to have transgressed by holding "offices of profit."

In pursuance of the American principle of separation of powers, the constitution of the United States has from the first prescribed that "no person holding any office under the United States shall be a member of either house during his continuance in office." Art. I, § 6, cl. 2.

the last incumbents to sit in the upper house; and if, as was true, their enforced absence from the House of Commons, the principal theater of legislative activity, proved a serious disadvantage to them, a prime minister so situated today would labor under an almost fatal handicap. Peerages for retired prime ministers are deemed appropriate; witness the titles bestowed (although in some instances only after a considerable lapse of years) on Arthur J. Balfour, Herbert Asquith, Stanley Baldwin, and David Lloyd-George. But from the time when, in 1923, Lord Curzon, to his intense disappointment, was passed over in favor of the then Commoner, Stanley Baldwin, it has been taken for granted that no peer will ever again be prime minister —at any rate so long as the House of Lords continues constituted and otherwise situated as at present. Distribution of remaining ministers between the two houses has varied, with, however, a tendency from the early nineteenth century onwards to an increased proportion of Commoners. Within the cabinet, as distinguished from the ministry as a whole, members of the two houses were usually about equally numerous at the middle of that same century; but of late Commoners have predominated, usually in the proportion of at least two to one (even heavier in Labor cabinets).[1]

3. Party Solidarity. A third general principle which the incoming prime minister must observe in making up both a ministry and a cabinet is that of party solidarity. William III set out to govern with a cabinet in which Whigs and Tories were deliberately intermingled. The plan did not give satisfaction, and during his reign and that of Queen Anne it was discarded in favor of cabinets having party unity. The last occasion prior to World War I upon which it was proposed to make up a cabinet from utterly diverse political elements was in 1812. The scheme was abandoned, and from that day to 1916 cabinets were regularly composed, not always exclusively of men identified with a single political party, but at all events of men substantially agreed upon larger questions of policy and willing to coöperate in carrying out a program.[2] During World War I, and afterwards until 1922, the country experimented with coalition gov-

[1] For an interesting analysis of the social and other backgrounds of some 300 cabinet ministers, see H. J. Laski, "The Personnel of the English Cabinet, 1801-1924," *Amer. Polit. Sci. Rev.*, Feb., 1928 (reprinted in part in N. L. Hill and H. W. Stoke, *The Background of European Governments*, 2nd ed., New York, 1940, 53-56).

[2] The conservative prime minister Disraeli nevertheless once complained to Queen Victoria that he "had six parties in his cabinet."

ernments; and under war-time conditions they were useful, if not indispensable. From 1931, furthermore, until after the outbreak of World War II in 1939, there was a "national" ministry (headed until 1935 by Ramsay MacDonald and thereafter by Stanley Baldwin and Neville Chamberlain in succession)—a ministry not technically a coalition, but nevertheless containing members drawn in varying proportions from the three principal parties. And, beginning with the accession of the Churchill ministry in 1940, World War II inevitably saw the coalition principle again in full operation. The average Englishman, however, has never been happy about coalition; and when the Labor party emerged from the elections of 1945 with a huge parliamentary majority, normal party government was thankfully resumed, with a ministry constructed, for the first time in 14 years, from persons bearing an identical party label. Writing of cabinet government in its more stable aspects, a competent authority properly observes that "party spirit supplies the driving force of the whole machine." [1]

4. Miscellaneous Considerations. In selecting his colleagues, the prime minister (at all events, when making up a regular party ministry) works under still other practical limitations. One of them is the well-established principle that surviving members of past ministries of the party, in so far as they are in active public life and desirous of appointment, shall be given preferential consideration. There are always a good many of these veterans of the Front Opposition Bench, and as a rule they want to get back into office. At any rate, they would be offended if not given an opportunity to do so when their party returns to power. Then there are the young men of the party who have made reputations for themselves in Parliament, and consequently have claims to recognition. A certain number of them must be taken care of. After all, the party will need leaders in years to come—men who have had long experience in official life—and its ministerial personnel must be continuously recruited from the ranks. Geographical distribution is of less concern than in the United States and Canada, yet cannot be entirely ignored. Different wings of the party, too, must be given representation; disaffected elements must be placated. Social, economic, and religious groupings throughout the nation must be borne in mind. Other things

[1] R. Muir, *How Britain Is Governed* (3rd ed.), 85.

being equal, also, men must be chosen who are good debaters, able platform speakers, and popular with the electorate.[1]

Distribution of Posts among the Ministers. By no means the smallest difficulty is that of assigning the ministers to individual posts in a reasonably appropriate way, and so that all will be at least moderately satisfied. Until a decade or so ago, the first question was as to the post which the prime minister himself should occupy. The premiership as such being formerly unrecognized by law, the incumbent could draw a salary only by virtue of occupying an office which was duly recognized and salaried; and such an office—carrying dignity and prestige, but entailing little or no administrative work—was usually found in the first lordship of the treasury. Lord Salisbury's keen interest in international affairs led him, when prime minister in 1887-92, to assume the heavy burden of the Foreign Office; and Ramsay MacDonald occupied the same post during his first premiership (in 1924), partly because of the paramount importance of international affairs at the time, and partly because he had a wider acquaintance abroad and was better versed in diplomatic usage than any of his colleagues. With these exceptions, however, nearly all prime ministers in the past half-century have taken for themselves the treasury post mentioned.[2] Nowadays, it is assumed, and in effect required by law, that this shall be the practice; because, in prescribing a new salary scale (and incidentally giving the prime-ministership legal recognition), the Ministers of the Crown Act of 1937 specified that a salary of £10,000 be paid "to the person who is prime minister and first lord of the treasury."[3] So appropriate, as well as practically advantageous, is the prime minister's tenure of the first lordship that the two positions have thus been definitely tied together.[4]

There remains, however, the task of fitting the persons chosen as ministers into the places to be filled, entailing as one of its most

[1] The pressure from aspirants is such that Lord Salisbury, when on one occasion engaged in making up a ministry, was heard to say of the principal Conservative club in London that it resembled nothing so much as "the Zoological Gardens at feeding-time."

[2] On two occasions, Gladstone combined the chancellorship of the exchequer with the prime-ministership, as did also Stanley Baldwin for a few months in 1923.

[3] Under terms of the same statute, other principal ministers received £5,000 a year and lesser ones £3,000. Recent legislation provided £5,000 for ministers heading departments. But in 1952 temporary reductions were announced by the prime minister.

[4] A prime minister may, however, take not only the first lordship but some other ministerial post as well. As indicated above, Winston Churchill, during World War II, held the additional position of minister of defense, as Clement Attlee also did for about a year in 1945–46.

troublesome aspects, of course, decisions as to who are and who are not to have posts regarded as carrying a right to sit in the cabinet; and never is this job an easy one. Two or more men may want, and have equally good claim to, the same position; some may insist upon posts for which the prime minister does not consider them well adapted; some, on the other hand, may be reluctant to take places of specially arduous or hazardous character for which they have been ticketed; some, when offered the only thing that is left for them, may refuse in language that will leave the harassed premier, as Gladstone once remarked, "stunned and out of breath." In the expressive simile of Lowell, the prime minister's task is "like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together." [1] He will have to display much patience and tact, often in the end subordinating his own preferences to the inclinations and susceptibilities of his future colleagues.[2]

Formal Appointment and Announcement. When the list of ministers is finally completed, or at least substantially so, the prime minister submits it to the king, by whom the formal appointments are made; and an announcement forthwith appears in the official publicity organ of the government, the *London Gazette,* to the effect that the persons listed have been chosen by the crown to occupy the posts with which their names are bracketed. Formerly, there was no mention of the cabinet; for the cabinet was unknown to the law, and membership in it came merely by informal invitation. The logic of the political situation was, however, usually so plain that enterprising gentlemen of the press could pretty well guess in advance who the members of the cabinet were going to be and in what particular office this statesman and that would find his chance to serve the country. Nowadays it should be noted that only the ministers without portfolio who are to sit in the cabinet are so announced in the *Gazette.*[3]

[1] *Op. cit.*, I, 57. Cf. M. MacDonagh, *Book of Parliament,* 148–183. On the ministers as amateurs, see pp. 135 137 below.

[2] It is possible to leave a minister very literally "without portfolio," *i.e.,* without assignment to any specific post. Except in war-time, however, this is rarely done.

[3] The process of making up a ministry and cabinet is described at length, with a wealth of historical illustrations, in W. I. Jennings, *Cabinet Government* (rev. ed., New York, 1951), Chaps. ii–iii. Much interesting information will be found in C. Bigham, *The Prime Ministers of Britain, 1721–1921* (London, 1922). A complete list of prime ministers since 1721 is printed in various issues of the *Const. Year Book*: also of ministries since 1824, with the principal members of each.

CHAPTER V



THE CABINET IN ACTION

MAJOR FUNCTIONS

Pivotal Position. Writers on the English constitution have employed many colorful phrases to suggest the pivotal position occupied by the cabinet. Bagehot refers to this inner ministerial circle as "the hyphen that joins, the buckle that binds, the executive and legislative departments together;" Lowell calls it "the keystone of the political arch;" Sir John Marriott terms it "the pivot round which the whole political machinery revolves;" Ramsay Muir speaks of it as "the steering-wheel of the ship of state," and L. S. Amery as "the central directing instrument of government." It is true that Gladstone found the center of the British system—"the solar orb round which the other bodies revolve"—in the House of Commons, and that Sidney and Beatrice Webb affirmed of the country's government that it is in fact "carried on, not by the cabinet, nor even by the individual ministers, but by the civil service." Nevertheless the cabinet has gained sharply in comparison with the House of Commons since Gladstone wrote; and notwithstanding that the civil service is better appreciated today than it used to be, the central place in the political picture is unquestionably held by the group of cabinet ministers, even as in the United States by the president.[1]

The Cabinet and Executive Power. To start with, the cabinet is the principal custodian of executive power and coördinator of administrative action. The wording of this statement is, however, to be

[1] The fact may nevertheless be noted that the dividing line between cabinet ministers and other ministers is nowadays less distinct than it used to be. One reason is the growing practice of inviting non-cabinet ministers to attend and take part in cabinet meetings when matters relating to their departments are under consideration.

observed: it is not asserted that the cabinet *is* the executive. No one studying the national government of the United States need have any trouble over identifying the executive in that system. "The executive power," says the Constitution plainly, "shall be vested in a president . . .;" [1] and this power is exercised by the president both directly and through heads of departments and a multitude of subordinate officials. In Britain, the situation is more complicated. Historically, and still in legal form, the executive is the king. As we have seen, however, the personal king has given way to the more impersonal crown; and it would be true enough today to say that the crown is the executive. But the crown is rather a concept than a tangible authority which, as such, can execute. And we must look beyond the abstraction to discover who it is that, in the day-to-day business of government, acts for the crown and in its name. As has already appeared, this is the ministers. Even yet, however, there is difficulty; because the ministers—60 or more in number—do nothing collectively —do not consider policy, prepare orders, or even so much as hold meetings. Yet once again the difficulty vanishes when we recall that while the ministers, in full number, do none of these things, the *cabinet* ministers do all of them and more.

The search for the point at which the exercise of executive power is directed and controlled therefore comes to an end when the cabinet is reached. Once more, however, the words employed are chosen carefully; for the supreme executive functions of directing officials and issuing orders do not inhere in the cabinet in the same immediate manner in which they inhere in the American president. Speaking strictly, the cabinet cannot, of its own authority, *direct* anybody or *order* anything. But once more apparent impediments melt away in practice. In carrying on the work of their respective departments or other establishments, ministers, whether in the cabinet or not, respect and enforce cabinet decisions and policies (relating to such departments) quite as unfailingly as if cast in the form of orders; failure to do so would have disciplinary consequences, perhaps not stopping short of removal. Moreover, if the cabinet desires to give effect to some more general line of policy—even a declaration of war—all that it need do is call into play the device of king-in-council —all, that is, unless the objective is of such a nature that parliamentary action is required, in which event the cabinet will have to go to

[1] Art. II, § 1, cl. 1.

the two houses in quest of the necessary statute. The upshot, then, is that, even though legal theory forbids simply setting down the cabinet as the executive in the unqualified manner in which this can be done for the president of the United States, the threads of executive authority are in or pass through its hands—with some grip upon a few of them still in the hands of the king. Historically and legally, the executive may, truly enough, be the sovereign—or as some might say, the crown. But the chief instrumentality through which the sovereign or crown acts in framing national policy, seeing that such policy is carried into effect, and coördinating the activities of the various departments and services is the cabinet ministers.

The Cabinet and Legislation. A hundred years ago or more, the cabinet, indeed, drew its importance mainly from its indirect though substantial executive functions. Since 1832, however, it has come to have so much to do with legislation that a careful observer has been moved to remark, without a great deal of exaggeration, that nowadays it is the cabinet that legislates, with the advice and consent of Parliament. Cabinet ministers prepare the Speech from the Throne in which the state of the nation is reviewed and a program of legislation set forth at the opening of every parliamentary session; they initiate, introduce, explain, and urge the adoption of legislative measures upon all manner of subjects; even though bills may be introduced in both houses by members who are not ministers, measures of a controversial nature, or important for other reasons, rarely receive attention unless they have originated with, or at all events have won the support of, the cabinet.[1] For weeks at a stretch, even under normal conditions, the cabinet preëmpts every working moment of the House of Commons in order to make sure that its legislative program will, so far as time will permit, be translated into law.[2] In short, the cabinet ministers formulate policies, make decisions, and (with the aid of the Parliamentary Counsel to the Treasury [3]) draft bills on all significant matters which in their judgment require legislative attention, asking of Parliament only that it give effect to such

[1] In both 1952 and 1953, the government allotted 20 Fridays to private-member bills: 10 for their introduction and 10 for motions. Members have to ballot long in advance for the privilege of bringing in bills, and only about one in 10 is ever successful; even then, available time is so scant that, if there is any strong opposition, second reading is rarely reached.

[2] From the beginning of World War II, the cabinet for years took the entire time of the House for government business.

[3] See p. 270 below.

decisions and policies by considering them and taking the necessary votes. Parliament is strong in criticism, but in initiative it is weak.

"Wheels within Wheels." Not infrequently, the cabinet is referred to as a committee of Parliament—a committee chosen, as Bagehot bluntly put it, to rule the nation. It is, of course, not a committee in any literal sense—not even a committee of the Privy Council, although historically it is more nearly that than a committee of Parliament.[1] Parliament does not appoint it; and, far from having bills referred to it like an ordinary committee, it is itself the originator, or at all events the sponsor, of nearly all bills that assume much public importance. Nevertheless, its members are drawn from the membership of Parliament, and they constitute a sort of parliamentary inner circle recognized and accepted as an agency of leadership —endowed, it is true, with large initiative, but yet deriving its power primarily from its parliamentary setting or connection. Leaving out of account periods of coalition, which have been numerous and protracted during the past three decades, the basic feature of the system is rule by party majority; and within the party majority the power that governs—in party matters and in public affairs alike—is the group of leaders forming the cabinet. As Lowell puts it, the governmental machinery "is one of wheels within wheels; the outside ring consisting of the party that has a majority in the House of Commons; the next ring being the ministry, which contains the men who are most active within that party; and the smallest of all being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control." [2]

LEADERSHIP AND AUTHORITY OF THE PRIME MINISTER

Informal Basis. Notwithstanding that for two hundred years the prime minister has stood out head and shoulders above his cabinet colleagues (not always in ability, but at least in power and prestige), there never has been any legally established *office* of prime minister at all; even today, the powers and functions going with the title are nowhere formally defined, being instead simply recognized and ac-

[1] If one *must* ascribe to it the character of a committee, it comes closest to being a committee of the party in power, although of course it is not even that in any formal sense.

[2] *Government of England*, I, 56.

cepted for what they are after two centuries of historical development. To be sure, a certain legal footing was conferred when, in 1937, a Ministers of the Crown Act, in fixing salaries, at least took note of there *being* a prime minister. Even under terms of this measure, however, a salary was assigned the top minister only in conjunction with the first lordship of the treasury; and since for a long time he had, as a rule, occupied the latter post and received a salary by virtue of it, the legislation merely regularized an existing practice, tying the two positions together by law and, in doing so, giving the premiership a statutory recognition previously lacking. Basically, it is as true today as when Gladstone said it, that nowhere has so small a substance cast so large a shadow.[1]

Primacy within the Ministerial Circle. As indicating that the prime minister, while having unique functions, is after all only one of a group, and not a different order of political being, a phrase traditionally applied to him in the past has been *primus inter pares*, "first among equals." A contemporary English writer makes the valid point, however, that such a characterization as applied to the working head of a state "endowed with such a plentitude of power as no other constitutional ruler in the world possesses, not even the president of the United States," [2] is "nonsense"; and if one must have a Latin phrase, a better one no doubt is Sir William Vernon Harcourt's *inter stellas luna minores*, "a moon among lesser stars"—although even this may not really be strong enough. For, within ministry and cabinet alike, the prime minister is the key man, even if not always the outstanding personality. He has put the other ministers where they are. He exercises a general watchfulness and coördinating influence over their activities.[3] He presides at cabinet meetings, and counsels as continuously as time permits with individual members, encouraging, admonishing, advising, and instructing. He irons out difficulties arising between ministers or departments. If necessary, he can require of his colleagues that they accept his views, with the alternative of his resignation or theirs,[4] for it is strategically essential

[1] *Gleanings of Past Years*, I, 244.

[2] Ramsay Muir, *How Britain Is Governed* (3rd rev. ed., 1935), 83.

[3] Prime Minister Neville Chamberlain regarded this function so jealously that when, in the early stages of World War II demand arose for more and better coördination of the war effort, he resented it as being "a challenge to the position of the prime minister."

[4] A rather extreme illustration is afforded by the circumstances of the break-up of the Labor government in August, 1931. See p. 305 below. On this occasion, Prime

that the cabinet, however divided in its opinions behind closed doors, present a solid front to Parliament and the world.[1] Indeed, he can, and as we have seen occasionally does, request and secure from the sovereign the removal of a minister for insubordination or indiscretion. He is expected to be the leader of the ministerial group; as its chief spokesman, he will have to bear the brunt of attacks made upon it; and it is logical that his authority shall be disciplinary as well as merely moral. It goes without saying, however, that in all this he must not be overbearing, or harsh, or unfair, or tactless. His government will at best have enough obstacles to overcome; its solidarity must not be jeopardized or its morale impaired by grudges or injured feelings within its ranks.[2]

Relations with the Sovereign. The prime minister is the principal—and at times the only—channel of communication between the cabinet and the sovereign. To be sure, every minister who is head of a department has a legal right of access to the sovereign; and on more than one occasion Queen Victoria had dealings with individual ministers—and even with favorite statesmen outside the ministry—behind the back of a chief (notably Gladstone) whom she disliked.

Minister MacDonald, finding a substantial majority of his colleagues opposed to financial measures which he deemed imperative, handed in the resignation of all of them in order to clear the way for the formation of a new government.

[1] "It doesn't much matter what we say," once remarked Lord Melbourne to his cabinet associates somewhat cynically, "but we must all say the same thing."

[2] The question of the extent to which the prime minister may impose his personal will upon his colleagues as a group is more or less an open one, although the general principle that under all ordinary circumstances he shall not override their wishes is clear. There have been instances in which the prime minister publicly announced an intention to ask for a dissolution of Parliament when the cabinet was not agreed upon such a step. Stanley Baldwin, for example, did this in 1923. Most precedents indicate, however, that such a decision must be reached by the cabinet as a whole and not by the prime minister alone—although it is a matter of record that Baldwin did not formally consult the cabinet before asking the king for a dissolution in 1935, nor Churchill in the case of that in 1945. Prime ministers who conspicuously dominated their colleagues include Walpole, the Pitts, Peel, Disraeli, Gladstone (more, however, in his earlier ministries than his later ones), and Churchill. Perhaps Baldwin and Neville Chamberlain should be added to the list. Most prominent among less dominant ones are Lord Salisbury and Balfour. On the prime minister and his colleagues, see A. B. Keith, *The British Cabinet System, 1830-1938*, Chap. iii.

A dramatic illustration of the prime minister's "primacy" (although hardly typical) was afforded by Baldwin's handling of the situation culminating in the abdication of Edward VIII in 1936. In the midst of a genuine crisis, the cabinet as a whole was consulted only casually and sometimes only after important decisions had been reached. For a full account, see W. I. Jennings, "The Abdication of Edward VIII," *Politica*, Mar., 1937.

Nowadays, such practices—regarded, indeed, as unconstitutional—have been entirely discontinued; and with rare exceptions the right of individual access in connection with even purely departmental matters is waived in favor of the prime minister, to the end that he may be able to put government business before the sovereign in a coherent and systematic manner. Frequent conferences at Buckingham Palace and elsewhere give the prime minister opportunity to report on the progress of discussions in the cabinet and of debate in Parliament; although the newer practice of sending the sovereign copies of the minutes of all cabinet meetings reduces the burden of oral report. No longer is the prime minister expected, as he was at times by Queen Victoria, to communicate with the sovereign daily by letter. A premier who should grow lax in the matter of consultations and reports would still be likely, however, to be reminded that, as the Queen so often insisted, one of the sovereign's surviving rights is that of full and prompt information.

Rôle in Parliament. In the branch of Parliament of which he is a member, the prime minister also represents the cabinet as a whole in a sense not true of any of his colleagues. He is looked to for the most authoritative statements and explanations of the government's policy; he speaks on most important bills; and at crucial stages he commonly carries the chief burden of debate from the government benches. A prime minister who belongs to the House of Commons is, of course, more advantageously situated than one who sits in the House of Lords. The latter must trust a lieutenant to represent him and carry out his instructions in the place where the great legislative battles are fought; and this lieutenant, the government leader in the House, tends strongly to draw into his own hands a part of the authority belonging to the cabinet's actual head. During Lord Salisbury's last premiership, this difficulty was largely obviated by the fact that the government leader in the lower chamber was the prime minister's own nephew, Arthur J. Balfour. But, as Gladstone once wrote, "the overweight of the House of Commons is apt, other things being equal, to bring its leader inconveniently near in power to a prime minister who is a peer." [1] It is, indeed, exceedingly doubtful whether there will ever again be a prime minister without a seat in the popular branch.

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

The Prime Minister's Heavy Load. It goes without saying that the prime minister is hard-worked and always pressed for time. He must scan multitudes of papers, carry on or supervise heavy correspondence, receive persons seeking interviews on matters of public or private concern, hold cabinet meetings, confer with individual ministers, visit and submit reports to the sovereign, and—as if that were not enough—spend much of almost every day when Parliament is in session either on the Treasury Bench or in his private room behind the speaker's chair, holding himself in constant readiness to answer questions, to decide points of tactical procedure put up to him by his lieutenants, and to plunge into debate in defense of some government proposal or policy. As leader of his party, too, he must devote steady attention to its affairs. All in all, it is small wonder that the shoulders of many a prime minister have drooped under the burden.

The British Prime Ministership and the American Presidency Compared. The office with which the British prime-ministership is most frequently compared is the presidency of the United States; and undoubtedly there are significant resemblances, if also weighty differences. Both are positions of topmost power in nations of foremost rank. Both operate in great democracies, under responsibility to the public will. Both are, in effect, filled by popular election, although in each instance the incumbent reaches his post by a roundabout route—the president by being formally designated by electors whom the people have chosen, the prime minister by attaining a commanding position in—usually the leadership of—a party having a parliamentary majority. Both positions carry powers which, tremendous as they are in ordinary times, mount to still higher levels in war or other emergency. The president, however, has a fixed term, while the prime minister does not. The former's powers are more definitely prescribed and limited by constitutional provisions. And while, in a general way, he is head of the national government as a whole, he, in a stricter sense, is head only of one of three great coördinate branches into which that government is divided. Sophomoric debaters may take delight in trying to prove that the prime minister (or the president, as the case may be) is the more powerful of the two. But serious students will recognize the effort's futility; for the powers of each are greater than those of the other at some points and in some periods, and also heavily dependent not only upon the nature of the

times but upon the temperaments and techniques of the personalities involved.[1]

Some Examples. What can be made of both the presidency and the prime ministership has been abundantly demonstrated in recent periods of depression and war. Americans well know what the presidency meant in the hands of Franklin D. Roosevelt from his accession in 1933 until his death 12 years later. During the tenure, after the middle thirties, of Neville Chamberlain, and especially of Winston Churchill, the prime ministership of Britain meant, if anything, even more. The famous (or infamous) appeasement policy which, instead of averting war, actually invited it was Chamberlain's policy; when the prime minister made his memorable visit to Munich in 1938, he did not so much as take the Foreign Secretary along. And from 1940 until the general election of 1945, Churchill, as prime minister, enjoyed a personal hold over his cabinet associates, the members of Parliament, and the country at large which finds few parallels in the history of Britain or any other country. He defined war aims and foreign policies; in conjunction with the American and Russian leaders, he controlled military strategy; he fixed the conditions under which propaganda might operate; he determined policies relating to India; he controlled appointments, wartime legislation, and administrative reorganizations. "It is," wrote a near-by observer, "improbable that any prime minister has been so fully the master of his forces, least of all in a coalition government. . . . He is the master

[1] On the question of whether British prime ministers have a better record for statesmanlike qualities than American presidents, one can find a wide variety of opinion. Viewing the presidents who had held office down to the time when he wrote, some 75 years ago, James (later Lord) Bryce expressed surprise at the mediocrity of many of the 21 and regarded only six as really outstanding. *The American Commonwealth* (4th ed., New York, 1910), I, Chap. viii. More recently, Harold J. Laski, well acquainted with both British and American politics, but writing from a British background, has asserted it as a "startling" fact that out of 14 presidents from the Civil War to the date of writing (about 1938) only four were of the caliber of British prime ministers—all of whom except one since 1868 he considered to have been persons of exceptional intellectual gifts. *Parliamentary Government in England* (New York, 1938), 202. On the other hand, Professor William B. Munro, who can point to Canadian birth as well as citizenship for many years in the United States, maintains that British prime ministers have had their share of mediocrity, hardly more than half of the number from Walpole to Chamberlain meeting the standards which Lord Bryce applied in the case of the American presidency. *The Governments of Europe* (rev. ed., New York, 1938), 87-88. Manifestly, conclusions depend upon who is drawing them and, while interesting, have no unchallengeable validity. Cf. S. Herbert, "The Premiership and the Presidency," *Economica*, June, 1926. For sketches of a lengthy series of British prime ministers, see A. Bigham, *The Prime Ministers of Britain* (New York, 1922), and F. J. C. Hearnshaw, *British Prime Ministers of the Nineteenth Century* (London, 1930).

of an organization in which he has important subordinates, but quite certainly no equal."[1] Crisis government, of course, inevitably exalts any agency best situated for supplying vigorous and effective direction of affairs. In the United States, this means the president; in Britain, the prime minister. In both instances, however, there is genuine primacy in ordinary times as well. In general, the office of prime minister is, as a former incumbent once wrote, "what its holder chooses to make it."[2] No less may be said also of the presidency.

✓ CABINET COMMITTEES, MEETINGS, AND RECORDS

Committees. Notwithstanding what was said above on the matter, the cabinet is in effect, although certainly not in form, a sort of committee—from one point of view, it may be regarded as a committee of the Privy Council; from another, it may be considered a committee of Parliament, or perhaps more accurately of the parliamentary majority. And, in turn, it has at times made a good deal of use of committees formed from among its members, with occasionally additional persons (especially ministers in charge of departments not represented in the cabinet) drawn from the outside. To be sure, there is no hard-and-fast structure of cabinet committee organization; every incoming cabinet can and indeed frequently does reshape the arrangements which it finds in operation and can, of course, continue reshaping them as it desires and experience indicates. The list of cabinet committees is never, strange as it may seem to an American student of government, made public. However, it is known that under the Labor government which held office during the period following World War II, over 20 standing cabinet committees were more or less active. The Conservative government overhauled the standing committees in 1951 to some extent because of the provision made for "overlords" or ministers to coördinate large areas. Among the standing committees retained were the following: (1) a legislation committee, (2) a defense committee, (3) an economic policy committee, and (4) a home-affairs committee. *Ad hoc* committees perhaps were given a larger rôle under this reorganization and a considerable amount of responsibility was delegated to the many interdepartmental

[1] H. J. Laski, in *Polit. Quar.*, Jan.-Mar., 1942, pp. 57–58. A full picture of a British prime minister in action in wartime is presented in Winston Churchill's memoirs, beginning with *The Second World War: I, The Gathering Storm* (Boston, 1948).

[2] Lord Oxford and Asquith, *Fifty Years of Parliament* (Boston, 1926), II, 185.

committees below cabinet level. As a rule, committees consist of three or four cabinet members most interested in, or best qualified with respect to, the subject to be studied. But heads of departments concerned (whether in the cabinet or not) may attend meetings, and it is expected that information and advice will be sought from administrative experts, from advisory groups outside of the government,[1] and in fact from any available source whatsoever; indeed, the committees at times become the principal medium through which the knowledge and experience of administrators—especially when there is interdepartmental overlapping of functions on a subject like housing—is brought to bear upon the planning of legislative action. Whether permanent or temporary, all committees are only advisory, in the sense that they can merely investigate and report. A preoccupied and less informed cabinet is not unlikely, however, to adopt their recommendations without much hesitation or discussion, particularly if offered with some approach to unanimity.[2] Just as the use of standing committees by the House of Commons was once deplored as tending to cut down the consideration of business by the body as a whole, so cabinet committees are opposed by some members on the ground that they weaken collective counsel; and in fact it was probably partly for this reason that the Conservative government, as noted above, overhauled the system of standing committees in 1951.

Meetings. When Parliament is in session, regular cabinet meetings are ordinarily scheduled once each week, usually in the morning so

[1] See pp. 124–126 below.

[2] From 1904 until World War II, an Advisory Committee of Imperial Defense of which one frequently heard was not technically a committee of the cabinet, yet functioned substantially as such. Embracing the prime minister (or a substitute named by him) as *ex-officio* chairman and such other persons as he chose to designate—usually the political and technical heads of the several defense services, the Chancellor of the Exchequer, and the secretaries of state for foreign affairs, the colonies, and India, and also representatives of the dominions as occasion required—this committee and its numerous subcommittees investigated, reported, and made recommendations upon all defense problems of the Empire and Commonwealth. See A. B. Keith, *The British Cabinet System*, 1830–1938, 139–147. Under a reorganization announced in 1946, the Committee, however, gave way to a regular standing cabinet committee on defense, with the prime minister as chairman and the minister of defense deputizing for him "when international relations are stable"– although part of the time the prime minister and minister of defense have been the same person. The committee on defense was the only cabinet committee on which full information was given out. An unusually valuable discussion of the cabinet committee system will be found in D. N. Chester, "The Central Machinery of Economic Policy," in *Lessons of the British War Economy* (London, 1951).

as not to conflict with the sittings of the houses. Special meetings may be called by the prime minister; indeed, in tense periods the members are likely to be brought together once a day or even oftener, perhaps on Sundays, and even in the dead of night. When, however, Parliament has been prorogued (normally between August and October), meetings—unless in critical times—are at lengthier intervals, at the prime minister's discretion. In earlier days there was no regular meeting place. "I see them [the cabinet ministers]," wrote Algernon West early in the century, "meeting everywhere." [1] Nowadays, the meetings are most commonly held in the famous cabinet room of the prime minister's official residence, No. 10 Downing Street,[2] although sometimes in his room back of the speaker's chair in the House of Commons, and occasionally at the Foreign Office, or, indeed, at any other convenient place. The proceedings are informal, although smoking is still prohibited. The Labor government of 1924 permitted its members to "light up" on such occasions, but the non-smoking rule has again been imposed. A rule against carrying on side conversation has to be got around by passing notes, schoolboy fashion, under the table.[3] The prime minister presides and of course guides the deliberations, even to determining when they shall be brought to a close. But there are no rules of order: there is no fixed seating or quorum; speeches give way to discussion of a conversational nature in which everyone gets a chance to participate, although, as would be surmised, a few members of superior talent, experience, and personality are likely to dominate.[4] Attempt is made to get decisions, not by show of hands (although on rare occasions a formal vote is taken), but by the give-and-take method of talking around a subject until a view emerges on which there can be substantial agreement. "Compromise," remarks Dr. Jennings, "is the

[1] "No. 10 Downing Street," *Cornhill Magazine*, Jan., 1904.

[2] More strictly, the official residence of the First Lord of the Treasury, bestowed as such upon Sir Robert Walpole by George II. The old house, small and dark, surprises visitors by its drabness both of exterior and interior.

[3] Tea and biscuits are sometimes served; indeed, Mrs. Gladstone used to defy the rule against admission of outsiders by coming in with a large pot of tea for her lord and master.

[4] "In most governments," testifies a former prime minister, "there are four or five outstanding figures who . . . constitute the inner council which give 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." D. Lloyd George, *War Memoirs*, III, 1042. Sometimes (as under the second Labor government in 1930) such an inner group goes so far as to hold regular meetings supplementary to those of the cabinet as a whole.

first and last order of the day." At all events, it is left, as Lord Oxford and Asquith tells us, to the prime minister to "collect and interpret the general sense of his colleagues."

In addition to the spirit of compromise, a good many circumstances contribute to expediting the transaction of business. To begin with, the cabinet insists that no matters shall be brought to it except those of first-rate importance; that everything shall have been discussed previously by the departments concerned; and that nothing be referred to the cabinet that can be settled in such discussion. In the second place, there is the device of the "cabinet box," passed from office to office with memoranda or proposals that may be assented to unanimously without group discussion at all. Time is economized also by increased use of committees, whose reports may often be adopted with assurance that the subject has been considered carefully, but without much talk in cabinet meeting. And since the rise of the cabinet secretariat (presently to be commented upon), pertinent documents on controversial matters are circulated in advance and agenda or programs of business prepared, facilitating progress when the ministers assemble. From streamlining achieved in these and other ways, it results that in normal times meetings rarely or never run beyond two hours. The cabinet may, as is often contended, be overworked, but not because of time spent in meetings.[1]

Privacy of Proceedings. Nobody has better reason than a group of cabinet ministers to know that in unity there is strength. At all events, they are well aware that, exposed as they are to a steady flow of inquiry and criticism in the House of Commons, any lack of har-

[1] The fullest and most readable account of British cabinet meetings—built up largely from intensive use of autobiographies and similar materials—is W. Yu, *The English Cabinet System* (London, 1939), Chap. v. W. I. Jennings, *Cabinet Government*, Chap. ix, is also informing; and a concrete description of a meeting by former Premier Asquith (later Lord Oxford and Asquith) will be found quoted in N. L. Hill and H. W. Stoke, *op. cit.* (1935 ed.), 52.

The degree to which the cabinet is overworked is a matter of difference of opinion. Even in the simpler days of a generation ago, Beatrice Webb considered the primary evil of Britain's government an overtaxed cabinet—"overtaxed beyond human capacity for thinking and taking decisive actions" *Fabian Tract*, No. 236, p. 3. Professor Laski, on the other hand, considers the cabinet's burden no greater "than will fall upon the executive heads of any large undertaking—the London County Council, for example." *Parliamentary Government in England*, 211-212. Cabinet ministers responsible for the administration of great departments or services, *e.g.*, the Chancellor of the Exchequer or the Secretary for Foreign Affairs, are bound to be weighed down with arduous duties; others differently situated may have a comparatively easy existence. As a whole, the cabinet is burdened primarily with responsibility for thinking, planning, deciding, rather than with paper work and other routine.

mony, or even an appearance of such, will soon rise to plague them. Practical circumstances that help the group maintain at least outward harmony include common party loyalty [1] and common reluctance to push dissent to the point of risking loss of office. In addition, two other features or devices help in presenting a solid front. One—already considered—is the leadership and disciplinary authority of the prime minister. The other is the privacy of proceedings. No one needs to be told that a group of men brought together to agree upon and carry out a common policy in behalf of a large and varied constituency will be more likely to succeed if their inevitable clashes of opinion are not published to the world. It would not be expected that such a body as the British cabinet would deliberate in public; no group of men charged with duties of similarly delicate and solemn character does so. But not only are reporters and other outsiders excluded (except the cabinet secretary or his deputy and persons occasionally admitted temporarily to give information); the subjects discussed, the opinions voiced, and the conclusions arrived at are divulged only in so far, and at such time, as is deemed expedient. In other words, the cabinet not only deliberates privately, but it throws a veil of secrecy over its proceedings. Following a cabinet meeting, the prime minister—or, in rare instances, some other authorized spokesman—may give the press some indication of what has happened, or may make statements in Parliament from which a good deal can be deduced. Indeed much may be told freely. But on the other hand the veil may not be lifted at all; and in any event remarks and situations that would tend to disclose serious differences of opinion will almost always be kept covered up.[2] One is obliged to add, however, that some cabinet ministers are less discreet in conversation than others, and that, in one way or another, enterprising reporters usually contrive to know pretty well, and tell the public, what is going on.[3]

[1] Except in the case of coalition cabinets. On the difficulties which these encounter, see W. I. Jennings, *Cabinet Government*, 205-207.

[2] Internal friction may, of course, be brought to light by the dismissal of a minister or by a minister resigning because he cannot go along with his colleagues (see p. 103, note 4 below). But such occurrences are rare.

[3] A great deal of information about what has taken place in cabinet meetings *eventually* becomes available through autobiographies and memoirs published by former cabinet members—often, however, impaired in value by the haziness or other untrustworthiness of the reminiscences upon which the writer relies, and also by "editing" to prevent offending susceptibilities. Noteworthy examples are Gladstone's *Gleanings of Past Years*, Lord Morley's *Recollections* (London, 1917), Lord

The Secretariat—Cabinet Records. There is, further, the matter of cabinet agenda and records—which brings us to an important piece of auxiliary machinery dating from within the past 40 years, *i.e.,* the cabinet secretariat. Until 1916, cabinet meetings were preceded by the preparation of no formal agenda, or order of business. Members desiring to raise matters for decision usually (but not always) circulated memoranda concerning them in advance, at all events told the prime minister of their intentions. The only planned program for a sitting, however, was such as the prime minister himself more or less hastily jotted down before meeting his colleagues. Equally deficient was the preservation of records of cabinet proceedings. In the early nineteenth century, it was not uncommon for brief memoranda, or minutes, to be written out and placed on file, at least temporarily. The practice, however, died out, and for a long time no clerk was allowed to be present at meetings and no records were kept. For knowledge of what had been done, ministers had to rely upon their own or their colleagues' sometimes untrustworthy memories, supplemented at times by privately kept notes. It was, indeed —so former Prime Minister Asquith stated in the House of Commons in 1916—"the inflexible, unwritten rule of the cabinet that no member should take any note or record of the proceedings except the prime minister"; and he went on to explain that the prime minister did so only "for the purpose . . . of sending his letter to the king." [1]

Mr. Asquith's statement was by way of interpolation in a speech of his recent successor in the prime-ministership, David Lloyd George; and what Mr. Lloyd George was divulging was that, along with the creation of a new "war cabinet," it had been decided to introduce arrangements for keeping a complete official record of cabinet decisions. The need for something of the kind had been felt before. But creation of a war cabinet of only five members, requiring many actions taken to be communicated to a lengthy list of important ministers not included, forced the issue; and the upshot was the introduction of a new official, a cabinet secretary, appointed by the prime minister and charged with preparing agenda for meetings, keeping minutes, and circulating full information among officials entitled to receive it. Designed only for the duration of the war

Oxford and Asquith's *Fifty Years of British Parliament,* and his *Memoirs and Reflections* (London, 1928).

[1] Lord Salisbury considered the freer interchange of opinion supposedly resulting from no records being kept "a fundamental requirement of the cabinet system."

cabinet, the arrangement proved so useful that in 1919 steps were taken to perpetuate it; and nowadays the secretariat, although sometimes criticized for having introduced more formalism into cabinet proceedings, is regarded as an indispensable cabinet adjunct. Cabinet proceedings continue no less confidential than before. Instead of being treasured only in members' minds, however—or at best in fragmentary notes—they are preserved in closely guarded, systematic minutes (not, to be sure, recording discussions verbatim, but summarizing them, reproducing or abstracting documents, and reporting decisions exactly and in full), from which they may some day be exhumed by the historian for the enlightenment of an interested world.[1]

THE CABINET AND THE PRINCIPLE OF MINISTERIAL RESPONSIBILITY

With a few formal and negligible exceptions, every act of the crown must be countersigned by at least one minister, who thereby assumes responsibility for it. But what does it mean to be "responsible"? Two things, chiefly: (1) liability before a court of law in case an act is alleged to be illegal, and (2) accountability to the House of Commons—on political, as distinguished from judicial, lines—for the reasonableness and desirability of what is done. The first form of responsibility is a matter of law—unwritten, indeed (except as embodied in certain court decisions), but nevertheless law; the second is one of the great conventions which has made the constitutional system what it is. From the principle that ministers are answerable to the popular branch of Parliament for every policy that they embark upon, and for every action that they take, has flowed the cabinet, or parliamentary, system, which, in turn, is one of Britain's primary contributions to modern political practice.

Responsibility Originally Individual. Before the days of the cabinet system, ministerial responsibility was individual rather than collective; and where it involves only legal liability for acts per-

[1] J. R. Starr, "The English Cabinet Secretariat," *Amer. Polit. Sci. Rev.*, May, 1928. Sir Maurice (later Lord) Hankey was the first cabinet secretary, holding the post for many years, in addition to an earlier established secretaryship of the Committee of Imperial Defense: and a first-hand discussion of the secretariat will be found in his *Diplomacy by Conference* (New York, 1947), Chap. iii. A later cabinet secretary was Sir Edward Bridges, son of the poet Robert Bridges. The most significant changes in the secretariat in recent years have involved the establishment of a central statistical office and an economic section—although the functions of the latter have now been largely taken over by a Central Economic Planning staff and an Information Division in the Treasury.

formed, it still is so; a minister acting in an illegal manner may be proceeded against at law singly and subjected to penalty. For a good while after the cabinet became a recognized institution, responsibility to the House of Commons for policies and acts involving questions only of policy, and not of law, was also essentially individual. In the old days, ministers had sometimes been impeached and removed from office by parliamentary action because of their policies, even though admittedly legal; that, indeed, was the only way of getting rid of them if the king refused to dismiss them. In the eighteenth century, impeachment became superfluous and to all intents and purposes obsolete, because the new relation of ministers and Parliament gradually arrived at after 1689 presumed a continuous responsibility on the part of the former, grounded upon a sort of "gentlemen's agreement" to the effect that if a minister could not keep the respect and support of a House of Commons majority, he should have the good sense and common decency to resign. But even this responsibility was, for a good while, as has been said, only a personal, or individual, matter; a minister might incur opposition forcing him to vacate his post without necessarily dragging down the others.

But Becomes Collective. Under these conditions, there was, to be sure, a cabinet, but no "cabinet system"; for the essence of a cabinet system is a solidarity, a "common front," of the cabinet (indeed, of the entire ministry in a system like the English) such that the members pursue an agreed policy for which *all* accept responsibility and on which they stand or fall together. It was in the last quarter of the eighteenth century that Britain arrived at this final stage, the first ministry to bow as a body before a hostile House of Commons being that of Lord North in 1782. From this period onward, ministerial responsibility was not only individual but also collective, and three-quarters of a century have now passed since a cabinet minister retired singly because of a hostile parliamentary vote. This does not mean, of course, that no minister ever leaves office individually because of being under fire. In the first place, a minister may be dismissed by the king, on request of the prime minister, because of official indiscretion or misconduct: in 1922, E. S. Montague was in effect dismissed as secretary for India for making public an important state paper without consulting his colleagues; in 1936, Colonial Secretary J. H. Thomas resigned under pressure because of having betrayed budget secrets; and in 1947 a Labor Chancellor

of the Exchequer, Hugh Dalton, dropped out because of a similar indiscretion.[1] In the second place, a minister may have incurred so much public or parliamentary displeasure (or both) that he would very likely be visited with formal censure by the Commons and bring further embarrassment upon his colleagues if he did not forestall such action by retiring; in 1935, Foreign Secretary Samuel Hoare was at least "allowed" by the Baldwin cabinet to resign because of nation-wide disapproval of a proposal made by himself and Premier Laval of France that about half of Ethiopia be turned over to Italy with a view to ending the war then going on between the two states.[2] But the point is that when a minister—either because of his own actions or because of actions of a subordinate for which he is responsible—falls into such a predicament, he is not left by his colleagues merely to sink or swim while they look on from the distant shore. Either they jump in and push him under, or they haul him into their boat and accept his fate as their own; in other words, they repudiate him and throw him out before his troubles drag him down, or they rally to his support and make common cause with him. The latter course is pursued far more frequently than the former[3]—so much so that cabinet solidarity, and therefore collective responsibility, may normally be taken for granted. Behind closed doors, cabinet members may make wry faces because of men and measures which their position requires them to support in public.[4] But except in extreme cases

[1] Mr. Dalton's misstep consisted simply in unguardedly giving a reporter advance information about a budget, the information appearing in the reporter's newspaper fifteen minutes before the Chancellor rose in his place in the House of Commons to deliver his budget speech. In the Thomas case, the information conveyed enabled two of the minister's friends to save themselves some taxes. In the Dalton case, no harm was done; but the inflexible rule that no inkling of a budget's contents may be revealed until it is presented in the House of Commons was violated, and the offender considered it his duty to resign.

[2] Subsequent action by the cabinet showed that it really shared the Foreign Secretary's views, and in a few months he was back as First Lord of the Admiralty. For the time being, however, he was encouraged to make himself a scapegoat.

[3] There was such a case in 1943, when the Home Secretary, Herbert Morrison, stirred up a hornet's nest by releasing the British Fascist leader Oswald Mosley from detention. Prime Minister Churchill upheld the action, and the furor died away in a vote of confidence.

[4] If the situation grows intolerable, a member may, of course, voluntarily resign, as did Viscount Morley and John Burns in 1914 rather than agree to Great Britain becoming involved in World War I, and as did the Foreign Secretary, Anthony Eden, and the First Lord of the Admiralty, Alfred Duff Cooper, in 1938 when they could not approve or support the methods of Prime Minister Chamberlain and a majority of their colleagues in seeking settlements with Germany and Italy. A dissatisfied cabinet member must not make public the fact or the grounds of his

they will recognize and accept their clear obligation to sustain the appearance (even though it be an illusion) of full harmony and coördination within the cabinet circle.

Methods of Enforcing Ministerial Responsibility: 1. Questioning of Ministers. The responsibility of ministers can be asserted and enforced in a variety of ways. First of all, there is the familiar device of the "question" to which the period from 2:30 to 3:30 at every sitting is regularly allotted.[1] Subject to conditions, any member of the House of Commons may address queries, which are taken in strict order, actually or ostensibly to obtain information—the principal conditions being (1) that every such question shall be addressed to that minister or official in whose province the subject-matter of the inquiry falls, (2) that notice shall be given at least one day in advance, (3) that the query shall contain no "argument, inference, imputation, epithet, or ironical expression," (4) that it shall not have been disapproved by the speaker as improper, (5) that it may not relate to statements made by ministers outside of their official capacity, and (6) that no member may submit more than three "starred" questions, *i.e.,* for *oral* answer, on any parliamentary day except Friday (he may submit as many "unstarred" ones, for written answer, as he desires).[2] Until less than a century ago, the device of questioning ministers was not much used. Nowadays, however, the number of questions during an ordinary session may range as high as thirty thousand—an average of 100 to 200 a day—and, as we shall see, "question time" (introduced into the daily order of business in 1849) is a regular, and usually an interesting, portion of every daily sitting.[3]

Practical Operation and Importance. Sometimes the questions asked have no object whatever except to elicit information; and the questioner may be entirely satisfied with what he hears. They may come from the minister's political friends as well as from his foes. More often, however, they are intended to imply criticism, placing the minister, and perhaps his cabinet colleagues, on the defensive; and the day-to-day bombardment to which members of every cabinet

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dissatisfaction unless and until he resigns, and then only with permission of the crown—which is never refused.

[1] Even during World War II, question time was scrupulously preserved.

[2] A further limitation is imposed by the rule that no question may be put which brings the name of the sovereign, or his actual or possible influence, directly before Parliament, or which casts reflection upon him.

[3] See p. 261 below.

are subjected serves usefully to keep them sensible of their proper relations with the House.[1] To be sure, it is a minister's privilege to decline to answer if he likes; all he needs to say is that to reply would be contrary to the public interest; and this is an answer certain to be given when the information requested might be of use to an enemy in war or damaging to a foreign negotiation. But a wise minister will seek to avoid the unfavorable impression bound to be created by manifest evasiveness. "There is," writes an English authority, "no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the House, and how that answer will be received." [2]

Although a prime means of holding ministers accountable, questions do not, of themselves, involve a debate or vote. Whether answered satisfactorily or not, they do not immediately jeopardize the ministry—except in one contingency. If a member seeking fuller information or bent upon testing the government's strength, moves "to adjourn for the purpose of discussing a definite matter of urgent importance," and if as many as 40 members support the motion, a debate takes place, nominally on the motion to adjourn, but actually on the subject involved in the question and answer. The government opposes the motion, and if defeated must suffer the consequences.

2. Votes of Censure. Questioning is, however, only one of several ways in which the House can hold ministers accountable. An-

[1] It goes without saying that for the answers to many, if not most, questions ministers must rely upon information given them by their subordinates in the departments. Furnishing such ammunition, often in carefully drafted form, is indeed an important civil service function.

[2] C. Ilbert, *Parliament* (London and New York, 1911), 113-114. Cf. R. W. McCulloch, "Question Time in the British House of Commons," *Amer. Polit. Sci. Rev.*, Dec., 1933. A specimen list of questions is presented in N. L. Hill and H. W. Stoke [eds.], *op. cit.* (2nd ed.), 120-123.

The questioning of ministers on the parliamentary floor has no counterpart under the American presidential system. In 1943, Congressman Estes Kefauver of Tennessee introduced in the House of Representatives a resolution amending the rules to provide that on at least one day in every two weeks heads of departments and independent agencies should appear in the House by request to answer orally written and oral questions put to them by members. The proposal won hearty support from younger members and in the press, but was frowned upon by the House leadership and, although later reintroduced, never stood much chance of adoption.

other takes the form of motions of censure, ordinarily directed at individual ministers, and specifying particular acts or policies for which they are regarded as responsible. Such motions may be offered by any member who can gain the floor for the purpose (in practice, they, of course, almost always come from opposition members), and they may lead not only to embarrassing debates but to hostile votes. As has been observed, a minister under fire *may* be abandoned to his fate, his colleagues washing their hands of him and regarding themselves as immune even if he is forced out. But, as also observed, this is very unlikely to happen; almost always, the principle of solidarity will prevail, the government unitedly seeking to save the situation by preventing the disturbing motion from coming to a vote, or at all events from passing. The chances are that a vote will be staved off, or, if taken, will result in defeat of the motion. If, however, the outcome is otherwise, the government again must accept the consequences.

3. Votes of No Confidence. The theory, and to a large extent the practice, of the English system is that the ministers shall stand or fall upon their general policy, upon their entire record, or if upon a particular matter, at all events only upon one of first-rate importance. Consequently, they are at all times subject to challenge upon general policy; and this brings us to a third method of enforcing responsibility, *i.e.,* a vote of want of confidence in the government, moved by the leader of the opposition and directed, not at any specific act, but at the ministry's policy in general—an extreme procedure, truly enough, but sometimes invoked. Ordinarily, the government will not dare attempt to prevent debate on such a motion; and defeat in the resulting division—which is squarely on the issue of turning out the ministry—becomes a major disaster.

Effects of Parliamentary Defeat. A ministry is not obliged to pay any attention to a hostile vote in the House of Lords. But when the Commons adopts a motion to adjourn for ". . . discussion of a definite matter of urgent importance," or a vote of censure or of no confidence, or indeed, without any such vote, defeats a bill upon which the cabinet has staked its fortunes, or passes it in a form which the ministers cannot accept, the prime minister and his colleagues must normally do one of two things—resign or appeal to the country. If it is clear that the cabinet has lost the support, not only of Parliament, but of the electorate, the only honorable course open to the

ministers is to resign. If, on the other hand, there is doubt as to whether the parliamentary majority actually represents the country upon the matter at issue, the ministers may very properly "advise," *i.e.,* request, the sovereign to dissolve Parliament, which, of course, brings on a general election. In such a situation, the ministers tentatively continue in office. If the election yields a majority prepared to support them, the ministry is given a new lease on life. If, on the other hand, the new parliamentary majority is hostile, the only thing left for the ministers to do is to retire, either immediately or upon suffering an actual defeat (generally on the reply to the Speech from the Throne) when the new parliament begins work. The usual course in such situations is for the ministers to hand over their seals of office as soon after the polling as they can put business in shape for their successors.

It is hardly necessary to add that some ministries are more "thick-skinned" than others, *i.e.,* more disposed to bear up under rebuffs without making them grounds for resignation or a dissolution—a characteristic displayed notably by the Balfour ministry in 1904-05 and by the Lloyd George coalition government during the two or three years preceding its collapse in 1922.[1] Indeed, a survey of the political history of recent decades would show that cabinets rarely resign without giving themselves the benefit of the chance that goes with a national election. They like to think that the country is behind them even though the House of Commons is not; and sometimes the outcome shows that they were right.[2]

[1] In 1924, Ramsay MacDonald, head of a minority Labor government, definitely announced that he and his ministers would resign only on a direct vote of no confidence, and not on a snap division on a minor issue.

[2] A different twist is given the situation when a cabinet that has the confidence of the House brings about a dissolution in order to take a sort of referendum on a policy or measure on which it wants a clear mandate from the people. This is not often done; and the miscalculation of Stanley Baldwin's government in 1923 shows that to take such a step may mean to court disaster.

The workings of the English cabinet, in general, are described in A. L. Lowell, *op. cit.*, Chap. iii; W. I. Jennings. *Cabinet Government* (rev. ed., New York, 1951), Chap. ix; A. B. Keith. *The British Cabinet System* (rev. ed., London, 1952), Chap. iv; and H. J. Laski, *Parliamentary Government in England* (New York, 1938), Chap. v. W. Bagehot, *The English Constitution,* Chaps. i, vi-ix, is decidedly worth reading. Much that is interesting and significant will be found in biographies and memoirs of such British statesmen as Gladstone, Disraeli, Lord Randolph Churchill, Campbell-Bannerman, Harcourt, Lord Oxford and Asquith, Lord Curzon, Lloyd George, and Winston Churchill. A classic comparison of the English cabinet system and the American presidential system is Woodrow Wilson, *Congressional Government* (Boston, 1885). See also H. L. McBain, *The Living Constitution* (New York, 1927), Chap. iv

CHAPTER VI



NATIONAL ADMINISTRATION— AGENCIES AND FUNCTIONS

"Whitehall." An inquirer seeking the spot from which the day-to-day enforcement of the laws is directed and the multifarious administrative labors of the government are managed would be told to turn his steps toward a busy area in the vicinity of the Houses of Parliament known as Whitehall. There he would discover a group of venerable buildings in which are housed most of the great executive departments—the Treasury, the Foreign Office, the Home Office, and others; and there he would find the ministers and their principal subordinates at their daily tasks. For, as in other governments, executive duties are performed and administration directed in more or less separate and specialized establishments or departments, to which the ministers (with only a few exceptions as noted above) are in one way or another attached. In the present chapter, we are concerned with the central departments and some selected aspects of their work; in the one that follows, attention will be directed to the men and women by whom the more routine, though not necessarily less important, tasks of administration are performed, *i.e.,* the permanent civil service.

A Complicated and Ever-changing System. Viewed from any vantage point, the nation's central administrative machinery presents an aspect of considerable complexity. To begin with, it is a product of prolonged historical development, with little or no effort ever made to achieve genuine integration or symmetry. To be sure, the multiplication of departments, boards, and other agencies has come in the main with the expansion of governmental functions during the past

hundred years, particularly in periods of stress such as World Wars I and II, and perhaps most of all under the impact of a comprehensive nationalization and welfare program carried out by the Labor government placed in power in 1945. But there are departments (to speak only of this top level) which reach deeper into the past and still show characteristics differentiating them from others of later origin. By the same token—and in contrast with federal executive departments in the United States, all of which have been created by act of Congress—departments at Whitehall have arisen in different ways and accordingly rest on different legal foundations. A few, *e.g.*, the Treasury and the Admiralty, represent survivals of establishments which flourished in earlier times; eight or ten, including the Foreign Office and the Home Office, are offshoots of a "secretariat of state" originating in the ancient office of king's secretary; others, like the Board of Trade and the Ministry of Education have evolved out of committees of the Privy Council; still others, such as the Ministry of Health, the Ministry of Transport, and the Ministry of Defense, have been created outright by parliamentary enactment. Similarly, certain departments find their reason for existence in the oldest and most fundamental functions of government, such as finance and defense, while others have to do rather with newer (mainly social and economic) activities, such as education, public health, and the regulation of industry. Some are on a different plane of importance from others; the Treasury, as we shall see, is in a class quite by itself. There is no uniformity of nomenclature; some are offices of secretaries of state, some are ministries, and some are boards. Moreover, there is no single administrative system for the whole of the United Kingdom. In Northern Ireland, most administration is conducted separately under control of the parliament of that area; and in such fields as education, health, and agriculture, Scotland has administrative machinery only loosely coördinated, through a Secretary of State for Scotland, with that operating south of the Tweed. Finally, the arrangements involved are not static, but on the contrary subject to continual readjustment and change; of major departments to be touched upon below, no fewer than seven originated only a decade or so ago. A flashlight picture as of one period is certain to be out of focus shortly.

Departmental Organization. Going from department to department, one would find no single, fixed pattern of internal organization,

but nevertheless, a certain degree of uniformity. At the top, in some departments, is a single minister and in others a board. Where a board exists, however, one member is practically certain to be designated as president or chairman, and to a large extent his position becomes similar to that of a single minister. In any event, department heads are selected by the prime minister from among persons of prominence in his party, and normally hold office as long as the party retains the upper hand in the House of Commons. Persons so selected are likely to have had much experience in Parliament, but little or none in the particular fields covered by the departments to which they are assigned. In other words, they are professional politicians, but not professional administrators; and while they are expected to correlate and supervise the administrative work as carried on in different divisions of their departments, their principal functions are rather to formulate policies, represent the department in Parliament, sit with the cabinet (if they are cabinet members[1]), and in general articulate the department with the government as a whole and with the nation, rather than to handle internal departmental work calling for specialized knowledge. For the latter, the department has experts, recruited on a non-political basis, secure in tenure, and carrying forward uninterruptedly the requisite knowledge of departmental affairs while amateur ministers come and go in accordance with the ups and downs of politics. Standing next to the department head there will be found (1) a parliamentary secretary, himself a minister, who is selected accordingly on a political basis and usually charged with representing the department in that branch of Parliament in which the department head, as a non-member, may not appear and speak; and (2) a permanent secretary, with tenure unaffected by politics, and serving in effect as a departmental general manager. From the permanent secretary downwards ramifies a staff, consisting of deputy secretaries, under-secretaries, assistant secretaries, "principals," "assistant principals," and the like, functioning in divisions, bureaus, and similar units. Sometimes these permanent officials actually run the department, because the political officials have insufficient experience with its affairs. In any case, they are likely to be very influential. Even if he does not accept their advice, the minister has to rely upon them for information; in addition, he has to depend upon them to put his decisions into

[1] Other ministers frequently sit with the cabinet when matters relating to their departments are under consideration.

effect. Ordinarily, the permanent staff is loyal enough to its nominal chief, irrespective of his politics (which is supposed to be of no concern to them) and of whether they privately agree or disagree with his policies and decisions. Sometimes, however, a minister finds himself effectively checked, not to be sure by open defiance which would justify dismissal, but at least by veiled opposition having the effect of circumventing his plans and objectives.

To describe even the score or more departments of top rank—to say nothing of several also of lesser status—would lead us into far greater detail than is desirable here. Some impression of the wide variety of services involved may, however, be imparted by a running sketch or outline, starting in some detail with the most important department of all, *i.e.*, the Treasury, but continuing by mere enumeration with occasional word of comment. Various ministries created during World War II to meet urgent but temporary needs, and now discontinued—among them, Information, Shipping, Aircraft Production, and Home Security—naturally are not included.[1]

THE TREASURY

Importance. Next to Parliament and the cabinet, the institution which the student of English government encounters most frequently is the Treasury. Practically everything that is done calls for expenditure of money; money for national purposes can usually be had, and, speaking broadly, can be spent, only with Treasury approval. This alone would be sufficient to establish Treasury primacy. But, in addition, within the wide confines of the Treasury are found multifold agencies having to do with matters only partly or incidentally fiscal.[2] A Treasury official, for example, is the technical head of the permanent civil service; many of the rules governing that service are Treasury-made; in the Treasury one finds the "parliamentary counsel" employed for the drafting of all government bills. Alone among the departments, the Treasury exercises substantial control over all of the others; itself not engaged to any large extent in actual administration, it nevertheless has more to do than does any other

[1] The Lord Chancellor, Attorney-General, and Solicitor-General serve many of the purposes associated in other countries with a department or ministry of justice. Strictly, there is no such department in Great Britain; and the officials mentioned are more appropriately touched upon in a different connection (see Chap. xvi).

[2] See E. Bridges, *Treasury Control* (London, 1950).

authority with the ways in which administration, all around, is carried on.

Evolution of the Treasury Board. The origins of the Treasury are bound up with the development of the Exchequer,[1] or revenue office, of the Norman-Angevin kings, which in the twelfth and thirteenth centuries gradually passed into the hands of a Treasurer, later known as the Lord High Treasurer. By Tudor times, this official had grown inconveniently powerful, and in 1612 James I tried the experiment of putting the post "in commission," *i.e.*, bestowing it upon a board of Lords Commissioners of His Majesty's Treasury, with a certain primacy in a First Lord. The plan worked well, and after Queen Anne's day no Lord High Treasurer was ever again appointed. Thenceforth, the duties connected with the office devolved upon a Treasury Board of five members; and in law they are still provided for in this way. Further developments, however, in the nineteenth century, brought it about that the Board gave up transacting business in a collective capacity, yielding in favor of one of its members, the Chancellor of the Exchequer. The First Lord indeed retained nominal headship; but he was likely to be an important figure only when, as was increasingly the case after the eighteenth century, he was also prime minister.

Today, therefore, the situation is substantially this. The Treasury Board, which legally has charge, never meets (except to transact one or two minor sorts of formal business), and substantially all of the work is done by the members individually. Indeed, practically all of it except signing papers and some other incidental duties is performed by one member alone, *i.e.*, the Chancellor of the Exchequer, with his staff. The First Lord, the nominal head, is invariably (under terms of the Ministers of the Crown Act of 1937) prime minister.[2] Three or more other members, known as the Junior Lords, have certain minor tasks in connection with the Treasury, but their really important work is performed in the capacity of assistants to the Parliamentary Secretary to the Treasury, who is chief government whip in the House of Commons; in other words, they are themselves government whips.

[1] The name arose from the chequered table at which the work of accounting was performed.

[2] See p. 84 above.

The Chancellor of the Exchequer. The only member of the group who gives his attention primarily to Treasury business is the "Second Lord," otherwise known as the Chancellor of the Exchequer. To all intents and purposes, this official is the finance minister of the realm, and as such he counsels with the spending departments and officers on the appropriations they will ask, prepares the annual budget (embodying a statement of the proposed expenditures of the year and a program of taxation calculated to produce the requisite income), pilots financial measures through Parliament, acts as master of the mint, and supervises the collection of the revenues. It is hardly necessary to add that the nature of his duties requires that he be a member of the House of Commons, where finance bills make their first appearance, and where alone, in point of fact, their fate is in these days determined. All in all, it goes without saying that the Chancellor of the Exchequer is one of the busiest men in the government, and one of the most important.

Treasury Functions. Surveying the governmental system as a whole, an expert body—the Machinery of Government Committee of 1918—summarized the major financial functions of the Treasury as follows: "(1) Subject to Parliament, it is responsible for the imposition and regulation of taxation and the collection of revenue. . . . (2) It controls public expenditure in various degrees and various ways, chiefly through the preparation or supervision of the estimates for Parliament. (3) It arranges for the provision of the funds required from day to day to meet the necessities of the public service, for which purposes it is entrusted with extensive borrowing powers. (4) It initiates and carries out measures affecting the public debt, currency, and banking. (5) It prescribes the manner in which the public accounts shall be kept." [1] This is truly an imposing list. Translating it into somewhat less formal language, the Treasury, in the first place —with the aid of the spending departments—prepares all estimates of expenditures. Similarly, it prepares all estimates of revenue and decides what changes in taxation will be required to meet expected outlays. Presenting the data and recommendations to Parliament, it secures that body's necessary, even though sometimes rather perfunctory, approval of its plans.[2] It supervises the collection

[1] *Report of the Machinery of Government Committee*, p. 16.

[2] The budgetary aspects of the Treasury's activities are dealt with in Chap. xiii below.

of all revenues, the coining and printing of money, the floating of loans, and the safe-keeping of the public funds. It determines how much of the money that Parliament has made available to a spending agency shall actually be used, and under what conditions (for it does not follow that all that has been granted must be spent). Through an independent Exchequer and Audit Department, presided over by a non-political Comptroller and Auditor-General, it sees that every request for a "credit" against the public funds kept in the banks is supported by parliamentary authority. Through the same medium, it likewise checks, after the money has been spent, to ascertain whether every disbursement actually made had similar justification. In the rôle of financial expert, it continuously supervises the organization and personnel of the spending departments, wields ultimate control over civil service regulations, and advises on and often in effect fixes wage and salary scales. Itself only incidentally and in small degree a spending department, the Treasury keeps its hand on every department, agency, and officer engaged either mainly or incidentally in collecting, spending, or paying out national moneys; and in pursuing its endless task, it becomes an all-pervading—one is tempted to add an all-powerful—instrumentality of centralized administrative correlation and control.

The Revenues and the Consolidated Fund. The revenues are collected through four great sub-departments or services, *i.e.*, the Board of Inland Revenue, the Board of Customs and Excise, the Post Office, and the Commissioners of Crown Lands, each with an extensive force of its own. The Post Office, which has charge of communication by telegraph (since 1870) and telephone (since 1911) as well as by post, is presided over by a minister, the Postmaster-General, who is sometimes included in the cabinet. The other three services are in the hands of statutory boards of commissioners.[1] In earlier days, the proceeds of the various taxes were paid into separate accounts or funds at the Exchequer, and Parliament, when making a given appropriation, would specify the fund from which the particular outlay should be met. An act of 1787, however, introduced an improved plan under which all revenues (with slight excep-

[1] For a brief account of the collection of the national revenue (over 90 per cent of which is gathered in by the first two agencies mentioned), see J. W. Hills and E. A. Fellowes, *British Government Finance* (New York, 1932), Chap. iv. On the Post Office and postal policy, see E. Murray, *The Post Office* (London, 1927); H. Robinson, *The British Post Office; A History* (Princeton, N. J., 1948).

tions) are now paid into a single Consolidated Fund, from which all disbursements (again with slight exceptions) are made. Most of the taxes are imposed by so-called "permanent" statutes, which stand unchanged for considerable periods of time; but some are laid afresh each year, or at all events are subject to an annual revision of rates. Similarly, some expenditures are authorized by continuing measures and others by annual appropriations. Numerous disbursements fall in the latter category; indeed, only those which it is particularly desirable to keep out of politics, *e.g.*, the Civil List, the salaries of judges, and interest on the national debt, are "Consolidated Fund charges," paid directly out of the Fund without annual authorization. Expenditures which are voted from year to year are said to be for the "supply services," being the outlays approved by the House of Commons in committee of supply, which is a form of committee of the whole.[1]

OTHER DEPARTMENTS: I. DEFENSE

1. The Admiralty. One will not be surprised to learn that from an early time Britain, as a sea power, numbered among its most important dignitaries a Lord High Admiral. Like the office of Lord High Treasurer, that of Lord High Admiral was in due time placed in commission, and today it is represented by a board of "Lords Commissioners for Executing the Office of Lord High Admiral," consisting of three "civil" or political lords, together with five "sea" or professional lords, and presided over by a civilian First Lord, traditionally to all intents and purposes a minister of marine.

2. War Office. One of several departments sprung from the ancient secretariat of state, this establishment has had a separate existence since 1794, with of late a six-man Army Council, on the pattern of the Admiralty Board, as advisory authority and with administrative responsibilities centered in a Secretary of State for War.

3. Air Ministry. At the conclusion of World War I, Great Britain became the first nation to centralize the supervision of armed aëronautical activities in a separate government department. Pre-existing air establishments in the War Office and Admiralty were

[1] See p. 283 below. The best systematic accounts of the Treasury are R. G. Hawtrey, *The Exchequer and the Control of Expenditure* (London, 1921), and T. L. Heath, *The Treasury* (London, 1927). For briefer treatment, see A. L. Lowell, *op. cit.*, I, 115-130; W. R. Anson, *op. cit.* (4th ed.), II, Pt. 1, 186-201; and W. I. Jennings, *Cabinet Government*, Chap. vii.

brought together in an Air Ministry, which soon was given control over civil aviation as well, although that responsibility has now been devolved upon a different department.

4. Ministry of Defense. Shortly before World War II, a minister for the coördination of defense was provided for. Proving ineffective, the office was abolished in 1940, when Winston Churchill became prime minister. In wartime, the function, however, was more than ever essential, and Churchill promptly assumed the title of minister of defense, which he retained throughout the war, even though with no corresponding ministerial staff ever developed. After the end of hostilities, the same manifest need for permanent coördination which led the United States, in the National Security Act of 1947, to superimpose a Secretary of Defense upon the heads of the War and Navy Departments [1] was felt in Britain also; and in 1946 a Minister of Defense was placed, as a regular arrangement, over the Admiralty, War Office, and Air Ministry, whose heads continue responsible for the day-to-day administration of their respective, and still separate, services, but nevertheless have lost their cabinet seats and suffered some other impairment of their previous importance.[2] As defined in the legislation creating the post, the Minister of Defense is to be "in charge of the formulation and general application of a unified policy relating to the armed forces of the crown as a whole and their requirements." In addition to coördinating the program of the Admiralty, War Office, and Air Ministry, he has the responsibility for allocating resources including manpower, money, and vital materials; he must also give his attention to the relation of national defense to the entire national economy.[3]

5. Ministry of Supply. Dating from shortly before the outbreak of World War II, this department originated as a wartime agency with only wartime functions—its great responsibility being to mobilize the sinews of war and make them available when and where needed. In effect, it was, throughout the war, both a ministry of raw materials and a ministry of manufactured munitions. If the world situation had

[1] With the War Department renamed Department of the Army and a new coordinate Department of the Air Force simultaneously created.

[2] Loss of cabinet seats has not, however, been of great practical significance since the three service secretaries are invited to attend cabinet meetings when anything involving their departments is expected to come up.

[3] C. F. Robinson, "British Organization for Defense," *Pub. Admin. Rev.*, Summer, 1948; H. D. Jordan, "The British Cabinet and the Ministry of Defense," *Amer. Polit. Sci. Rev.*, Feb., 1949.

been more promising after the Axis surrenders, the ministry would not unlikely have been terminated.

II. FOREIGN AND IMPERIAL AFFAIRS

1. Foreign Office. Although somewhat impaired since World War II, Britain's position in the world lends high importance to the Foreign Office, and no other department, except possibly the Treasury, enjoys so enviable a reputation. Difficult, delicate, and sometimes hazardous tasks devolve upon it; and it is not surprising to find the Foreign Secretary selected with more regard for experience and prestige than are other department chiefs, more decisions and actions emanating from the department head than in departments with more purely administrative functions, and a larger degree of detachment, and even immunity, from parliamentary control than in the case of any of the others. Still recruited to a considerable extent from the upper social classes (though the base has been broadened since 1945), and occasionally displaying a somewhat unfortunate class consciousness, the Foreign Service operating throughout the world under Foreign Office direction nevertheless equals, if it does not surpass, the corresponding service of every other country.

2. Colonial Office. With vast imperial possessions scattered throughout the world, Britain naturally has had need for a good deal of central supervising machinery; and after various other arrangements had served their day, the present Colonial Office made its appearance in 1854. For a time, the department functioned in connection with dependencies of all sorts—both those with few or no rights of self-government and others, like Canada, which were ripening into present-day autonomous dominions. In 1925, however, a dominions division was erected into a distinct ministry, the Dominions Office; and although for a few years the new establishment had the same political head, with even today some common machinery on the lower levels, in 1930 it was given essentially a separate status, with a minister of its own. In connection with the many non-self-governing dependencies remaining under its jurisdiction, the Colonial Office is concerned with recruiting official personnel, directing the work of colonial governors and other administrators, and supervising the elaborate program recently authorized by Parliament to develop colonial areas.

3. Commonwealth Relations Office. Within the broad framework of the Commonwealth of Nations, all the members are basically self-governing, and their affairs neither require nor permit of any such supervision from London as in the case of other parts of the Empire.[1] After all, however, they are still interdependent in many respects, and for handling official relations, a British high commissioner is stationed in each, with also a representative of each Commonwealth stationed in London, and with the Commonwealth Relations [formerly Dominions] Office serving as chief point of contact. Until lately, the Commonwealths consisted only of Canada, Australia, New Zealand, and South Africa, with Eire nominally included but gradually assuming such autonomy that in 1949 its dominion status gave way to complete independence. Since World War II, however, Ceylon has become a Commonwealth nation, and two additional ones—India and Pakistan —have been created from the former dependent empire of India, thus broadening the range of the Commonwealth Relations Office's responsibilities and certainly augmenting their delicacy.[2]

III. ECONOMIC AND SOCIAL AFFAIRS

Most of the establishments thus far mentioned are agencies for exercising governmental functions—finance, defense, foreign relations—that are not only the oldest historically, but by their nature primary and fundamental. As recently as a hundred years ago, there were, indeed, few others. Then started, however, a remarkable era of functional and administrative expansion, heralded by the first parliamentary grant for education in 1832, the first factory act in 1833, the new poor law in 1834, the first public health acts in 1848, and other measures pointing in the direction of the progressively broadening public control over economic and social relationships and processes which has become so characteristic of the present age. From newly developed functions and activities sprang need for regulative and managerial machinery, and to older Whitehall establishments

[1] See Chaps. xviii–xix below.

[2] These changes, along with the achievement of independence by Burma in 1948, have resulted in discontinuance of the former India Office and Burma Office. A Scottish Office, presided over by a Secretary of State for Scotland, has to do with neither *foreign* nor *imperial* affairs, but may perhaps most appropriately be mentioned here. Although joined for nearly two centuries and a half in the United Kingdom, Scotland is still sufficiently separate administratively to require a distinct department. In 1951, a Minister for Welsh Affairs was appointed to coördinate activities of particular concern to Wales.

were steadily added others, bringing the list to the impressive, if not baffling, proportions which it displays today. Most of the increase has taken place within the past 40 years—much of it, indeed, during the period since the beginning of World War II.[1] Slightly over a dozen principal agencies may here be mentioned, not for description, but for possibly useful panoramic impression.

1. Board of Trade. Originating as a Privy Council committee, the Board of Trade is a phantom agency; its members never meet, and work is carried on under the sole direction of a single member, the president. Though more or less routine, responsibilities are many and varied, touching numerous aspects of domestic commerce, navigation, and industry, and including at least indirect control over foreign commerce through a "department" of overseas trade supervised jointly with the Foreign Office.

2. Ministry of Economic Affairs. Following World War II, the economic situation of Britain became so critical that it seemed imperative to provide a large measure of central control over all industrial enterprises, foreign trade, domestic consumption, and related fields. A Ministry of Economic Affairs was created to establish policies, draft plans, provide coördination, and furnish controls directed at setting the country on its feet economically. The relations between this ministry and the Board of Trade were naturally intimate. However, when the minister, Sir Stafford Cripps, became Chancellor of the Exchequer, he carried his functions with him and the ministry went out of existence. In 1951, it was brought back into the picture by the Conservative government, only to be dropped late in 1952 when it was absorbed by the Treasury.

3. Ministry of Materials. This ministry was created in 1951 to supplement the efforts of the existing Supply Ministry. It gives its attention to vital materials which are short in supply, seeking new sources and allocating available materials in such fields as light metals, pulp, cotton, jute, certain chemicals, and the like.

4. Ministry of Agriculture and Fisheries. Britain is not primarily an agricultural country, yet the production of foodstuffs by tillage of the soil is one of its major interests, and adoption of a protective tariff policy some years ago, together with the economic

[1] Included in this expansion has been notably the creation of government corporations in pursuance of the Labor government's program of nationalization since 1945. On this development, see Chap. viii below.

stringency resulting from World War II, has imparted fresh stimulus to a somewhat up-and-down activity. Interestingly enough, a Board of Agriculture made its appearance in the very year from which the United States Department of Agriculture dates, *i.e.*, 1889. In 1903, supervision of the country's extensive fishing interests was transferred from the Board of Trade; and in 1919, at the close of World War I, the Board (which, as a board, had been another phantom) was converted into the present Ministry of Agriculture and Fisheries.

5. Ministry of Labor and National Service. Dating (as a Ministry of Labor) from 1916, this department has to do with industries and occupations of many different kinds, notably in connection with the administration of laws relating to labor exchanges (employment offices), unemployment insurance, minimum wage standards, and the settlement of industrial disputes. In these various fields, the general policy of the government has been to promote and supplement the activities of trade unions, employes' associations, and other voluntary groups; and the function of the Ministry of Labor (with the name lately broadened as indicated above) has been, in the main, not to exercise positive control, but to coöperate with non-governmental groups and agencies in better organizing the relations between employers and workers.

6. Ministries of Transport and Civil Aviation. With the country's railroads—taken over by the government during World War I—still publicly administered, a Ministry of Transport was set up by statute in 1919. Two years later, the railroads were returned to private management; but again during World War II, the roads were taken over, and in 1947 not only they, but all other important inland transport services, were definitely nationalized. In addition to supervising the elaborate public operating machinery administering the railways, docks and canals, London bus and subway systems, and railway hotels,[1] the Ministry of Transport has a sizable task dealing with shipping matters, roads and highways, safety on roads, railways, docks, and related matters. In 1951, the Conservative government placed the Ministry of Civil Aviation under the minister already charged with transport, indicating that a consolidation of the two ministries might take place later.[2] The Ministry of Civil Aviation di-

[1] See Chap. viii below.

[2] Such a consolidation actually took place in 1953.

rectly administers the airports and enforces air safety standards as well as supervising the two nationalized air corporations.

7. Ministry of Health. Medical examinations in connection with recruiting troops for service during World War I brought to light grave facts concerning the physical fitness of the people, especially the industrial classes, and forced the conclusion that in future the state must concern itself far more with matters of public health than in times past; and with a view to correlating under a single authority a wide variety of public health and related functions previously dispersed among a number of separate administrative agencies, a Ministry of Health was established in 1919. Practically every major function that the ministry exercises today came to it by transfer from some preëxisting ministry or board. Some of the functions so transferred were manifestly inappropriate to a ministry of health and in later years the supervision of local government and the expedition of the housing program have been reassigned, by order-in-council or statute, to departments where they more logically belong. On the other hand, new and larger powers in relation to sanitation, water supply, health services, and other matters have been conferred, and the department remains a very important ministry.

8. Ministry of Education. Gradual growth of national legislation and expenditure on education led in 1899 to conversion of a Privy Council committee into a Board of Education, headed by a single full-time member, the president, and recently transformed into a "ministry." The department has nothing to do with universities, and relatively little with schools not receiving financial aid from the national government. It does not, indeed, provide or administer school systems, construct buildings, engage or supervise teachers, prescribe or supply textbooks, regulate curricula (except in general terms), or control methods of teaching. Rather, its business is that of supervising and coördinating educational administration as carried on under the immediate direction of the education committees of county and county-borough councils, inspecting all grant-aided schools (and others on request), fixing standards concerning personnel, equipment, and the like, publishing bulletins and reports, and helping generally to keep the educational system on a satisfactory level.

9. Home Office. Descended more directly from the early secretariat mentioned above than is any other of the departments, and

aptly termed by Lowell a "residuary legatee," the Home Office serves many, if usually not very spectacular, uses—receiving and transmitting petitions to the crown, considering and advising on applications for pardons, supervising parliamentary elections, naturalizing aliens, directly controlling the police systems of London, inspecting and fixing standards for police establishments throughout the remainder of the country, and administering the probation system, along with other activities too numerous to mention. Many times it has been proposed that this office be so reoriented as to become, in effect if not in name, a ministry of justice; but the legal profession, fearing political interference with the judicial process, has always objected.

10. Ministry of Fuel and Power. This establishment was born of a wartime coal crisis (in 1942), and of political opposition to a fuel rationing scheme which the government at that time proposed to set up. Even before the war, however, coal was so vital to British life and industry, and its production, distribution, and use affected by so many conflicting interests, that new machinery for handling fuel and power problems had been widely regarded as desirable. Under the Labor government installed in 1945, the entire coal industry was transferred from private to public hands, with a National Coal Board in charge of operations, but responsible to the Fuel and Power Ministry.[1] The British Electricity Authority and the National Gas Council—set up in pursuance of the nationalization of the country's entire electrical and gas industries in 1947 and 1948—sustained a similar relation to the ministry.

11. Ministry of Food. To aid in preparing the nation for the eventuality of war, a "food defense plans department" was instituted in 1936 as a branch of the Board of Trade. Lack of adequate status and power, however, handicapped the agency, and in the three-year interval before war actually began its efforts to build up the country's stocks of wheat, sugar, meat, and other foodstuffs were only mildly successful. With war a reality, the inevitable step was taken of setting up a full-orbed Ministry of Food; and the department has since been perpetuated despite some agitation for its liquidation, not merely because of immediate concrete problems of food supply and distribution in the postwar years, but in response to a lively public interest in nutrition stimulated by many social and medical investigations during the inter-war period.

[1] See Chap. viii below.

12. Ministry of National Insurance and National Assistance Board. Since the decade preceding World War I, Britain has built up a system of employment, old-age, health, and other social insurance with which the United States had nothing comparable until the passage of the Social Security Act of 1935. For a good while, opinion grew that, instead of being scattered through half a dozen ministries, administration of the various insurance schemes should be coördinated in a single department; and, after the Labor party came to power in 1945, this idea, reënforced by the eager popular reception accorded the Beveridge Report of 1942 and by the political importance attached to social security as part of the postwar reconstruction program, eventuated in creation of the present unified ministry. Its scope was extended in 1953 when the Ministry of Pensions created in 1916 to handle military pensions was amalgamated with it. The National Assistance Board supplements the program of the Ministry of National Insurance by providing unemployment assistance and various other forms of public aid.

13. Ministry of Housing and Local Government. The concept of planning with respect to urban and semi-urban areas has long been deeply rooted in Britain, and the traveller finds many evidences of it as he goes about the country. Responsibilities in this field as well as in the fields of housing and local government that had been assigned the Ministry of Health were, however, regarded as having been only imperfectly discharged; and several wartime and postwar developments quite naturally led to arrangements expected to be more effective. Following World War II the planning function was concentrated in a new Ministry of Town and Country Planning. No one will have difficulty in surmising that the two contributing factors referred to were (1) the destruction wrought by wartime bombing in numerous cities, combined with a natural desire to turn the calamity to useful ends by rebuilding for greater convenience and beauty, and (2) the accession of Labor to power with a program extending to not merely broad nationalization of economic resources and activities, but reassessment of the entire national life and reordering of it in accordance with plans systematically made and carried out by government. Under a comprehensive Town and Country Planning Act of 1947, every square foot of land in England and Wales, not only urban but rural, became subject to a new code regulating use and development, and enforceable through the ministry. In 1951, the Labor government,

under criticism for its neglect of local government problems, removed the supervision of local government from the Ministry of Health and, combining it with town and country planning, instituted a Ministry of Local Government and Planning. The Conservative government elected in 1951 went a step further and, adding responsibility for the housing program which it had promised to enlarge, set up a Ministry of Housing and Local Government to push the construction of new housing, to supervise local government, and to administer the town and country planning legislation.[1]

14. Ministry of Works. This department has to do with a wide variety of matters associated with public buildings, building materials and regulations, and the like. It is custodian of ancient monuments and historical structures.[2]

SOME GENERAL ASPECTS OF THE ADMINISTRATIVE PROCESS

Without pursuing farther the general framework of administrative organization, we may turn to several significant phases of departmental activity in general—somewhat arbitrarily selected, perhaps, but certainly all of a nature to command the attention of even the most casual student of the subject.

1. Use of Advisory Agencies. In a democracy, government officials do well to disassociate themselves from any notion of comprising a caste of mandarins possessed of all wisdom; and in Britain one of the time-honored ways of doing this is to draw in people from outside of government circles for purposes of conducting research, providing information, and giving advice. Advisory bodies flowing from this procedure may be temporary only, as for example royal commissions set up to study and report upon some particular subject, *e.g.*, proportional representation or capital punishment; and the labors of such may be aimed primarily at preparing the way for adoption

[1] J. R. H. Roberts, *The Law of Town and Country Planning* (London, 1948).

[2] A selective reference list on the departments enumerated may properly include: H. Gordon, *The War Office* (London, 1935); J. Tilley and S. Gaselee, *The Foreign Office* (London, 1933); G. V. Fiddes, *The Dominions and Colonial Offices* (London, 1926); H. L. Hall, *The Colonial Office; A History* (London, 1937); H. L. Smith, *The Board of Trade* (London, 1928); F. Floud *The Ministry of Agriculture and Fisheries* (London, 1927); A. Newsholme, *The Ministry of Health* (London, 1925); L. A. Selby-Bigge, *The Board of Education* (London, 1927); E. Troup, *The Home Office* (London, 1925); W. H. Wickwar, *The Social Services* (London, 1936), and *The Public Services* (London, 1938). Most of these books appear in a well-known "Whitehall Series"; and unfortunately, all are more or less out of date. Numerous articles dealing particularly with newer departments will be found in the *Political Quarterly*, published in London.

by the government of some concrete program of legislation. On the other hand, they must be continuous, or "permanent," enlisting the services of presumably well-informed private individuals who, acting alone or in conjunction with appropriate representatives of government, will be available over the years for consultation and opinion on given subjects or in given fields of activity. Such continuing bodies are likely to take the form of committees; and they may be intended to serve the government, *i.e.*, the cabinet, as a whole, or they may function simply in relation to a particular department or office.

There has never been anything to prevent department heads and other officers from conferring informally with individuals or groups outside of the public service, and consultations of the kind must often have taken place for generations past. As long ago as 1899, provision for departmental advisory committees composed of non-governmental experts (usually from five to 15 in number) began to be made by statute—first in an act of the year mentioned creating the Board of Education, and later in the Trade Boards Act of 1909, the National Insurance Act of 1911, and one or two other measures. During World War I, large numbers of such committees were provided for by executive orders, without express statutory authority; beginning again with acts of 1919 relating to the ministries of transport, health, and agriculture and fisheries, extensive statutory authorizations were made; and the multiplication of such agencies has continued in later years. In 1918, a Machinery of Government Committee which covered pretty much the whole field of executive and administrative organization warmly endorsed the advisory committee plan, "so long as the advisory bodies are not permitted to impair the responsibility of ministers to Parliament"; and the general testimony is that the committees have been rendering good service, not only by bringing to the departments information and advice based on first-hand knowledge, but by inspiring greater public confidence in administrative authorities as being guided by such information and advice rather than by sheer theory or bureaucratic presuppositions. It goes without saying that the committees have no power to direct or control administrative work, or to dictate policy. Their business is solely to discuss and advise.[1]

[1] J. A. Fairlie, "Advisory Committees in British Administration," *Amer. Polit. Sci. Rev.*, Nov., 1926; R. V. Vernon and N. Mansergh [eds.], *Advisory Bodies; A Study of their Uses in Relation to Central Government, 1919-1939* (London, 1940). See also J. D. Millett, *The Unemployment Assistance Board* (New York, 1940).

Turning to still more definitely functional aspects of the departments, we encounter two related but distinct developments that in the view of competent scholars constitute the most significant changes in the English constitutional system since Dicey's classic description was written. One, *i.e.*, the delegation of legislative power to administrative authorities, has to do with the relations between the executive establishments and Parliament, or, as English writers would be likely to say, between "Whitehall and Westminster"; the other, *i.e.*, the turning over of judicial power to the departments, or to tribunals which the departments control and sometimes even create, materially affects the relation between the executive establishments and the courts. Both developments vitally affect the rights and interests of the individual citizen.

2. Growth of Administrative Legislation. In earlier centuries, Parliament, as we have seen, slowly gathered to itself ample powers of legislation, and the day came when it was sturdily contended that —apart, of course, from the ever-developing common law—no new law could properly come into being except with the sanction of Parliament. At no time did this mean that all enacted or decreed laws were actually and literally made by the two houses; for the crown clung resolutely to its ancient lawmaking authority, and Parliament was always obliged, or at all events found it expedient, to tolerate, and even to recognize, that authority within certain bounds. As late as the seventeenth century, the crown issued proclamations and enforced them as law, on the sole basis of prerogative; and, as every student of the period knows, the practice became one of the principal points of contention between the Stuart kings on the one side and Parliament and the judges on the other. So far as independent and autocratic royal legislation was concerned, the matter was settled by the triumph of the parliamentary cause; from 1689 onwards, it was a fixed principle of the constitution that laws could be made only by Parliament or with its consent (express or tacit).

Parliamentary Delegation of Legislative Power. Even before this turning point was reached, however, it was found both convenient and necessary for Parliament to delegate the actual exercise of certain lawmaking powers to the crown, and almost at once after the Revolution the issuance of orders-in-council in pursuance of authority conferred at Westminster—"statutory orders," that is to say,

as distinguished from "prerogative orders" [1]—became a familiar, even if not frequent, event. Through the eighteenth century, and well into the nineteenth, Parliament granted such authority sparingly, preferring (and in those days having the time) to legislate directly even upon detailed matters of an essentially administrative nature. After 1832, however, when great fields of governmental regulation and administration—poor relief, public health, factory inspection, transportation, education—were newly entered or subjected to new forms of control, acts delegating power to make rules having the force of law multiplied rapidly; and by 1893, when a Rules Publication Act undertook to regulate certain features of the procedure involved, the volume of such rules had come to be truly impressive. Since the date mentioned—with governmental functions growing ever more numerous and taking on ever increasing complexities—the development has continued on an even greater scale, government increasingly concerning itself with managing the life of the people, and the flow of statutes feeding the springs of a flood of delegated legislation. In the single year 1919, no fewer than 60 of out of 102 public acts passed by Parliament delegated legislative power to some subordinate authority; in a subsequent year (1927), 26 out of a total of 43 acts—a year during which, while Parliament was passing the said 43 acts, the departments were issuing no fewer than 1,349 different statutory rules and orders.[2] The upshot is that in numerous broad fields, *e.g.*, agriculture, industry, poor relief, public health, and education, regulation today is far more largely by administrative rules and orders than by statute—and not merely "orders-in-council" but regulations laid down by particular executive depart-

[1] Prerogative orders did not wholly cease, and to this day "prerogative legislation," *i.e.*, orders issued, through one channel or another, by the crown, by virtue of original authority which Parliament has never sought to take away, is listed separately in the annually published volume of Statutory Rules and Orders. A good illustration is the orders issued by the Colonial Office for colonies which have no legislatures.

[2] Needless to say, while neither the recent war nor even the Labor government's embarkation upon its extensive program of nationalization in 1945 materially increased the number of public acts passed by Parliament in a given year, both situations had the effect of sharply stepping up the number of statutory rules and orders issued. Thus in 1946, when 66 public general statutes were submitted for the royal assent, the total of rules and orders formulated was 2,287 (1,291 general and 996 local). In the year mentioned, and for the first time in four years, the separate volume containing rules and orders issued under wartime emergency powers acts proved less bulky by 700 pages than the volume containing instruments flowing from other statutory powers.

ments, by officers or branches thereof, or even by local (county or borough) authorities—corporate bodies like railway boards or commissions, too—to which the rule-making power, in lesser matters, has trickled down from above. So far, indeed, has the delegation of legislative power been carried that Parliament is found not only leaving it to administrative authorities to supplement and fill out the broad terms of statutes as enacted, and sometimes to fix the dates at which various portions of statutes shall take effect, but even in occasional instances authorizing ministers or departments to modify (usually within some stipulated bounds) the terms of statutes according as they may find "necessary or expedient." Forty years ago, the enactment of "skeleton" legislation by Parliament, with the intention that it should be filled out and applied by administrative officials, was regarded as peculiarly characteristic of France, Italy, and other Continental countries. But nowadays it is almost, if not quite, as common on the other side of the Channel. In Britain, there is no constitutional obstacle; and delegation—frank and unashamed, as contrasted with roundabout and more or less disguised delegation in the United States—is going on in steadily increasing amount.

Reasons for Delegation. If anyone ever supposed that powers of a legislative nature could be kept exclusively in the hands of Parliament, Congress, or any other important legislative body, such a view is entirely untenable now. To start with, no legislature—certainly not the British Parliament—has time in which to consider, or even to act perfunctorily upon, all of the multifarious questions that must somehow be settled as the day-to-day business of administration proceeds. Often as not, the legislature is not in session when decisions must be reached. Sometimes, too, the legislature is of divided opinion, and finds it easiest to pass along a given problem to other hands. Most important of all, the matters to be regulated are increasingly complicated and technical, quite beyond the knowledge and experience of the average run of legislators, and capable of being dealt with intelligently only by administrators and technicians on the basis of first-hand experience and scientific expertness, and under circumstances such that if rules adopted do not work out as expected, they can more easily be modified than if formal legislation were required. Under these conditions, Parliament perforce contents itself time after time with statutory enactments laying down broad principles, policies, and objectives, leaving it to the king-in-council or to

an appropriate department or other agency to supplement them with orders and regulations.

Pros and Cons of the Matter. Although by no means a new development, the practice of delegation has so grown in recent times as to arouse misgivings and draw forth some vigorous criticism. Parliament, it is charged, is gradually restoring to the crown by statute the arbitrary powers of which earlier parliaments stripped it, and thus, whether realizing it or not, is abdicating its own proper functions. Urging it along this perilous road are the ministers, who originate most of the important public measures, who have a definite interest in obtaining as much freedom as possible for the executive authorities to legislate independently, and who are not above slipping into bills clauses, frequently unnoticed by anyone else, conferring the coveted powers. Few members of Parliament, we are told, have any real understanding of how far matters have actually gone.

There are, however, other things to be said. In the first place, notwithstanding delegation, Parliament remains the ultimate authority. Neither king-in-council nor any department has original, independent lawmaking authority entitling it by means of rules and orders to override the will of Parliament on any matter on which the latter chooses to take a position. "All rules," the judicial committee of the Privy Council has said, "derive their validity from the statute which creates the power [to make them], and not from the executive body by which they are made." [1] In the second place, many statutory rules and orders—"statutory instruments," as a Statutory Instruments Act of 1946 has renamed them—must, under terms of the act on which they rest, be "laid upon the table of the House" (this means both the House of Commons and the House of Lords, since both have the power to annul) for a given number of days (by the same act of 1946 made uniformly 40) before they go into effect; and since 1944, a select committee has been charged with examining and reporting upon every statutory instrument so submitted for scrutiny.[2] This latter check is often more a matter of form than anything else, say the objectors, and rightly. Nevertheless, the power of veto is there, to be exercised whenever desired. Finally, it should be carefully noted that orders and rules enjoy no such immunity from judicial review as do

[1] The Zamora (1916). See D. L. Keir and F. H. Lawson, *Cases in Constitutional Law*, 66-70.

[2] The committee has found itself almost overwhelmed by the task. A member lately complained that the agenda for a single meeting weighed 1 lb. 7 oz.!

statutes. No court will hold any act of Parliament *ultra vires*; but any judge, high or low, before whom a case is brought turning on the enforcement of an administrative rule or order may inquire into the authority by which the rule or order was issued and, upon finding it wanting, decline to apply the order to the case before him.[1] Even war-time orders-in-council issued under the broad authority of the Defense of the Realm Acts of 1914–15 and of similar legislation associated with World War II fell to the ground in this way.[2]

3. Development of Administrative Adjudication. Hardly less interesting than the growth of administrative legislation is the development of what may, by analogy, be termed administrative adjudication. Largely as a result of the social legislation of the past half-century, the judicial activities of administrative authorities in, or under the control of, the executive departments have enormously increased, not by accident, but by deliberate provision made in parliamentary statutes. For example, housing acts make the Ministry of Health the appellate body with respect to an extensive series of significant matters closely affecting the rights of owners of slum property and workmen's dwelling houses; and, the department having laid down requisite rules on the subject, appeals are decided by its officials in accordance with them and can be carried to no court of law. Again, the Ministry of Education hears and gives final decision upon appeals turning upon essentially judicial questions arising between local educational authorities and the managers of "non-provided," *i.e.*, denominational schools. Hardly any important department—indeed, hardly any major

[1] The only exception arises in scattered instances, *e.g.*, the Poor Law Act of 1927, in which regulations are given immunity by provision of the covering statute that they "shall have effect as if enacted in this act." The significance of this exception is, however, lessened by a ruling in *Ex parte* Yaffe (1930) that the provision does not compel the courts to accept such legislation unless it conforms to the act.

[2] Interest in the subject of administrative legislation was raised to a lofty pitch by a challenging book published at London in 1929 by the Lord Chief Justice, Lord Hewart of Bury, under the title of *The New Despotism* (see especially Chap. vi). Spurred in part by the alarming picture presented in this volume, the Labor government of the day forthwith set up a committee of 17, under the chairmanship of the Earl of Donoughmore, to investigate both administrative legislation and administrative justice; and in 1932 this group presented a Report of the Committee on Ministers' Powers (Cmd. 4060), the second section (pp. 8-70) of which surveys the growth and character of administrative legislation, in general approvingly, although with suggestions for needed safeguards (for portions of this discussion, see R. K. Gooch, *Source Book*, 157-170). J. Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933), is an informing treatise on the subject, as is also C. K. Allen, *Law and Orders; An Inquiry into the Nature and Scope of Delegated and Executive Powers in England* (London, 1945). An older but still standard work is C. T. Carr, *Delegated Legislation* (Cambridge, Eng., 1921).

branch of a department—lacks in these days a wide range of judicial powers exercised under statutory authority and in complete independence of the courts of law.

Differences of Opinion Here Also. Those who object to the growing exercise of legislative power by administrative authorities usually object even more strongly to "administrative justice." Under the basic English principle of the rule of law, they say, it is the right of every British subject to have disputes of a legal nature in which he is involved heard and decided by the regular judicial courts. As things have been going, however, he is increasingly likely to find that when he desires to contest a rule or decision of an administrative authority, in defense of what he regards as his rights or interests, the matter must be heard and settled, not by a regular judicial court, but by an official, or perchance by a quasi-judicial body, within the department under which the question has arisen.

Here again, there are, of course, arguments in rebuttal: first, that what is complained of is nothing new, since administration and justice have always been to a considerable extent commingled; second, that the swift expansion of social legislation in the past half-century has made the growth of judicial functions in the hands of administrative authorities necessary and inevitable; third, that in wielding such powers these administrative authorities have achieved, and are achieving, socially desirable ends which the courts of law as at present constituted are not always prepared or disposed to serve; and fourth, that the administrative tribunals are easier of access than the ordinary courts and their procedure less technical, less expensive, and more speedy. The problem is an intricate one—too much so to be dealt with adequately here.[1]

4. Emphasis on Coördination. During recent years the responsibilities of governments have expanded almost beyond human comprehension and management, and the problem of coördination has become a major one in Britain and other countries. Various efforts

[1] Lord Hewart's *The New Despotism* is devoted especially to this subject, and section 3 (pp. 71-118) of the *Report of the Committee on Ministers' Powers* considers it concisely (reprinted in part in R. K. Gooch, *Source Book*, 399-414). The Chief Justice finds administrative justice little better than "administrative lawlessness"; the Committee finds nothing radically wrong with it, but, as in the case of administrative legislation, suggests some desirable safeguards. W. A. Robson, *Justice and Administrative Law* (cited above) is a first-rate treatise, with Chaps. i, iii, and vi especially to be recommended, as is also C. T. Carr, *Concerning English Administrative Law* (London, 1941).

have been made to achieve an orderly and reasonably integrated system of public administration, some of which have contributed results while others have been more or less failures. Three general approaches to the problem may be noted in Britain: (1) the setting up of interdepartmental committees, (2) the establishment of cabinet committees, and (3) the appointment of coördinating ministers.

Hardly known to the public are a considerable number of interdepartmental committees which may be either permanent or *ad hoc* in character and whose task it is to canvass certain areas which are of interest to more than a single ministry. Some of these committees have been successful in bringing about a substantial degree of understanding among administrative agencies involved and have become an essential feature of British public administration; others have accomplished little or nothing. But it is apparent that interdepartmental committees are likely to play an increasing rôle in the government process as time passes.

Cabinet committees are at a higher level than the interdepartmental committees and, composed of the heads of the ministries concerned with various aspects of government operations, are in a position to reach decisions not possible at a lower level.[1] With ministers hard pressed for time, these committees have not always been able to give careful attention to their tasks, and indeed some have accomplished very little. They come and go and, as a leading British political scientist who served in the cabinet office has pointed out, their success depends in large measure on their chairmen and other personal factors.[2] But irrespective of the uneven record, the cabinet committees occupy and in all probability will continue to occupy an important position.

The most recent innovation in the direction of coördination has seen the appointment of coördinating ministers, frequently referred to as "overlords." Used rather informally during the war years and during the Labor governments of 1945–51, these officials, usually ministers without portfolio, entered the limelight under the Conservative government which came into power in 1951. They were given the assignment of coördinating government activities in such fields as food, transport, economic affairs, and special research including

[1] See p. 96.

[2] D. N. Chester, "The Central Machinery for Economic Planning," *Lessons of the British War Economy* (London, 1951).

atomic energy. Despite the use made of such area ministers in other governments and the grave problem of integrating administrative activities in Britain, public opinion did not react too favorably to such ministers and their future may be uncertain, at least on their present basis.

CHAPTER VII



THE PERMANENT CIVIL SERVICE

Importance. To this point, the British administrative system has been considered chiefly in terms of its higher managerial and policy-framing levels. But secretaries of state, presidents of boards, departmental under-secretaries, and the like, do not collect taxes, audit accounts, inspect factories, take censuses, keep books, or deliver mail; such services and a thousand others, are performed, rather, by a multitude of lesser officials and employees constituting the permanent civil service. Of ministers and other political officials there commonly are not more than perhaps 200, gathered naturally in London. Of permanent civil servants, there are some 700,000,[1] with heavy concentration in London, yet scattered through all parts of the country; and it is these thousands of men and women who, translating law into action in every corner of the land, bring the national government into its closest day-to-day contacts with the people in their homes and communities. But for the civil servant's unremitting labors, indeed, government would be only a jumble of rules and regulations suspended in mid-air, without force or effect upon the people.[2] In shaping policies on all sorts of subjects, too, both cabinet and Parliament draw heavily upon the civil service for information and guidance; and, as has appeared, different authorities within the service are themselves increasingly entrusted with filling out loosely woven statutes by means of rules applicable to concrete and changing circumstances beyond the ken of the legislature at Westminster.

[1] On April 1, 1952, 683,998. Besides this number of "non-industrial" civil servants, there were on Jan. 1, 1952, 413,000 "industrial," *i.e.*, laborers and the like.

[2] "I have a shrewd suspicion," Joseph Chamberlain once said to a group of civil servants, "that you could do without us. But I have an absolute conviction that we could not do without you." C. W. Boyd [ed.], *Mr. Chamberlain's Speeches* (London, 1914), II, 7.

No branch of the British government has a higher reputation for integrity and efficiency; and in the present chapter we must see how the service is recruited, classified, controlled, disciplined, and fitted into the general scheme of things.

MINISTERS AND PERMANENT CIVIL SERVANTS CONTRASTED

1. As to Political Status. Certain sharp distinctions between ministers and permanent civil servants at once attract attention. The first turns on the fact that the minister is a political official while the civil servant is not. Most ministers belong to the House of Commons, to which they have been elected as party men; if in the cabinet, they are likely to be recognized party leaders; in any event, they bear a party label and remain in office only so long as their party stays in power.[1] The permanent civil servant, particularly of the higher levels, on the other hand, derives his status definitely from the fact that he is nonpolitical. He is not permitted to be a member of the House of Commons, or even to become a candidate for a seat in that body without resigning his civil service post. A higher level civil servant may not make a political speech, print a partisan article or tract, edit or publish a party newspaper, canvass for a party candidate, or serve on a party committee. Indeed, in times past revenue collectors, police, and one or two other groups of public employees have actually been disfranchised, although none is under such disability today, and lower level civil servants now have reasonable freedom in political activities, especially in the local area. Hedged about by parliamentary statutes, orders-in-council, and restraining rules laid down by the Civil Service Commission—to say nothing of public opinion—the civil servant high or low (if he lives up to what is expected of him) serves with equal fidelity under governments of different hue.[2]

2. As to Technical Experience. There is another way in which ministers and permanent civil servants differ. The former are, in the

[1] The situation is, of course, somewhat different when a coalition government is in office, but even then ministers are selected with reference to their party status and are certainly "political."

[2] In his *Democracy in Crisis,* Professor H. J. Laski a few years ago visualized a future violent break between the more conservative, constitutional elements of British society and the forces of Socialism, and predicted that the civil service not only would be found on the conservative side but would add to the fires of revolution by flatly refusing to function under a Socialist régime. That so fearsome a forecast was purely fanciful was clearly evidenced in 1945 when, with a Socialist (Labor) government in full power and entering upon a program of nationalization

main, amateurs, while the latter are, or are in process of becoming, experts. Anyone who has read what has already been said about the ministers will understand why they are, and with rare exceptions must be, amateurs. They are appointed with some regard, of course, for their personal aptitudes, but often, if not usually, for reasons that have little connection with the nature of the work performed in their particular departments; frequently they have had little or no experience with governmental administration in any form. The departments over which they find themselves placed have in most instances come to embrace so many different services that no man could possibly qualify as an expert in them all. While in office, ministers, furthermore, must devote so much of their time to cabinet, parliamentary, party, social, and other activities outside of the fields assigned them that they can in fact learn little about their departments except on very broad and general lines. Not infrequently they are shifted from one post to another, and in any event they enjoy only the precarious, and usually rather brief, tenure which the political character of their positions entails.[1] Merchants, lawyers, country squires, professional politicians, trade union organizers, with an occasional journalist and university professor—these, rather than permanent secretaries, under-secretaries, assistant secretaries, and bureau chiefs who have risen from the ranks, are the materials of which ministries are made. Ministers are generally laymen, and make no pretense to being anything else.

Should the Ministers Be Experts? The apparent incongruity of such a state of things has stirred no small amount of ridicule and complaint. "We require," says one critic, "some acquaintance with the technicalities of their work from the subordinate officials, but none from the responsible chiefs. A youth must pass an examination in arithmetic before he can hold a second-class clerkship in the Treasury; but a Chancellor of the Exchequer may be a middle-aged man of the world, who has forgotten what little he ever learnt about fig-

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repugnant to most conservatives and many moderates, the civil service quietly accepted the situation and, with little if any less loyalty to the new régime than to others that had preceded it, went on uninterruptedly with its business of administering the laws entrusted to it.

[1] In the first 25 years of his public career, Winston Churchill was successively President of the Board of Trade, Home Secretary, First Lord of the Admiralty, War Minister, Air Minister, Colonial Secretary, and Chancellor of the Exchequer. Within two years (1935-37), Sir Samuel Hoare had charge of the India Office, the Foreign Office, the Admiralty, and the Home Office.

ures at Eton or Oxford, and is innocently anxious to know the meaning of 'those little dots,' when first confronted with Treasury accounts worked out in decimals. A young officer will be refused his promotion to captain's rank if he cannot show some acquaintance with tactics and with military history; but the Minister for War may be a man of peace—we have had such—who regards all soldiering with dislike, and has sedulously abstained from getting to know anything about it." [1] In France and other Continental states, it has been not uncommon to put military and naval men in charge of the war and marine ministries; and even in the United States there has been a growing demand that the persons whom the president places at the head of at least a few of the executive departments, *e.g.,* Agriculture and Labor, shall have had professional experience related to the work which they will be expected to supervise; and of course the head of the Department of Justice is always at least a lawyer.

Reasons Why the Present Practice Is Best. There is no denying that, other things being equal, the department head who is well informed on the work to be carried on under his direction is to be preferred. But this does not mean that he can, or should, be expected to qualify as an expert or technician. Dozens of more or less related, but different, activities must go on simultaneously in the department, each requiring a high order of technical proficiency. Neither the minister in charge nor any other man can be a master of all; and so far as the minister is concerned, it is unnecessary that he be a master of any, because—and this cannot be too strongly emphasized—his business is not to do the work of the department, but only to help frame general policies and see that they are carried out by the staff employed for the purpose. Indeed, there are reasons for thinking that it may actually be better for him to be a layman, brought in from the outside. He must be able to see the department as a whole and in its relations to other departments and branches of the government. He must have a sense of proportion and values requisite to guide him in keeping the department within its proper sphere. He must serve as intermediary between the department and the House of Commons, keeping the one in touch with public opinion and the other informed on administrative needs and problems. Though war minister, he must have the interests of more than the military men at heart; though minister of agriculture, he must serve others besides the landowners.

[1] S. Low, *Governance of England* (rev. ed., 1914), 201-202.

These larger things he might be less capable of doing if he had grown up in the department and had only a departmental point of view. On general principles, too, it is usually desirable for the work of experts to be supervised by laymen. If the supervision is at all tactful and sympathetic, less friction is likely to result than where experts are set to supervise experts.

Relations of Ministers with Their Subordinates. The basic feature of British executive and administrative organization is, therefore, the association together of (1) an amateur, lay, political, non-permanent, directing body of officials, and (2) an expert, professional, non-political, permanent, subordinate staff. "The former," as an American scholar writes, "provides the democratic element in administration; the latter the bureaucratic. Both are essential—one of them to make a government popular; the other to make it efficient. And the test of a good government is its successful combination of these two qualities." [1] The interrelations of the two elements in the day-to-day workings of a department vary with the personalities and circumstances involved, but must necessarily be intimate and continuous. As spokesman in the department for the cabinet and Parliament, the minister directs and instructs; to a degree, he determines policy and imposes it upon those under him. On the other hand, as an amateur with little time for delving into the minutiae of department business, he cannot go far in any direction without assistance from the experts. On them he must rely for information about matters of which he knows little or nothing; from them he must seek advice; from them, indeed, he must continually accept guidance.[2] Well aware of their own superiority in experience, and sometimes in ability as well, permanent secretaries and various other members of the permanent staff commonly have no hesitation about putting forward their own suggestions, arguments, and admonitions; and as a well-known English writer observes, the minister will, "in ninety-nine cases out of a hundred, simply accept their view, and sign his name on the dotted line." [3] Of course, no minister ever acknowledges any *obligation* to accept and act upon the views of his subordinates,

[1] W. B. Munro, *The Governments of Europe* (3rd ed.), 117.

[2] Bernard Shaw's scoffing remark in the preface to his *The Apple Cart* that "the nearest thing to a puppet in our political system is a cabinet minister at the head of a great public office," while of course an exaggeration, nevertheless contains no small amount of truth.

[3] R. Muir, *How Britain Is Governed* (3rd ed.), 56.

however urgently pressed. It is he, not they, who will have to justify to the cabinet whatever decisions are made, and also bear responsibility for them on the floor of an inquiring, and perhaps censorious, House of Commons; and the last thing that he would surrender would be the right to make the decisions himself. If things go well, he gets the credit; if ill, he shoulders the blame. So far as responsibility goes, the minister is the department. Nevertheless, to a far greater extent than is commonly appreciated, the skilled and permanent service contributes to the shaping both of departmental and of broader national policy. The actual authorship of many a bill introduced and pushed in Parliament by the ministers is to be found, not among the ministers themselves, but among their subordinates in the departments.[1]

CIVIL SERVICE REFORM

Earlier Conditions—The Prevalence of Patronage. A moment's reflection would suggest that while the political, ministerial members of the public service must of necessity be selected differently, the non-political, professional, permanent officials and employees might best be recruited on the basis of knowledge and capacity as tested in formal examinations; and the next significant aspect of the permanent service to be observed is the wide application made of what we in America are accustomed to term the "merit" principle. Like ourselves, the British people came by the merit plan only after a long fight for "civil service reform." They attained it, however, a generation earlier than we, and the victory of the cause in their country did much to promote the hard-won, but very substantial, triumphs which it has achieved on this side of the Atlantic.[2] In Britain, as with us, the fight had to be waged against various flagrant and insidious forms of what is commonly known as "patronage." On whatever level and in whatever branch, government in Britain in the eighteenth and earlier nineteenth centuries was by no means democratic. Legislation at Westminster was chiefly in the hands of the leading members of a few governing families; justice and local

[1] For an excellent detailed discussion of this general matter, see C. Aikin, "The British Bureaucracy and the Origins of Parliamentary Policy," *Amer. Polit. Sci. Rev.*, Feb. and Apr., 1939.

[2] Thus the basic legislation known as the Pendleton Act, in 1883, was helped along appreciably by the publication in 1880 of a book entitled *The Civil Service in Great Britain*, by Dorman B. Eaton, an ardent reformer whom President Hayes sent to England to study civil service progress there made.

government were carried on almost entirely by propertied but unpaid and often inefficient justices of the peace; and the national administration was entrusted mainly to persons who got their places by some sort of favoritism rather than as a reward for possessing any particular capacity or competence. Many, if not most, appointees to administrative posts not only were amateurs, like the ministers, but had no claims whatever to preferment other than that they were clamorous constituents of influential members of Parliament—perchance useful supporters at election time. Many were younger sons of powerful landholders or politicians; many were needy relatives or other more or less unpromising members of a magnate's entourage; many performed public duties on only a part-time basis, as a sort of side-line.[1]

"Clean sweeps," of the sort that came to be the fashion in the heyday of the American spoils system rarely or never occurred; the Englishman thought of a man, once in a public office, as having somewhat of a vested right to it, and there was no such fear of entrenched office-holders as found frequent expression in America, especially in Jacksonian days. Besides, under a cabinet system, with a change of ministers possible at almost any moment, the principle of rotation, if allowed to dominate, would, as any sane man could see, keep the entire governmental system constantly on the brink of chaos. Nevertheless, there were some removals on partisan and personal grounds; and when desirable places fell vacant, or new ones were created, the appointments almost invariably went to sons of the aristocracy or other place-hunters selected for reasons having little or nothing to do with competence. Promotions, too, were largely a matter of political or personal influence.[2]

Transition to the Merit System. High-minded heads of departments protested against a system which swamped the services with inefficient and lazy employees, and lay critics like Carlyle poured out the vials of their wrath upon both the purveyors and the beneficiaries of patronage. Not until 1833, however, was it found pos-

[1] John Bright once referred to the civil service of his time as "the outdoor relief department of the British aristocracy." See the unpleasant picture presented in a document reprinted in N. L. Hill and H. W. Stoke, *op. cit.*, 86-87.

[2] The general state of the service at the middle of the nineteenth century is reviewed in R. Moses, *The Civil Service of Great Britain* (New York, 1914), Chap. i. The situation is portrayed half-humorously in Anthony Trollope's novel, *The Three Clerks;* and devotees of Dickens will have no difficulty in recalling the "circumlocution office" of *Little Dorrit.*

sible to make a start in the direction of reform, and then only in a very modest fashion in connection with appointments in British India. Not until past the middle of the century, following the submission of a challenging report by a Treasury committee, could anything be done to improve matters in the services at home.[1] Even then, the country did not go over to a merit system immediately, or by a single leap. Nevertheless, in 1855 an order-in-council created a civil service commission of three members charged with administering examinations to candidates in junior positions in all departments; the pass examinations introduced at the outset presently gave way to competitive tests; and a Superannuation Act of 1859 imparted a powerful impetus by providing that no person thereafter appointed (with certain exceptions) should be regarded as entitled to a retirement pension unless he should have been admitted to the service with a certificate from the commissioners. Finally, in 1870, an epoch-marking order-in-council completed the edifice by making open competitive examinations obligatory practically throughout the service. Since that time, the merit plan of recruitment and promotion has applied, speaking broadly, to the whole body of national administrative officers and employees except only employees with purely routine duties at the bottom of the scale and a small group of ministers at the top who have to do directly with determining policy, and who accordingly are properly kept on a different basis.[2]

A Task for the Executive Authorities. One will not be surprised to learn that every step in the British reform was resisted stoutly by politicians and others who had something to lose by any change, and that during its first 20 years the Civil Service Commission was the object of almost continuous criticism and attack. There never was really serious danger, however, of a reversion to the earlier condition of things; and from 1870 onwards it was a matter chiefly

[1] The report proper was issued late in 1853; with comments by various eminent people, it was presented to Parliament in 1854 under the title of *Report and Papers Relating to the Reorganization of the Civil Service.* Macaulay tells us that, when first published, it was laughed at in the clubs and had little support in the House of Commons. It is, nevertheless, the foundation of Britain's excellent civil service system today. For an account of it, see R. Moses, *op. cit.*, Chap. iii.

[2] The merit principle thus operates considerably farther up the official scale than in the national government of the United States, where many hundreds of higher, and even intermediate, office-holders, such as under-secretaries, assistant secretaries, office directors, bureau chiefs, district attorneys, and others, are still on a political basis. In a British executive department, even permanent secretaries, corresponding to American under-secretaries and assistant secretaries, are on the merit basis.

of studying and experimenting with modes of bringing the system to a still higher level of efficiency and keeping it abreast of the times. To this end, searching inquiries were made by successive commissions, notably in 1875, in 1884-90, in 1910-14, in 1918, and in 1929-31; and large numbers of orders-in-council were issued introducing improvements. In the entire process, Parliament—never very enthusiastic on the subject—played a distinctly minor rôle; indeed, the fashion in which the two houses kept their hands off the problem and allowed the entire present-day merit system to be built up upon the basis of executive investigations, plans, and orders may well be cited as an illustration of that legislative abstention from direct control of administration which so sharply differentiates methods at Westminster from those at Washington. The executive authorities, standing closer to the realities of the problem, quite outran parliamentary, if not also popular, sentiment on the subject, and, almost before the country was aware of what was happening, gave it the first truly expert and professional civil service known to the Western world.[1]

THE CIVIL SERVICE TODAY

Numbers. The broadening and deepening of the range of government activities in the last hundred years is reflected strikingly in the creation of new executive departments and offices, as outlined in the preceding chapter. It is similarly evidenced by the growth of the civil service. In 1832, the total number of civil servants—counting all members of administrative and clerical staffs, including postal officials, but excluding laborers (for whom there are no figures)—was 21,305.[2] By 1871, the figure had risen to 54,000, and by 1891, to 79,241; in 1914, on the eve of World War I, it was 280,900; in 1926, after a considerable decline from a peak reached during the war, it was 296,000. It 1939, on the eve of World War II, it was 371,050; during that war it mounted, in 1943, to 678,470; and after 1945, the postwar decline which might have been anticipated did

[1] Closely rivalling it, however, was the civil service of Prussia, by which indeed it was considerably influenced, although happily without imitation of the rigidity, pedantry, and arrogance characteristic of that system.

For historical accounts, in addition to the monograph by R. Moses mentioned above, see W. A. Robson, *From Patronage to Proficiency in the Public Service* (London, 1922), and E. W. Cohen, *The Growth of the British Civil Service* (London, 1941).

[2] To avert possible confusion, the reader may be reminded that only the national civil service is under discussion here.

not materialize, so that, as indicated above, the total on April 1, 1952, was actually 683,998. Of this latter total, less than one-half (320,661) were employed in the national revenue departments (252,617 in the Post Office alone, including the telegraph and telephone services), and, next to that, one-sixth (138,812) in civilian jobs connected with the defense services and the related Ministry of Supply. The total of employees of the national government, including laborers not reckoned as belonging to the civil service, was 1,101,400 at the beginning of 1952; and there is scant prospect that it will be materially smaller despite a drop of several thousand during 1952.

Classification. In earlier days, little or no attempt was made to group the members of the civil service into definite classes. After the reform of 1870, however, it was found desirable to distinguish between the higher posts, involving discretionary powers and requiring a thorough education, and inferior positions entailing only work of a clerical nature; and gradually a scheme of classification into first or higher division clerks, second division clerks, assistant clerks, boy clerks, and women clerks was worked out, although promotion from one class to another was rare and the articulation of the different parts of the system was generally unsatisfactory. A reorganization definitely in prospect when World War I began naturally was delayed, but, resumed actively in 1918, was within a few years carried out in most departments, although even yet the resulting arrangements are not employed in all, nor with entire uniformity in those employing them. The present general scheme of classes, from the top downwards, is as follows:

1. The Administrative Class. Sometimes termed "the brain of the service," this class, replacing the old first division, consists of some 3,000 persons (both men and women) constituting a pool of especially competent personnel available for all departments as needed. Recruitment is partly by promotion, but mainly by competitive oral and written examinations of such difficulty that only honor graduates of the best universities can hope to pass them; and admission is normally to the lowest of several grades only, at ages between 21 and 24. Key class of the service, this is the one that contributes most to the high reputation of British administration throughout the world. Foreign writers sometimes speak of the British civil service as though recruited exclusively from brilliant young graduates of Oxford and Cambridge. Not even the small administrative class, however, is

drawn solely from the two institutions named; while the great bulk of the service comes from the ranks of those who have not enjoyed a university education at all.[1]

2. The Executive Class. This class, numbering in recent years some 65,000 persons, roughly takes the place of the former second division and certain other groups, and is recruited at the ages of 18-19, partly by promotion from the next class below, but mainly by competitive examinations adjusted to the higher secondary school level. Members of this class do the more important work of supply and accounting establishments and of other executive and specialized branches of the service.

3. The Clerical Class. Broadly equivalent to the lower ranges of the old second division, this relatively numerous class (about 145,000 in 1952) consists of men and women recruited at the ages of 16-17 mainly by competitive examinations of the standard of the intermediate stage of a secondary school. This class is employed in practically all departments, and there is a grade of higher clerical officers (totalling some 10,000) to perform supervisory duties and tasks of an individual nature similar in type to those of the junior executive grade.

4. The Clerical Assistant Class. In days before office work underwent its present mechanization, large numbers of "writing assistants" were used for hand copying and transcribing, addressing letters, writing and filing cards, and other purely routine operations. Originally, boys were employed. For them, however, such occupation was a blind alley, leading to nothing except ejection at 19-20 into the general labor market with little or no preparation for a trade; and a quarter of a century ago the work was shifted to girls, on the theory not only that they might do it better, but that the outflow would be taken care of naturally and harmlessly by marriage. In 1936, the term "writing assistant" was abandoned and the pay increased; and nowadays the grade is recruited entirely from girls by examinations open to those of the ages 16-17 and based on a higher elementary education, although some of the successful applicants come from the secondary schools. Unlike the other classes, clerical assistants (numbering, in all, some 105,000) are not divided into grades.

The scheme of classes outlined constitutes a less rigid hierarchy

[1] E. Barker, "Selection and Education for the Administrative Class," *Pub. Admin.*, July, 1938; H. E. Dale, *The Higher Civil Service of Great Britain* (London, 1941).

than the uniformed observer might suppose. Not only are the boundaries between classes more or less indefinite—varying also from department to department—but, at least in the case of the first three, there is an increasing flow of personnel from one class into another. A number of establishments requiring special techniques, *e.g.*, the customs and excise and inland revenue branches of the Treasury, have classes specially adapted to their needs. Finally, the general classification mentioned takes no account of the thousands of people employed as scientific experts, specialists such as lawyers and doctors, and various foreign and colonial service officials; nor does it include the many laborers in government arsenals, dockyards, and other industrial undertakings.[1] In some areas, there is segregation on the basis of sex; but the tendency is to restrict these to forms of work for which one sex is supposed to have some advantage over the other.[2]

AGENCIES OF CONTROL

1. The Civil Service Commission. As a recent English writer observes, the civil service is "centrally recruited through the Civil Service Commission and centrally controlled by the Treasury, which is the mouthpiece of the government in relation to the administration and constitutes the legislative authority for the civil service as a whole."[3] The pioneer order-in-council of 1855 created a central three-member board of examiners, and to this day the authority which makes and executes rules for entry into the service (except in the case of the public corporations, as indicated) has been His Majesty's Civil Service Commissioners, commonly referred to simply as "the Commissioners," or the Civil Service Commission. Appointed by the crown—which in practice means by order-in-council after the cabinet has duly consulted with appropriate Treasury officials—the commissioners are usually persons of long experience in the service; and, subject to "the king's pleasure," they hold office until eligible for retirement under regular civil service rules. By order-in-council

[1] This is one of the reasons why the figures given above for the various classes do not add up to the service total.

[2] In 1952, 33.7% of non-industrial, and 9.8% of industrial, employees were women.

[3] E. N. Gladden, *The Civil Service; Its Problems and Future* (London, 1945), 39. This broad statement is now subject to some qualification inasmuch as the numerous public corporations that have grown up (chiefly in pursuance of the Labor government's nationalization program since 1945) recruit their personnel, not through the Civil Service Commission, but directly, and since, further, they are independent as to both personnel and salary scales.

definition, the Commission's duties are: (1) to "approve" the qualifications of "all persons [1] proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty's civil establishments"; (2) to make regulations prescribing the manner in which persons are to be admitted to the civil establishments and the conditions on which the commissioners may issue certificates of qualification; and (3) to publish in the *London Gazette* notice of all appointments and promotions with respect to which certificates of qualification have been issued. As indicated below, the Commission's work is subject at all points to Treasury approval; and of course it must be understood that actual appointments are made, not by the Commission, but by the appropriate department heads, subject again to general Treasury control. The Commission has nothing to do with classification, promotions, salary ranges, or discipline. Its business is solely that of examination and certification. In all that relates, however, to this important function of recruitment, it wields an authority which is rarely overborne; and the scheme of examinations which it has built up is one of the outstanding features of the British administrative system.

2. The Treasury. The key position which the Treasury occupies among the executive departments—more particularly, the supervision which it wields over their expenditures—would of itself entail a good deal of control over the conditions under which their work is carried on. But an order-in-council of 1920, consolidating a long line of previous orders, authorizes this purse-holding *pater familias* of the governmental system to "make regulations for controlling the conduct of His Majesty's civil establishments and providing for the classification, remuneration, and other conditions of service of all persons employed therein, whether permanently or temporarily"; and as a result, practically every phase of civil service organization and activity (outside of the public corporations, as indicated)— the number and rank of civil servants in each department, salary bases and ranges, efficiency ratings, promotions, pensions, though not discipline —is subject to whatever degree of Treasury regulation the authorities of the department care to impose. Even rules and regulations for admission to the service as laid down by the civil service commissioners, including types, times, and places of examinations, are effective only when given Treasury approval; and altogether it is

[1] With certain specified exceptions.

hardly exaggerating to characterize the Treasury as "employer of the civil service." Since 1919, Treasury control has been centralized in an "establishments department," each larger ministry having an "establishments" branch of its own for handling matters not requiring attention elsewhere, and the heads of these units forming a committee to advise and assist the central establishments department in the Treasury. Since 1919, too, the Permanent Secretary of the Treasury has borne the significant title of "Head of the Civil Service;" and now he receives the highest salary (£ 5,000) paid in the service.[1]

RECRUITMENT

Methods. It must not be supposed that a single mode of recruitment is employed for all branches and grades of the service. Quite the contrary. In the first place, as pointed out, the Treasury has its own system for certain of its important services (especially customs and excise and inland revenue), as do also the public corporations. Furthermore, even in the services as regularly administered, tests may be applied (1) by written examination, (2) by interview, the candidate conversing with a board of examiners, or (3) by a mixed method under which personal fitness is judged by means of interview and knowledge by written examination.[2] To describe, one by one, the many kinds of tests employed is not feasible here, but something may be said about the examination system in general, especially as found in those parts of the service in which recruitment is most directly controlled by the Commission.

Examinations. Great changes have taken place in English civil service examinations since the time when Anthony Trollope, having failed at everything else, was admitted to the secretariat of the Post

[1] See T. L. Heath, *The Treasury*, Chap. x. "Treasury control," remarks a former Treasury official, "is something you live under, that you suffer from, that you profit by; and if you cannot define it, well—Lord Morley used to say that he could not define an elephant, but he knew it when he saw it, and you know Treasury control when you feel it." H. Higgs, in *Jour. of Pub. Admin.*, Apr., 1924, p. 122. It is sometimes questioned whether the Treasury, concerned as it is and must be with matters of finance and economy, is the best instrument for supervision of the civil service, and the cabinet secretariat has been proposed as in some respects more logical. No relaxation of Treasury control is, however, at all probable.

[2] Use of the interview has on the whole been increasing, although often criticized as tending to reintroduce the personal factor in recruitment. In the traditional examinations for admission to the lowest grade of the administrative class, 300 points, or "marks," out of a total of 1,300 are allotted to the oral portion. Under the newer methods, introduced as a postwar experiment and applicable to the examinations for the administrative class, senior division of the Foreign Service, and special departmental classes, candidates are selected mainly by interview.

Office on the basis of a test which consisted in copying a newspaper article, in the course of which he misspelled several words and finally spilled ink on the manuscript! Furthermore, the English objectives in examining for admission to the service, particularly in the administrative-clerical sphere, are rather different from the American, even on corresponding levels. In this country, persons taking the examinations are commonly candidates for specific types of positions, and examinations are framed primarily to test fitness for appointment to those particular posts. As a result, examinations tend to be specific, practical, non-academic. English examinations, however, aim, not so much at finding out how well an applicant could presumably discharge the duties of a given post if he were appointed to it tomorrow, as at measuring his intellectual attainments, his qualities of mind, and his general promise for the future. Thus, candidates for admission to the administrative class are given the same examinations, whether they eventually find employment in the Treasury, in the Board of Trade, or in the Admiralty. The subjects in which they are examined are distinctly academic—including, in varying combinations, history, mathematics, ancient and modern languages, philosophy, economics, political science, natural science, and others—and are drawn almost entirely from the realm of the liberal, as opposed to the technical, studies. And the questions are of a sort which ordinarily can be answered only by an upper-group university graduate; indeed, most of them are furnished by Oxford, Cambridge, and other university teachers.[1] To be sure, examinations for entrance into the next class below, *i.e.*, the executive, are easy enough to be passed by persons with a secondary-school education. Yet they, too, are of an essentially academic rather than "practical" nature; and even at a still lower level, a "female telegraphist"—so a recent examination paper reveals—might be required to give an account of the reign of Alfred the Great, compare the times of Elizabeth and Victoria, discourse on ocean currents, and compute algebraically the area of the face of a penny!

Merits of the English and American Concepts. The English view of the matter is that it is desirable to get into the service people who, although they may at the moment know little or nothing about the duties of any particular position (their youth and inexperience

[1] Many specimen sets of questions are given in R. K. Gooch, *Source Book*, 198-223. Cf. N. L. Hill and H. W. Stoke, *op. cit.* (2nd ed.), 87-89.

would, in fact, preclude such knowledge), nevertheless have education and capacity that will enable them to rise from lower to higher positions and to become increasingly useful servants of the state. Such people can be trusted to pick up in a relatively short time a sufficient knowledge of the special work with which they are to start; indeed, provision is commonly made for training them after they begin. The main concern is that they—at all events, in the middle and higher levels—be the sort that will prove capable of going on, some of them to permanent secretaryships and other important offices which the British permanent service includes. From this it follows that much emphasis is placed upon the civil service as a career. Rarely is it entered today, at intermediate or higher levels, except by persons who have decided to make it a life work, who accordingly have subjected themselves to the arduous discipline involved in carrying out the necessary preparation, and who come to the service as young men or women (not over 24 years of age with allowance for military service) who have looked to this alone, and not as middle-aged persons who have tried a number of other things and failed.

There is something to be said, of course, for both the American and British concepts. The American is more democratic; it exacts little of the beginner in the way of cultural equipment, and it affords a haven for men and women of all ages who are presumably fitted to do some particular form of clerical or other work. This, however, is about all that can be said for it. The British system is less democratic. But it attracts to the public service men and women who, on the average, not only are younger and more energetic and flexible than American appointees, but far better fitted by education, and perchance by native capacity as well, to become progressively able, useful and responsible servants of the state. From an American point of view, the British administrative class has suffered in the past from being drawn almost exclusively from the well-to-do and aristocratic elements of society, resulting too often in narrowness of sympathies and sometimes in smugness and snobbishness. The university education almost indispensable for entrance is now coming to be available to young people on every social level; even Oxford and Cambridge are being democratized through the device of scholarships (some 80 per cent of the students are currently recipients of scholarships or other forms of financial aid); and the disadvantages of limited entry and aristocratic background are gradually being overcome.

Appointments. After candidates have been examined, they are listed in the order of their standings; and from these lists individuals are picked off in the order of their standings as appointments become necessary in the departments. In the case of the administrative class, examinations are held once a year, concurrently with graduation at the universities; and departments indicate in advance how many recruits they will need. If candidates remain without appointment, their names are dropped and can find places on the following year's list only if new examinations are taken and successfully passed.[1]

OTHER ASPECTS OF PERSONNEL

In-Service Training. As has been indicated, recruitment under the British system is aimed at securing general education and intelligence rather than special training and proficiency; the successful candidate must learn his job after he gets it. From this it might be inferred that systematic schemes of post-entry, or "in-service," training were founded long ago. This, however, is not the case; except in rather desultory fashion, or at all events in connection with positions calling for specialized techniques—little thought was given the matter until comparatively recently. "The usual practice," we are told, "especially in the ordinary clerical branches, has been to pitchfork the newcomer straight on to a job with the minimum amount of preliminary advice, and to leave him to the mercies of his often overpressed colleagues." [2] In some degree, this situation is now being corrected. In many departments, more or less care is taken at least to assign the newcomer to a job affording him the most suitable introduction to his new field of effort. To widen his experience, too, he may be transferred from one branch to another at frequent intervals. Tours of inspection covering different establishments or procedures from which he can learn are sometimes utilized. Some departments and services go farther and organize lectures and even formal courses of instruction, perhaps drawing in assistance from the outside. In a few cases, *e.g.*, the Post Office, especially equipped training schools have been provided; in still others, employees are required to attend

[1] After World War I, Great Britain encountered the same general problem of preferential treatment for veterans that has assumed such magnitude in the United States—and with, in lesser degree, the same outcome. From that time, the service has been infiltrated increasingly on various levels by ex-servicemen, commonly admitted initially on only some temporary basis, but ultimately absorbed as permanent, specially-favored members.

[2] E. N. Gladden, *op. cit.*, 61-62.

special evening classes at such a center as the London School of Economics. In all too many instances, however, a department seems to consider that it has discharged its obligation when it has simply issued and distributed codes of regulations, information booklets, and the like—often legalistic and dull, rather than of a nature to stimulate interest and pride in the work to be done and challenge to a proficiency promising advancement. Nowhere in the world has the problem of civil servant in-service training been solved, and Britain has done about as well with it as has any other nation. The excellence of the British service at many other points, however, leaves its long neglect at this one the more glaring.[1]

Promotions. A corollary of the principle that new appointees to the service shall be persons of demonstrated capacity for growth is the consideration that the way must be kept open for them to mount in the scale as experience fits them for more important duties. This means a scheme of promotions conceived in the best interests of efficiency and morale. The experience of Great Britain, as well as of the United States, however, bears out the observation often heard that no civil service problem is more difficult and troublesome than that of promotion. The simplest and easiest basis for moving up employees, whether within a grade or from grade to grade within a class or from one class to another, is, of course, seniority; and that factor is not entirely absent from either British or American promotional procedures. For obvious reasons, however, the principle cannot be followed completely or even mainly. A second manifest basis or method is competitive promotional examinations. But while this tends to give equal opportunity to all, and yields other undoubted advantages, universal experience indicates its inadequacy to the purpose in hand, *i.e.*, to the singling out of the most deserving; the qualities looked for in promotion rarely lend themselves at all readily to the examining process. In the British system as now operated, the department is the promotional unit, and there is variation from department to department. But since shortly after World War I the key device has been, in each department, a promotion board including the principal department officials, sitting whenever there are vacancies to be filled, and selecting employees for advancement on the basis of service records and any other information available—although considering possible selectees in the order of seniority and either

[1] H. Walker, *Training Public Employees in Great Britain* (New York, 1935).

agreeing upon them or passing on down the list. Department staffs may, but seldom do, volunteer recommendations; and a promotion board may, but usually does not, interview likely candidates. Promotion comes more rapidly on the upper than on the lower levels, where frequently it does not come at all; but even in the executive and administrative classes, it is made less frequent by the filling of numerous posts (fully half in the executive class) by direct entry from the competitive examinations.

Removals. As is suggested by the term "permanent civil service," non-political officers and employees, once appointed, remain in the public employ until they die, resign, are removed for misbehavior, or reach the age of retirement. There is, to be sure, no legal guarantee to this effect. Quite the contrary; except judges and the Comptroller and Auditor-General, every officer under the crown—civil and military—serves only "during the king's pleasure"; so far as the law goes, any officer or employee (with the exceptions indicated) may be dismissed at any time, with no reasons assigned; and, once discharged, a civil servant has no case in the courts for wrongful dismissal and damages. Promiscuous removals, however, never became the fashion, even when patronage was at its height; and the custom which nowadays protects every permanent official's right to be retained in the service (up to the age of retirement) as long as he behaves himself and does his work acceptably is as scrupulously observed as any law on the subject could possibly be. Nothing would sooner discredit a ministry than any manifestation of a disposition to tamper with the securities and immunities of the permanent service.

Pay. A difficult but unavoidable problem in any civil service system is that of pay. To be sure, there was a time when the bulk of the state's work was done by persons who secured their positions through patronage, who frequently were incompetent and negligent, and who would hardly be regarded as having a claim to compensation on a basis fixed by market demand. Nowadays, however, the state must seek out the best talent available, compete for it with the professions and with private employers, and pay whatever is necessary to recruit and retain an efficient staff. As compared with private employment, the public service has some advantages, but also disadvantages; and in some degree both contribute to determining public pay scales. On the one hand, civil servants are virtually assured of permanent employment; they commonly have reasonable opportuni-

ties for promotion; they have a dignified connection, and are shielded from certain of the casualties of private occupations. On the other hand, they are subject to special rules of decorum; they may not engage in various political activities open to other people; they have no chance to acquire riches at an early age, or indeed at all; once in the service, they cannot leave it without sacrifice of their superannuation rights, or having left it, return to it except with considerable difficulty. With these and other factors in the picture, civil service pay in Britain works out broadly in such fashion that in the lower grades it is, on the average, favorable in comparison with outside employment, but in the higher grades less so, until at the top it is somewhat below the standards for posts of similar importance and responsibility elsewhere, in both private and semi-official organizations. Only a handful of top officials in the permanent service receive as much as £1,500 a year—far fewer than get comparable amounts in the federal service of the United States.

Pensions. Retirement and retirement allowances, or pensions, are regulated on broader lines by Parliament, but in detail by the Treasury; and the system is administered by Treasury commissioners. The normal retirement age is now flexible, normally between 60 and 65; retirement on a pension can ordinarily take place before 60 only upon presentation of a certificate of physical or mental unfitness; at that age, anyone may retire who desires to do so; and at 65, retirement is compulsory unless the employing department allows an extension, in an individual case. Public employees in Britain are not required to make a contribution out of their salaries toward the cost of the system; and the pension received is one-half of the average salary earned in the last three years of service plus a single gratuity three times the amount of the pension.

ORGANIZATION OF CIVIL SERVANTS—WHITLEY COUNCILS

The Organization Movement. In these days of widespread and effective organization in industry, business, and politics, one will not be surprised to learn that in Britain as elsewhere civil servants, high and low, have formed themselves into unions and confederations for the promotion of their pecuniary and other interests. Trade unions among employees in private industry were legalized only in 1824-25, and similar organizations of civil servants became permissible only in the early years of the present century. Somewhat over three-fourths

of the whole number of public employees, however, are now to be found in one or another of literally hundreds of organizations, many linked up in federations like the Civil Service Alliance (with over 200,000 members) and the Union of Post Office Workers (with 160,208).[1] Since the Whitley Council system (to be explained below) was introduced after World War I, multiplication has been particularly rapid; for the system's operation is based on the principle of representation of employee organizations, and the only way in which employees can obtain representation on a council at any level is through membership in an organization. Furthermore, such associations are again free to affiliate with trade-union organizations outside, as well as inside, the public service; and most of the unions and federations have become so affiliated, not only with the general national trade-union organization, the Trades Union Congress, but also with the Labor party. Pay and working conditions in the service are governed largely by standards prevailing in private employment, and it is to the interest of government workers to coöperate in any effort of private employees to raise wage levels and improve conditions.

Restrictions Imposed in 1927, Repealed in 1946. Such alliances, however, raise problems, particularly that of the right to participate in strikes; and it was out of this situation that the restrictive policy above referred to arose. The unionizing of government workers has been going on the world over, and the strike question never fails to come up. Various ways of handling it have been adopted. In the United States, an act of Congress dating from 1912 recognizes the right of civil service organizations to affiliate with labor unions outside of the service so long as such relationship does not entail any purpose or obligation to strike; and the Labor-Management Relations [Taft-Hartley] Act of 1947 expressly banned federal-employee strikes. In Germany, full rights of association and affiliation were recognized in the Weimar constitution of 1919, but again stopping short of the right to strike—even though some strikes actually occurred. In Britain, an attempted general strike in 1926 brought the

[1] To a considerable extent, existing civil servant organizations correspond to particular grades of the service. Thus the Association of First Division Civil Servants represents the administrative class, the Society of Civil Servants, the executive class, the Civil Service Alliance, the clerical and clerical assistant classes; and there are other organizations for scientists, physicians, and technicians of various kinds. The Civil Service Union is the principal organization for messengers, cleaners, and other laborers.

issue dramatically to the fore, and a great deal of argument, pro and con, took place. The Civil Service Clerical Association—the largest constituent unit in the Civil Service Alliance—sounded out its membership by a referendum and obtained a majority opinion that, so far as that organization was concerned, its officers had no power to call out the members on strike and its policy of affiliation could not be construed to involve any obligation to support a strike. The Conservative government of Stanley Baldwin came to the view, however, that the affiliation of civil servants' organizations with industrial groups accepting the principle of the sympathetic strike and the "solidarity of labor" ought to be prohibited; and Section 5 of a drastic Trade Disputes and Trade Unions Act of 1927, passed in a state of public temper rare in Great Britain, not only forbade civil servants to be members of any trade union unless such union was confined to persons employed under the crown and was independent of any outside trade union or federation of trade unions, but also prohibited any civil servant organization to be associated, directly or indirectly, with any political party. The measure was opposed vigorously by the civil service organizations, and by labor interests generally, as constituting an unnecessarily extreme action induced by sheer panic. Nevertheless, it prevailed, and not only were all civil servants who individually belonged to outside unions (then some 137,500) compelled to give up their membership, but all organic relations of the civil servant organizations with the Trades Union Congress and the Labor party were brought to an end. From that time forth there never was much doubt that if and when Labor gained sufficient power, it would wipe the offending law, or at least Section 5, off the statute-book. Efforts in 1931, when the second MacDonald government was in office, fell short because there was insufficient strength in the House of Commons. Labor's smashing triumph in the 1945 election, however, cleared the way, and in 1946 the legislation of 1927 was completely repealed, leaving civil-servant organizations once more free, as indicated above, to affiliate not only with outside unions but with the Labor (or of course any other) party.[1]

[1] Many organizations of civil servants in the United States are, of course, affiliated with the American Federation of Labor or the Congress for Industrial Organization, but on the assumption that they will not thereby be drawn into any commitments or activities having to do with strikes; and since 1947, as mentioned, all have been expressly forbidden to engage in strikes. The best account of unionism in the British civil service (though not fully up to date) is L. D. White, *Whitley Councils in the British Civil Service* (Chicago, 1933), Chaps. xii-xiii.

Whitley Councils. A grievance of civil servants often voiced in earlier days was that they had no opportunity to participate in making the rules and determining the conditions under which they worked. They could, it is true, present memorials and petitions, which were presumed to receive respectful attention from department heads and from the Treasury. But there was no provision for systematic discussion of and coöperative action upon civil service matters in joint committees or other agencies representing both officials and staff. This situation has now been remedied by the interesting device of "Whitley Councils," [1] introduced rather widely throughout the service in 1919 on the model of such councils lately set up in private industry, and in time extended to practically all departments. In substance, the machinery consists of (1) works committees (sometimes called district and office committees) organized in government offices, shops, arsenals, dockyards, and the like; (2) departmental councils, varying somewhat in character from department to department, but each containing equal numbers of official and staff representatives; and (3) a national council of 54 members, half appointed originally by the Chancellor of the Exchequer, but now with vacancies filled by the Treasury, to form the official side and half by the civil service associations, grouped in certain ways, to form the staff side. Nearly all civil servants are nowadays represented in both departmental and national councils; and in most of the departments, as well as more broadly upon national lines, much useful work has been done. It is the business of the councils to consider "all matters which affect the conditions of service of the staff," *e.g.*, recruitment, hours, promotion, tenure, discipline, and remuneration; to devise ways of better utilizing the training and experience of the staff; to encourage the further education of staff members; to consider grievances; and to propose remedial legislation. Many decisions arrived at can be put into effect by simple council agreement, although naturally some, by their nature, require action by the department head, by the Treasury, or even by Parliament. It is often charged that the official side enjoys superior power—even that sometimes it is arbitrary and despotic. It has the unquestionable advantage of knowing that upon any matter upon which agreement cannot be reached its views will prevail; and,

[1] So-called because J. H. Whitley (later speaker of the House of Commons) was chairman of a committee which, during World War I, proposed the plan, although at that time for private industry only.

as a recent writer has warned, the employee side, speaking generally, must not expect too much. Experience of thirty years or more with the system has, however, gone far toward substituting for the relationship of master and servant that of copartnership, and has, accordingly, contributed considerably to bringing the service into a more contented frame of mind.[1]

A WORD OF EVALUATION

Some Criticisms. Most students of public administration concur in giving the British civil service a high rating. This does not mean, however, that the service is in every respect satisfactory.[2] In the first place, it is charged that, while of almost uniformly high quality in the upper levels (particularly the administrative class), the personnel of the service otherwise leaves a good deal to be desired. Not only because the work-week is longer than in many private employments and the pay inadequate to keep pace with the increased cost of living, but because under the national policy of full employment there are plenty of jobs elsewhere and because, with social security now otherwise available, the security of employment and eventual superannuation going with civil service jobs exert a weaker pull than they once did, the service has come to be less attractive as a profession than it formerly was. In the second place, the service is charged with less zeal than it has sometimes been credited with for self-improvement. Not unrelated to this criticism, too, is the complaint that the general atmosphere of the service is too much that of tradition and caution; that imagination, initiative, drive, and willingness to take responsibility are deficient; that while higher policy-making admittedly belongs in other hands, civil servants sometimes need to take more literally and seriously their duty "to devise what ought to be done"; that there is too much "red tape," the service too slow-moving, too hesitant about reaching decisions, and procedures sometimes too indirect and roundabout.

Some Tendencies toward Improvement. At the same time, certain valid criticisms of the past are now tending to be overcome. Not so long ago, one well might have placed at the top of the list of criti-

[1] The principal works on the council system are L. D. White, *Whitley Councils in the British Civil Service* (cited above), especially Chaps. i-xi, xvii-xviii, and E. N. Gladden, *Civil Service Staff Relationships* (London, 1943).

[2] See, for example, H. R. Greaves, *The Civil Service in the Changing State* (London, 1947).

cisms the complaint that in the upper levels (especially the administrative class) the social basis of the service was too narrow, that too much stress was placed on written and purely academic examinations, that as a result recruits had too little knowledge of and experience with the thoughts and interests of the mass of the people, and that too much advantage was given the graduates of Oxford and Cambridge as compared with those of Manchester, Leeds, Birmingham, or Liverpool—in short, that the higher ranks were recruited too largely from a closed caste, socially as well as educationally. Changes, however, since 1945 have to a considerable degree removed the grounds for these charges. A report of 1942 led to the setting up of a special committee on in-service training (the Assheton Committee) which, in a report of 1944, proposed a wide extension of staff training under the leadership of a central branch; and the recommendation has since been implemented, with an in-service training program now in operation.

The Service Not a Bureaucracy in the Continental Sense. One basic fact to the credit of the service may be emphasized in conclusion; the service does not constitute, and is not thought of by Englishmen as being—at least in any objectionable meaning of the word—a bureaucracy. To be sure, if the term be employed in its literal sense to suggest simply "government by professional administrators," there is full justification for applying it to the British system. Undeniably, permanent professional administrators play a rôle whose importance it would be difficult to exaggerate. They do not, however, dominate the scene and fix the tone and character of government as civil servants have done in other times and places.[1]

[1] In addition to books cited in earlier footnotes, mention may be made of B. Monck, *How the Civil Service Works* (London, 1952); W. A. Robson [ed.], *The British Civil Service* (London, 1936); H. M. Stout, *Public Service in Great Britain* (Chapel Hill, N. C., 1938); and J. D. Kingsley, *Representative Bureaucracy; An Interpretation of the British Civil Service* (Yellow Springs, O., 1944); T. A. Critchley, *The Civil Service Today* (London, 1951); E. Bridges, *Portrait of a Profession: The Civil Service Tradition* (New York, 1950); F. T. A. Ashton-Gwatkin, *The British Foreign Service* (Syracuse, 1950); G. P. Cuttino, *English Diplomatic Administration* (New York, 1946); Fabian Society, *The Reform of the Higher Civil Service* (London, 1947). A Civil Service Commission publication, *Posts in the Civil Service for University Graduates* (1951), contains much useful information.

CHAPTER VIII



NATIONALIZATION AND THE WELFARE STATE

BACKGROUNDS AND TECHNIQUES OF NATIONALIZATION

It is probable that no other aspect of British public activity has received as much attention outside the country during the years following World War II as the nationalization and welfare programs. Indeed, so many sensational accounts have been broadcast that there seems to be a widespread belief that virtually all economic and welfare activities have been taken over by the government. Undoubtedly it is true that "socialization" has been carried to greater lengths than anything known in the United States, but down to late 1952, when discussion at the annual Labor party conference pointed to a demand for the extension of nationalization, official Labor statements indicated that 80 per cent of industry would remain in private hands.[1] What has been happening, nevertheless, is significant enough to justify some comment at this point—not merely on the bearings of nationalization upon the functioning of the executive and administrative machinery outlined in the two preceding chapters, but also on multiplying government programs and controls in fields where nationalization, in the strict sense, has not been involved.[2]

The Scope of Nationalization. "Nationalization" is a term variously defined. Some persons, for example, regard virtually every domestic program of the Labor party as coming under it, and see in the National Health Service, the National Insurance Scheme, the Agricultural Act of 1946, the Town and Country Planning Act of 1947, the food subsidy and housing programs (all to be touched upon

[1] See the *London Sunday Times*, Sept. 12, 1948, for such a statement by Herbert Morrison.

[2] For a lucid exposition of the program by a Labor spokesman, see Francis Williams, *Socialist Britain* (New York, 1949).

below), and even in the Education Act of 1944,[1] basic nationalizing principles. It is true that the political philosophy embodied in the activities named may be related to the taking over of the coal mines, the acquisition of the transport facilities, and the transfer of the gas works to national ownership. However, it hardly seems accurate to include such enterprises, even if related, in the strict category of nationalization projects. At least for purposes of this discussion, nationalization will be limited to the taking over of industrial activities by the government. Used in this sense, it has to do with the coal mines, radio-broadcasting, transportation services, electricity facilities, gas works, and the Bank of England—a list which for a brief period included the iron and steel industry. It is possible that the Port of London Authority, the Raw Cotton Commission, and the Colonial Development Corporation might also qualify for inclusion in the list of accomplished nationalizations, although they are rather different in character from the interests or activities enumerated.[2] At any rate, after all possible inclusions have been made, there remain as private enterprises the greater part of manufacturing, ship-building, wholesale and retail trading, commercial banking, publishing of newspapers, magazines, and books, insurance, and various other types of business.

History of Public Ownership in Britain. It is popularly assumed that the entire record of public ownership in Britain is to be identified with the postwar period and the Labor government which came into office in 1945. It would be unwarranted to minimize the significance of what has been done since 1945, but it is unfortunate that so little is generally known about developments prior to that time; for the beginnings of collectivism in Britain go back to the middle of the last century. Curiously enough, until 1906 it was the Conservative party that was responsible for most of the steps taken in this direction. The Liberal party then assumed leadership; but between the First and Second World Wars it was again the Conservatives that set the pace. It is the rôle of Labor that is the new thing.[3] The royalties of the coal mines were taken over by the government during the 1930's, marking an important step toward full government ownership. About two-thirds of the cities owned their own electricity facilities prior to 1939

[1] This measure was, of course, actually the work of a Parliament controlled by the Conservative party.

[2] For a useful statutory analysis of the acts providing for nationalization, see D. N. Chester, *The Nationalized Industries; A Statutory Analysis* (rev. ed., London, 1951).

[3] See the *London Times*, "Policies and Votes," Sept. 13, 1948.

—and a Central Electricity Board was created by the government in 1926 to provide a grid system carrying electricity throughout the country. Prior to World War II, the government compelled the many different railroad lines to merge into four great systems covering the South, the West, the Northeast, and the Midlands and Scotland; and as a war measure it took over operation of the lines. The underground system, the buses, and the trolleys of the metropolitan region of London had been taken over some years before 1945 and placed under the London Passenger Transport Board. The docks and harbor installations of the great port of London had been placed under public ownership and put under the Port of London Authority in 1908. As early as 1926, radio-broadcasting was made a public monopoly, with the British Broadcasting Corporation, as a public corporation, created to administer it. Hence the foundations of the much-publicized post-war nationalization projects were actually laid much earlier, often by Conservative governments. Moreover, it is significant to note that the Conservative party has taken no stand in opposition to most of the later nationalization measures as such, though it has been urged to do so and has criticized the techniques and operations.[1]

Government Ownership versus Government Direction. While a large section of the economic field has remained free from nationalization and according to present plans will continue under private enterprise, it is important to observe that there has been a heavy increase during recent years in the scope of government control, or "direction," as it is termed in Britain, over general business. So much attention has been focused on nationalization that economic planning and supervision have often been more or less ignored. Of course, public control of business in Britain is not a new development, for there has been a considerable measure of government direction for many years. But the tempo has been quickened by the war and the nationalization program, and it is sometimes felt that the scope for private enterprise in the non-nationalized areas of activity is not very much greater than would be the case under government ownership. Private business concerns are frequently forced to obtain approval from the appropriate government department in the case of any extension of plant, in obtaining raw materials, on the type of product to be manufactured, on the markets to be cultivated, and on numerous

[1] Only in iron and steel and road transport had the Conservatives declared themselves for a return to private ownership by 1952.

other matters. Much of this control is doubtless to be explained by critical economic conditions recently prevailing in the country; some is more or less identical with increased social control to be observed in other lands. There is, of course, far less "direction" than under totalitarian, including Communist, governments.

Public Corporations. One of the first features to be observed in connection with the nationalization program in Britain is the public corporation. Contrary to the notion held by many people, the British government has not taken over the direct operation of the coal mines, the railroads, and the electricity facilities. That is to say, these enterprises, although of course subject to government supervision, are not administered as parts of a ministry or government department and staffed by civil servants. Instead of placing the nationalized industries directly under government departments, it has been thought desirable to set up public corporations to assume the task of administration.[1] Thus the National Coal Board runs the coal mines; the British Electricity Authority has taken over the electricity facilities; and the British Transport Commission has general responsibility for the railways, docks, and inland waterways. The public corporation is not a new feature of British public administration.[2] As already mentioned, the Port of London Authority was created as early as 1908 to administer the dock and harbor facilities of London. In 1926, a Conservative government set up the B.B.C. (British Broadcasting Corporation) and the Central Electricity Board to deal with radio-broadcasting and electricity grids. In 1933, a measure sponsored by the Labor party (although not then in power) provided for the establishment of the London Passenger Transport Board to unify bus, underground, and trolley services in the metropolitan district of London. And the war years following 1939 saw certain other public corporations created for special purposes. It remained, however, for the postwar years to

[1] Exceptions to this general rule may be noted. Airports are directly administered by the Ministry of Civil Aviation and the home assets of Cable and Wireless, Ltd. by the Post Office.

[2] For additional discussion of the history and rôle of public corporations in Britain, see L. Gordon, *The Public Corporation in Great Britain* (London, 1938); W. A. Robson [ed.], *Public Enterprise* (London, 1937); J. Thurston, *Government Proprietary Corporations in English-Speaking Countries* (Cambridge, 1937); H. Morrison, *Socialization and Transport* (London, 1933); T. O'Brien, *British Experiments in Public Ownership and Control* (London, 1937); "The Public Corporation," a series of articles in *London Times*, Jan. 20-22, 1947; Sir Arthur Street, "Quasi-Government Bodies since 1918" in *British Government since 1918* (London, 1951); E. Davies, *National Enterprise* (London, 1951); and Sir Henry Self, "The Public Accountability of the Government Corporation," *Pub. Admin.*, Autumn, 1947.

bring the public corporation into the limelight. Each step taken to nationalize industries has resulted in at least one such corporation.[1]

Why Public Corporations Have Been Employed: 1. Immunity from Parliamentary Questioning. The query may be raised as to why Britain has seen fit to entrust the operation of the nationalized industries to public corporations rather than to government departments; and the explanation is not simple. One of the reasons most commonly advanced involves the well-known practice of putting questions to the ministers in Parliament. If the nationalized industries were directly under the ministries, it would be in order for questions to be put to ministers or their spokesmen with regard to details of operations; and it is probable that numerous queries would be put. But it is considered that effective operation of the industries would not be promoted by such parliamentary scrutiny. By setting up public corporations, the detailed activities of the nationalized industries are presumably removed from the scope of parliamentary questions—though of course it must not be imagined that Parliament lacks authority to ask for general information. Indeed, periodic reports are made by public corporations and commonly transmitted to Parliament by the minister having general supervision over the given corporation; and upon receipt of such reports, parliamentary debate is in order and the minister may be called upon to furnish additional data. In point of fact, the exact relationship between the public corporations and Parliament remains to be worked out. Legally, Parliament undoubtedly has full authority over them. Hope, however, is expressed that it will exercise its powers with due restraint.[2]

2. Greater Flexibility. Another argument in favor of public corporations is their greater flexibility. Government departments are regulated by elaborate civil service, budgetary, and procedural legislation, regulations, and orders which, although normally justifiable, sometimes operate seriously to hamper their activities. The management of a nationalized industry is thought to require freer and prompter action. The public corporations recruit their own personnel and may have personnel policies varying more or less widely from those of the civil service.

[1] For a brief analysis of the composition of the public corporations, see Acton Society Trust, Paper No. 4, *The Men on the Boards* (1951).

[2] During 1951 a select committee was set up by the House of Commons to consider the relations of the nationalized industries to Parliament, particularly in regard to question time.

3. Ministries Already Over-burdened. A third basic reason for the employment of public corporations in the field of nationalized industries grows out of the heavy burdens already carried by most of the ministries. While there is considerable variation among the ministries in loads, most of them already have enough to look after without assuming direct responsibility for operating nationalized industries, and it has been believed that responsibility might better be decentralized rather than further concentrated. Under the public corporation system, ministers can delegate far-reaching authority to the boards of the corporations. If it be asked why new ministries were not created for the purpose, the answer is that the number of ministries is already quite large—larger than in many other countries—and that further multiplication would have added substantially to the problem of coördination.

Relation of the Public Corporations to the Government. Before passing to a word of comment on some of the corporations individually, it may be useful to look a little more closely into their exact relationship to the government.[1] In the first place, as already observed, the corporations are usually created, their general form of organization prescribed, and the authority they are to exercise fixed, by act of Parliament. Parliament furthermore can at any time abolish any of the number, change its organization, alter its powers, or otherwise modify its existing arrangements. And in the last analysis, all are fully responsible to Parliament. Parliament, however, is too busy to exercise control in any detailed fashion. Hence it makes some minister responsible for each of the corporations. Thus the Minister of Fuel and Power is responsible for the National Coal Board and the power industries; the Minister of Transport and Civil Aviation supervises the several air corporations and the British Transport Commission. The exact responsibility of the minister is specified in some detail in the parliamentary act creating a corporation, and there is some variation in the authority given. Mr. D. N. Chester, however, points out that "there has been a considerable increase in the powers of the minister to control and to interfere in the working of the corporation since 1939."[2] In addition to issuing orders or directions in the case

[1] For discussions of the general problem, see E. Davies, "Ministerial Control and Parliamentary Responsibility," *Polit. Quart.*, Apr.-June, 1950; and Acton Society Trust, Papers No. 1 and 2, *Accountability to Parliament* (1950), and *The Power of the Minister* (1951).

[2] See his *The Nationalized Industries; A Statutory Analysis* (London, 1948), 5.

of the newer public corporations, ministers usually have an important power of reviewing and approving actions of the boards.

Variation among the Public Corporations. Especially in the case of the public corporations set up during the comparatively brief period since 1945, it might be supposed that there would be a considerable degree of uniformity in organization and authority conferred.[1] But actually one of the most striking features of the situation is the variation that exists in both of these particulars. To a considerable extent, this is to be accounted for by the varying character of the nationalized industries themselves—the coal-mining industry, for example, has quite different problems from the electrical and gas industries. However, it is interesting to note that some authorities maintain that a developing concept of the importance of decentralization has also entered in to some degree.[2] The first large-scale industry to be nationalized following 1945 was coal-mining. A National Coal Board was set up to take over operations, and given broad powers to deal with every aspect of the industry, with no area (regional) boards or executives provided for in the parliamentary statute. When, later on, electricity services were nationalized, definite provision was made in the parliamentary act for 14 area (regional) boards, with fairly extensive powers. And when the gas industry came in for nationalization in 1948, not only were 12 area boards created, but they were given the primary operating authority.[3]

NATIONALIZED INDUSTRIES AND ACTIVITIES

1. Radio-Broadcasting. Turning now to a brief review of industries or activities already nationalized—mainly since 1945—we may start with an older one, *i.e.*, radio-broadcasting. To make it free from parliamentary control and ministerial interference, the British Broadcasting Corporation was created in 1926 by royal charter rather than by parliamentary act. B.B.C.'s charter, license, and agreement were renewed in 1936 for a period of 10 years after various modifications had been made and further extended in 1946, 1951, and 1952 by

[1] On the general subject, see W. A. Robson, "The Administration of Nationalized Industries in Britain," *Pub. Admin. Rev.*, Summer, 1947, and "The Governing Board of the Public Corporation," *Polit. Quart.*, Apr.-June, 1950; also D. N. Chester, "Organization of the Nationalized Industries," *Polit. Quart.*, Apr.-June, 1950.

[2] See D. N. Chester, *The Nationalized Industries*, 5-6.

[3] See H. Clegg, *Industrial Democracy and Nationalization* (Oxford, 1951), for a discussion of this trend.

parliamentary act, again with certain amendments.[1] The corporation operates under a board of governors made up of a chairman, a vice-chairman, and seven other members appointed by the crown for terms not exceeding five years, and effort is made to include members widely representative of the general public.[2] The Corporation enjoys a complete monopoly of radio-broadcasting throughout the country, and in theory at least is entirely independent in matters relating to programs and services. Financially, it depends very largely on the share of the wireless license receipts which the Post Office turns over to it.[3] The Corporation's annual accounts must be approved by the Postmaster-General and presented by him to Parliament.

2. Bank of England. The "Old Lady of Threadneedle Street" is an institution with a long history. Though its functions have been very largely public in character—in a general way, it is the counterpart of the Federal Reserve System in the United States—it remained, at least nominally, under private ownership until 1946. In that year, however, Parliament passed a Bank of England Act providing for public ownership of the capital stock [4] and replacing the existing directors by a board appointed by the crown. The new Court of Directors, as the board is designated, consists of a governor, a deputy governor, and 16 other members, the governor and deputy governor and not more than four of the others being required to be full-time officers. In this governing body, a good deal of discretionary authority is lodged; but the Treasury may issue instructions to it in the public interest. While the act of 1946 provides only for public ownership of the Bank of England, it includes a section giving that Bank authority, if approved by the Treasury and in the public interest, to request information from and to issue directions to other banks. The power has not been invoked during the early years of the Bank's new status, though its existence seems to have caused some perturbation among private bankers.[5]

[1] For first-hand discussions, see Crawford Committee, *Report on Broadcasting*, Cmd. 2599 (1926); Ullswater Committee, *Report on Broadcasting*, Cmd. 5091 (1935); *Memorandum by the Postmaster-General on the* [Ullswater Committee] *Report*, Cmd. 5207 (1936); and *Broadcasting Policy—Government Statement*, Cmd. 6852 (1946).

[2] There were seven members prior to mid-1952. The nine members provided in 1952 include three national governors for Scotland, Wales, and North Ireland respectively.

[3] During the war years, B.B.C. received grants-in-aid from the national Treasury, because of heavy expenses.

[4] For details, see *Bank of England Charter*, Cmd. 6752 (1946). This is included in L. H. Laing and others, *Source Book in European Government* (New York, 1949), 64-67.

[5] A good general treatise is J. H. Clapham, *The Bank of England; A History* (Cambridge, 1944).

3. The Coal Industry: (a) the Coal Problem. The coal industry is one of the most important foundations of British economy; both domestic and foreign commerce, as well as industry, are in large measure dependent upon it. Yet for many years it has presented a major problem to the British public.[1] Some of the mines have been worked out; coal veins, usually less productive than in the United States, have tended to become narrower as mining operations have progressed; as the shafts have gone deeper and deeper, the cost of hoisting coal and waste has increased and the expense of keeping the mines free from water has gone up. Mechanical equipment, too, has frequently been less adequate than in certain foreign mines, with the result that the average production per miner has been comparatively low. A serious difficulty also has been that of recruiting a sufficient number of miners. Strikes have been fairly commonplace, and absenteeism has constituted a serious obstacle to full production. At a time when Britain has needed generous supplies of coal as perhaps never before, the supply has sometimes not sufficed to meet minimum domestic needs, to say nothing of export requirements, and coal has had to be imported at heavy expense from the United States.

(b) The National Coal Board. In 1946, the coal-mining industry, which, despite the limitations mentioned, represents one of the largest enterprises in the world, with approximately 800,000 employees and a total annual production of some 200,000,000 tons, was put in charge of a National Coal Board appointed by the crown and subject to the general supervision of the Minister of Fuel and Power. Made up of a chairman, a deputy chairman, and ten other members of known experience and capacity in "industrial, commercial, or financial matters, applied science, administration, or the organization of workers," and appointed for terms not exceeding five years, the Board has broad authority over the operation, development, and financing of the coal industry. In addition, it has incidental responsibility for large areas of agricultural land, coke ovens, brick plants, chemical works, and an amazing array of other enterprises; indeed, its responsibility is so extensive that it has organized along regional and district lines, although the Coal Act does not so require.[2] Various types of

[1] See the Reid Committee's *Report on the Coal Industry,* Cmd. 6610 (London, 1945).

[2] In the case of electricity and gas the parliamentary acts providing for nationalization expressly stipulated decentralized organization, but in the Coal Act no such provision was included. Nevertheless, the National Coal Board has on its own initiative set up nine regional and 48 district organizations to supervise the 1,000 mines and other plants.

consumers' councils, *i.e.*, industrial, domestic users, and regional, are provided to advise the Board in regard to their needs and problems. Plagued, however, by insufficient miners, unwillingness of British miners to work alongside Italians, absenteeism, and other difficulties, the Board has found its task by no means easy. The mere job of taking over the physical properties of the numerous companies was a tremendous one, which required several years to wind up. Despite increases in coal prices, public operation has had difficulty in keeping out of the red and production has remained inadequate despite an elaborate long-term plan to improve the situation.[1]

4. The Electrical Industry. Public ownership has been fairly extensive in the electricity field in Britain for many years. Approximately two-thirds of the boroughs owned electricity systems which stood well to the fore in the "municipal trading" list, and in 1926 a Central Electricity Board was created under the Ministry of Transport [2] to coördinate generating facilities. Consisting of a full-time chairman and seven part-time members, this latter agency had authority to control bulk generating of electric current and was especially significant for developing a grid of bulk transmission lines covering all of Britain. In 1947, Parliament passed legislation placing the entire electricity industry under public ownership.[3] A British Electricity Authority, consisting of a chairman and not fewer than nine nor more than 11 other members, was created to have general charge, and 14 area boards, each with the status of a public corporation, and composed of a chairman and not more than seven other members,[4] were set up. The British Electricity Authority—sustaining relations with the Minister of Fuel and Power similar to those indicated in the case of the National Coal Board—has over-all responsibility for maintaining an effective and integrated electricity industry.[5] It generates electric power, sells bulk electricity to the area boards, and supervises the work of the latter. It may manufacture electrical equipment, although this authority has not been exercised, and constructs generating

[1] The deficit was £23,250,000 in 1947; the years 1948-50 saw surpluses of £1,500,000, £9,500,000, and £8,250,000. In 1951 a loss was again reported. See the National Coal Board, *Annual Reports and Statements of Accounts.*

[2] Later moved to the Ministry of Fuel and Power.

[3] Municipal plants, as well as privately owned ones, were taken over, much to the dissatisfaction of some of the boroughs which had long owned such facilities.

[4] The Minister of Fuel and Power is authorized to form additional areas.

[5] The North of Scotland Hydro-Electric Board is independent of the British Electricity Authority in some respects.

plants. It is empowered to issue electricity stock to raise funds to finance capital improvements,[1] and it maintains a central reserve fund contributed by itself and the area boards. It also fixes the conditions of labor for all employees in the industry. The area boards purchase electricity from the British Electricity Authority, or on occasion from other area boards with a surplus, and are responsible for providing an adequate distributing system within their respective territories. Their annual budgets, accounts, and surplus revenues are subject to supervision by the central Authority. Consultative councils of not less than 20 nor more than 30 persons representing local governments, agriculture, commerce, labor, and general consumers are appointed by the Minister of Fuel and Power in each area, and the recommendations of such councils must be considered by the area boards and may be carried to the central Authority if satisfaction is not forthcoming from the area board concerned.

5. Civil Aviation. Civil aviation has to some extent been a government monopoly since before World War II.[2] The British Overseas Airways Corporation (B.O.A.C.) was created in 1939 to supplant British Imperial Airways, a private corporation in which the government owned some stock. However, before actual operations began, the war broke out and the Air Ministry took over. The basic act placing British international air services under government ownership was passed in 1946, and three corporations—the British Overseas Airways Corporation (handling North Atlantic, Commonwealth, and Empire service), the British European Airways Corporation, and the British South American Airways Corporation[3]—shortly started operations. Each corporation is made up of a chairman, a deputy chairman, and not less than three nor more than nine directors. The Minister of Transport and Civil Aviation "may, after consultation with the board [of any of the corporations] give to the board directions of a general character as to the exercise and performance by the board of their functions in relation to matters appearing to the minister to affect the national interest, and the board shall give effect to any such directions."[4] An Air Transport Advisory Council, set

[1] A limit of £700,000,000 is set on borrowings of the central and area boards for this purpose.

[2] See J. Longhurst, *Nationalization in Practice: The Civil Aviation Experiment* (London, 1950).

[3] In 1949, the British South American Airways Corporation was merged with the British Overseas Airways Corporation.

[4] Civil Aviation Act of 1946, Sec. 4.

up by order-in-council, with a chairman appointed by the Lord Chancellor, is authorized to consider the over-all problems of the industry and to make annual reports to the minister for transmission to Parliament.

6. Transport. In 1947, Parliament decided to nationalize the railways and other major inland transport services. With the railways already under government operation as a war measure, the actual change involved was perhaps less noticeable than in the coal and electricity industries. A British Transport Commission, consisting of a chairman and not fewer than four nor more than eight other members,[1] was created to take over responsibility for the transport industry in general. However, the ramifications of the industry are such that it was not considered feasible to shoulder the entire job of operating the various services on this one agency, and hence subordinate authorities, or "executives," were created for different fields: railways, docks and inland waterways, long-distance trucking,[2] road passenger transport, London transport, and railway hotels. Made up of a chairman and not fewer than four nor more than eight other members, the executives handle the day-by-day operations. All function subject to approval of the British Transport Commission, in turn under supervision of the Minister of Transport and Civil Aviation. The Commission does not have final determination of rates, although it drafts schedules; a Transport Tribunal hears complaints against proposed rates and confirms them, refuses to confirm, or confirms and amends. Legislation enacted in 1953 provided for the abolition of the central railway executive and the establishment of regional agencies to operate the railroads. A Central Transport Consultative Committee for Great Britain, a Transport Users' Consultative Committee for Scotland and Wales, and Areal Transport Users' Consultative Committees as determined by the minister advise the Transport Commission and the executives on matters relating to passenger and freight services.

7. The Gas Industry. Although involving a less important industry than coal, electricity, and transport, the nationalization of gas works stirred up extraordinarily vigorous debate in Parliament. The

[1] The chairman and at least four other members must give full time to the work.

[2] The Conservative government introduced legislation in Parliament in 1952 looking to the return of long-distance trucking to private hands, although the nationalized railroads are to be permitted to operate trucks essential to their business as prior to nationalization.

Gas Act of 1948 took over the gas industry from private and municipal ownership and placed it under a public corporation. In contrast to the acts relating to coal and transport, however, and to a greater degree than the act pertaining to electricity, it provided for a decentralized plan of organization. The National Gas Council, made up of a chairman, a deputy chairman, and 12 other members, is more a supervisory than an operating agency; 12 gas area boards, composed of a chairman and not fewer than five nor more than seven other members, actually administer the industry in their respective areas or regions.[1]

8. The Steel Industry. All of the nationalization acts passed by Parliament have occasioned controversy, but the proposal to bring the iron and steel industry under public ownership not only involved bitter argument but was tied up with the move to curtail the authority of the House of Lords. Eventually the Iron and Steel Act was passed in 1949, and an Iron and Steel Corporation of Great Britain was set up to take over 92 companies which produced in excess of 90 per cent of the iron and steel. However, this particular nationalization project differed in many respects from the earlier schemes. To begin with, the iron and steel companies taken over by the government were permitted to remain in existence, to retain their names and organization, and to handle day-to-day operations much as before. Instead of having their stock owned by private investors, the Iron and Steel Corporation acquired all of their capital as agent of the government, thus serving as a great holding company. The Iron and Steel Corporation was given the responsibility of laying down general policies, but the act charged it with exercising its authority in such a manner as to "secure the largest measure of decentralization consistent with the proper discharge" of its duties. After the election of 1950 the Conservatives appealed without success to Labor not to proceed with this nationalization scheme; in the 1951 election campaign the Conservatives definitely pledged themselves to restore the iron and steel industry to private ownership, adding that the Monopolies Commission would be expected to check objectionable features of the earlier era of private operation. In the actual bill presented to Parliament it was provided that an Iron and Steel Board be organized

[1] For an appraisal of the various nationalized industries listed above by an American economist, see B. W. Lewis, *British Planning and Nationalization* (New York, 1952).

to supervise expansion, fix maximum prices, and control raw materials under private operation. Labor strenuously opposed such a step and the Conservative government found that the process of denationalizing this industry was far from a simple one.[1]

9. Miscellaneous. The eight industries listed above constitute the major segment of British industry which has undergone nationalization, but there are certain other undertakings which are sometimes included among the nationalized projects. These include the Overseas Food Corporation which purchases food for the government under the subsidy and ration systems, the Raw Cotton Commission which has exercised a similar responsibility for cotton, the Colonial Development Corporation charged with building up the economic strength of colonial possessions, and Cable and Wireless, Ltd. which operates communication facilities between Britain and overseas areas.[2]

10. Nationalization Prospects. Prior to 1952 Labor had committed itself to a 20 per cent limit on nationalization, but in 1952 resolutions were passed at the Labor and Trade Union national conferences calling for the consideration of substantial expansion. At the time of this writing (early 1953) nationalization of ship-building, aircraft construction, chemicals, textiles, and tenanted farm lands was receiving attention, but the future course was not clear.

The Problem of Denationalization. A casual observer of recent changes in Britain ordinarily has little idea of how complicated the process of nationalization is, though he may realize that it involves more than a parliamentary act. And it is not likely that he will understand the difficulties in the path of denationalizing certain industries—indeed many assume that it requires only a formal decision on the part of Parliament to return nationalized industries to their previous owners. It may be presumed that the Conservative leaders had some notion of what would be necessary when their party committed itself to the denationalizing of road transport and iron and steel; yet recent events have demonstrated their failure to comprehend the full list of difficulties. The securities which the government issues to compensate the private owners change hands far more rapidly than

[1] The proposed steps to be taken may be found in a White Paper issued in 1952 as Cmd. 8619.

[2] The most useful treatment of the nationalized industries to date is probably that of W. A. Robson [ed.], *Problems of Nationalized Industries* (London, 1952). Supplementing this are the 12 monographs on various aspects of the nationalized industries brought out by the Acton Society Trust during 1951 and 1952.

is ordinarily realized and within a year have passed in large measure to insurance companies and other large holders of government securities which are not prepared to take over the management of great enterprises should denationalization be decided upon. Some of the nationalized properties would be attractive to a private investor, but others have a long record of marginal operation which would hardly impress a business man unless the government were prepared to sell them at far less than was paid. Then, too, it must be remembered that there is a shortage of investment capital in Britain. The threat of the Labor party to renationalize any industries which the Conservatives denationalize does not exactly smooth the process—and the threat to take over without further compensation must frighten many prospective buyers.

FOOD AND AGRICULTURE

Agricultural Production. With a population of approximately 50,000,000 and an area but slightly larger than that of Oregon, the problem of agricultural production naturally bulks large in Britain. Prior to World War II, by far the greater portion of the food supply was imported; but the exigencies of the war made it imperative to increase domestic production. As a result of heroic measures, the annual value of home-produced agricultural commodities was doubled during the war years. With world food production curtailed by postwar conditions and foreign exchange a major problem, emphasis on domestic agricultural programs has been maintained despite the predominantly industrial character of the country. Even after vigorous steps had been taken, however, approximately one-half of the food supply has to be imported from other countries.

The Agriculture Act of 1946. Various legislative acts dealing with agriculture have been passed in Britain,[1] but the most comprehensive was one adopted by Parliament in 1946.[2] This measure does not nationalize the land, but it does provide a measure of public control which some would regard as rather closely related in spirit to the various nationalization acts. Five major parts of the act deal, respectively, with guaranteed prices and assured markets, efficient estate management and good husbandry, agricultural holdings, small

[1] An act of 1923 was perhaps the most basic prior to the act of 1946.

[2] For a White Paper explaining the act of 1946, see Ministry of Agriculture and Fisheries, *Agriculture Bill*, Cmd. 6996 (1946).

holdings, and general administration. In basic principles, Part I is not without resemblance to agricultural legislation in the United States, although naturally it varies in detailed provisions. A vigorous agricultural economy, it is contended, depends in considerable measure on guaranteed prices of agricultural products and assured markets; and so the Minister of Agriculture and Fisheries is authorized to make periodic reviews of the situation prevailing both at home and abroad and to fix prices on other than horticultural products far enough ahead so that farmers may know what to expect and be able to plan accordingly.[1] In collaboration with the Minister of Food, the Minister of Agriculture and Fisheries is further empowered to take steps to assure a market for the country's principal agricultural products.

Part II of the act, however, is the one embodying the most extensive controls on the part of the government. Ownership and right of transfer of land are normally left with the private landholder, but subject to various qualifications. If a farmer fails to make full use of his land, he may be supervised by agents of the government, receiving instructions as to what to plant and how to care for his growing crops; and if after 12 months, satisfactory improvement is not apparent, the Minister of Agriculture and Fisheries may dispossess him. Even earlier dispossession is possible in cases where an occupant refuses to carry out the government supervisor's instructions. Dispossession, of course, does not mean confiscation, but merely compulsory sale of the land involved. As a rule, land thus changing hands is to be let to an approved tenant, although the act authorizes the minister to farm it as a public undertaking through the county agricultural executive committee. In practice this power has been used quite sparingly.

The Agricultural Act of 1946 further provides that good agricultural land shall not unnecessarily be diverted to non-agricultural uses and that certain areas which cannot be profitably used for agricultural purposes without an expenditure for reclamation and equipment beyond the capacity of private individuals may be operated by the government. Finally, a National Agricultural Land Commission and county agricultural executive committees are set up to act as agents of the Minister of Agriculture and Fisheries.

[1] These are usually fixed a year ahead, but prices of milk, eggs, and fat livestock are set two years ahead.

The Food Subsidy Program. In order to maintain as high a standard of nutrition as possible among the rank and file of the people and to discourage inflation, the British government has operated during recent years an elaborate food subsidy program costing at its top point in excess of £400,000,000 per year and thus representing a heavy drain on the Treasury. Wheat, butter, margarine, fats, cheese, fresh meat, bacon, sugar, eggs, and various other products are purchased from abroad by the Overseas Food Corporation under the direction of the Ministry of Food to supplement local supplies and sold under an elaborate system of rationing [1] to the consumer at prices well under world levels. While there has been some variation in prices and the Conservative government elected in 1951 has in general permitted prices to rise, fresh beef and lamb under this arrangement have sold for one-fourth to one-third of the price in the United States, and bacon, cheese, and butter for one-half or less. However, it should be noted that the quantities which an individual can buy at such prices have been strictly limited—i.e., the meat ration rarely has exceeded one pound per week; the egg ration one or two per week; the cheese, bacon, butter, and fat ration a few ounces per week.

NATIONAL INSURANCE, THE HEALTH SERVICE, AND LEGAL AID

Comprehensive Scope. The British record in the social security field has been well known for some years. Indeed, Britain has long been regarded as a pioneer in this area. But a familiarity with the national health and contributory pension schemes, unemployment insurance, and workmen's compensation acts which covered the period prior to 1948 gives only a very limited picture of the programs under which Britain is now operating. It is usually a risky matter to make categorical statements in regard to the relative standing of a country in a given field, and social security is no exception. However, it seems probable that no other country equals Britain in the comprehensive coverage afforded by the several social security programs inaugurated since World War II; certainly no country surpasses the British record. Much is in a formative stage, and years will be required to give a basis for definitive conclusions concerning

[1] Bread has been rationed at times, but ordinarily has been freely available to purchasers at a price well under prevailing prices elsewhere. The other items in the subsidy program have almost always been covered by rationing.

actual operations. Nevertheless, it is significant that the nation has inaugurated public programs which reach all save a small fraction of the people, and that benefits are afforded in all such fields as childhood and old-age, ill-health and death, retirement, unemployment, injuries rising out of employment, widowhood, and maternity. Almost all of the ills to which human beings fall prey are now covered to at least some degree; and there is a national assistance program to deal with cases which, at least until the national insurance system gets well under way, will require attention.[1]

Old-Age Pensions. Employed persons, self-employed persons who have their own businesses or professions, and non-employed persons are alike covered by the compulsory national insurance scheme. At the age of 65, if men, or of 60, if women, retired persons qualify for a weekly pension of 32*s* 6*d*.[2] Widows with a child draw the full rate and a married couple 54*s*. By delaying retirement, it is possible to increase the standard pension.

Unemployment Benefits. Unemployed persons are entitled to a weekly allowance of 32*s* 6*d* if single and 54*s* if married. The standard initial period covered by such benefits may not exceed 180 days, but persons with long-standing insurance and a record of few claims may qualify for a maximum of one year. After 13 weeks of employment, another potential period of 180 days becomes available. Local tribunals are provided to hear applications from those who have exhausted their unemployment benefits, and they may recommend extended benefits paid out of general taxation if local industrial conditions warrant.

Sickness Benefits. Persons who become victims of illness are entitled to draw a weekly pension of 32*s* 6*d* if single or 54*s* if married. Those who have made the minimum insurance payments covering a year may receive sickness benefits for a period not to exceed one year, while those who have paid for half a year qualify for reduced

[1] For a convenient summary of the provisions of the various programs, put out by the Ministry of National Insurance, see *Family Guide to the National Insurance Scheme* (London, 1952). See also W. H. Wickwar, *The Social Services; An Historical Survey* (London, 1949); M. P. Hall, *The Social Services of Modern England* (London, 1952); E. W. Cohen, *English Social Services* (London, 1949); G. D. H. Cole, *British Social Services* (London, 1949); D. C. Marsh, *National Insurance and Assistance in Great Britain* (London, 1951); and K. de Schweinitz, *England's Road to Social Security, 1349-1947* (Philadelphia, 1948). Particularly important is *The Beveridge Report: Social Insurance and Allied Services* (New York, 1942).

[2] These rates became effective in mid-1952. The shilling in 1952 was the equivalent of 14 cents in U.S. currency.

benefits. However, after a lapse of 13 weeks of employment additional time accrues. Persons who have made insurance contributions for at least three years, if diseased or disabled, qualify for sickness benefits indefinitely until they reach an age where old-age pensions are paid.

Miscellaneous Benefits. Mothers are paid £4 for each baby born, together with an allowance for a period of 13 weeks if employed or self-employed. Maternity allowances are paid non-employed women for four weeks. Widows and orphans are covered under the scheme, while death grants of £20 are paid toward the cost of funeral expenses. Finally, industrial injury benefits are provided for employed persons (but not the self-employed or non-employed) in cases of injury or accident arising out of their work.

The National Health Service. The National Health Service which became operative in July, 1948, is closely related to the National Insurance Scheme, but should not be confused therewith. Administered by the Ministry of Health, the National Health Service is intended to provide adequate medical, dental, surgical, and hospital care for all persons within the country, even those who may be there temporarily. Unlike the national insurance system, which is based on contributions from employers, employees, self-employed, and non-employed persons, the National Health Service is financed mainly out of the national Treasury and local taxes, though certain contributions are made out of the national insurance fund. Ordinarily, no fees are charged to the patient.[1] The Minister of Health assumes direct responsibility for hospital and specialist services, blood transfusions, and bacteriological laboratories, but much of this authority in the case of hospital and specialist facilities is actually exercised by regional hospital boards.[2] The health centers and various local clinical services are operated by the county and county borough councils, subject to

[1] Charges of 1*s* for prescriptions and £1 or if less full payment for dental services (excluding children and expectant mothers) were imposed in 1952. Also charges for dentures, hearing aids, wigs, and other special appliances have been instituted for those able to pay.

[2] For a detailed explanation of the National Health Service made to Parliament in 1946, it will be profitable to consult a White Paper put out by the Ministry of Health under the title *National Health Service Bill,* Cmd. 6761 (1946). Cf. J. Moss, "The New British Public Health Service," *Soc. Service Rev.,* Sept., 1946. Books on the subject include C. Hill and J. Woodcock, *The National Health Service* (London, 1949); Institute of Public Administration, *The Health Services* (London, 1951); F. Roberts, *The Cost of Health* (London, 1952); J. S. Ross, *The National Health Service in Great Britain* (London, 1952); W. C. Rappleye, *The National Health Service of Great Britain* (New York, 1950).

the approval of the Ministry of Health. Finally, the general practitioners, dentists, and pharmacists who constitute the backbone of the service are under the supervision of local executive councils, half of whose members are selected by the Minister of Health and local government authorities and half by the local doctors, dentists, and pharmacists. Of course, too, these executive councils are subject to regulations laid down by the Minister of Health, who is given professional and technical advice by a Central Health Services Council made up of experts in medicine, surgery, dentistry, nursing, and other related fields.

Hospitals are for the most part taken over by the state, though nursing homes and a small number of hospitals not considered appropriate for integration into the National Health Service remain outside. Nevertheless, it should not be assumed that all medical services have been socialized. Patients continue to select their doctors; doctors, dentists, and specialists decide for themselves whether to join the service or remain outside. Moreover, if they elect to enter the service, it is not essential that they give all of their time and professional energy to their public patients; they are permitted to carry on a private practice also. Those who decide to become participants receive a flat annual payment from the government, which is arrived at by negotiations between the Ministry of Health and the medical and dental associations rather than set by law, and an additional sum for each patient served. The task of organizing the councils, taking over existing hospital facilities, constructing health centers, and negotiating with the doctors, dentists, surgeons, nurses, and pharmacists was naturally not a simple one, and it is expected that some years will be required to get the system into full operation. Many of the country's doctors and dentists displayed hostility to the scheme, at least to begin with, and the problem of a sufficient supply of adequately trained professional persons to administer so comprehensive a program is itself a major one. However, initial response of the people has been impressive—over 90 per cent of the population has signed up for the services provided. The cost to the Treasury, which has approximated £400,000,000 per year, has perhaps been the greatest problem.

The Legal Aid Scheme. Under an act approved by Parliament in 1949 a system of legal assistance began to function in 1950.[1] Some-

[1] For the details of the program, see a publication of the Lord Chancellor's office, *The Legal Aid Scheme, 1950* (London, 1950).

what similar in basic purpose to the National Health Service, the legal aid scheme is far more limited in character than other welfare programs in Britain, to some extent because it was drawn up by the Law Society and thus reflects the distrust of the legal profession in matters involving elaborate social programs and to some degree because by 1949 it was apparent that the Treasury could not well support additional large-scale undertakings. The act entrusts the operation of the scheme to the Council of the Law Society, 12 area councils, and various local committees which set up panels of solicitors and barristers from which assignments may be made to persons requiring legal aid and who have been approved by local committees as entitled to such assistance. Unlike the other welfare programs which in general are available to all persons, legal aid is provided only to those who can convince the local committees that they are financially unable to retain their own legal counsel and pay legal costs. Where applicants may be able to shoulder some of the expenses, partial public grants may be made. It is contemplated that the scheme may be expanded if experience indicates its desirability and funds are available from the Treasury. But to begin with, only certain types of cases, generally of a civil character, are eligible for legal aid.

PUBLIC PLANNING AND HOUSING

Britain has displayed interest in public planning for many years. Acts passed by Parliament in 1932, 1943, and 1944 authorized councils of county boroughs and county districts to serve as planning authorities and to give attention to various current problems requiring attention; and some progress was actually made, although World War II naturally interfered seriously. On its part, the war left the country with problems of great magnitude. Some involved food production, industrial output, social security, and public finance, and were entrusted to the Ministers of Agriculture, Economic Affairs, National Insurance, and Health, to the Central Economic Planning staff, and to the Treasury, respectively. Others, including land use, the construction of housing, and the clearing of slum areas, did not seem to fall appropriately within the spheres of existing government departments. The great destruction resulting from war bombing, with extensive areas in London, Coventry, Southampton, and other cities completely laid waste, made some attention to reconstruction plans imperative. Legislation passed in 1944 attempted to deal with certain

of the problems, but it was not until the postwar period that a comprehensive frontal attack was made.

Economic Planning. Economic planning is not a new government activity in Britain, though it has been in the limelight only during the last few years.[1] By 1920 a substantial amount of planning was being carried on in such fields as social security, factory conditions, and wage standards, and this increased moderately during the period prior to World War II. The great expansion of public planning has taken place since 1938 and was particularly notable under the Labor government during the years 1945-51. Public planning in Britain is carried on by various departments of the central government and plans are not usually brought together into a single master scheme so familiar in the Soviet Union and its satellites. The problem of coördination is a major one under such a system; it is entrusted to interdepartmental committees, cabinet committees, and various agencies such as the Economic Section of the cabinet office, the Central Economic Planning staff of the Treasury, and the Economic Planning Board made up of representatives of industry and the government. The general goals of recent economic planning have been as follows: (1) the maintenance of full employment, (2) the control of inflation, (3) a satisfactory balance of international payments, (4) wise capital expenditures, (5) attainment of social objectives in the health and security fields, and (6) adequate national defense.[2]

The Town and Country Planning Act of 1947. The Town and Country Planning Act of 1947 [3] is administered by the Ministry of Housing and Local Government, already mentioned as a major government department.[4] Its local agents are the county councils and the

[1] See O. Franks, *Central Planning and Control in War and Peace* (Cambridge, Mass., 1947); W. A. Lewis, *The Principles of Economic Planning* (London, 1949); H. D. Henderson, *The Uses and Abuses of Economic Planning* (New York, 1947); and B. Wootton, *Freedom under Planning* (Chapel Hill, N. C., 1948).

[2] See D. N. Chester, "The Central Machinery of Economic Planning," in *Lessons of the British War Economy* (London, 1951); R. S. Milne, "Labor and the Planning Organization," *Polit. Quart.*, Apr.-June, 1952; and R. S. Milne, "Britain's Economic Planning Machinery," *Amer. Polit. Sci. Rev.*, June, 1952, for additional discussion. Earlier works worth consulting include H. Finer, "The Central Planning System in Britain," *Pub. Admin. Rev.*, Autumn, 1948; J. Chamberlain, "Britain under Planning," *Yale Rev.*, Winter, 1947; J. Jewkes, *Ordeal by Planning* (London, 1947), a trenchant criticism of planning as a panacea and of actual planning under the Labor government since 1945.

[3] For a detailed explanation of the act, see the White Paper issued by the Ministry of Town and Country Planning under the title *Town and Country Planning Act, 1947; Explanatory Memorandum* (London, 1947).

[4] See p. 123 above.

county borough councils, and a Central Land Board has been created to manage land acquired under terms of the legislation. Perhaps the most serious defects in earlier planning acts centered around the provisions made for compensation. Differing from totalitarian countries, whose governments simply confiscate private property desired for public purposes, Britain has a strong tradition requiring adequate compensation to be given the owners of any property taken over by the government; and so much importance was attached to this limitation in earlier planning acts, and so many safeguards were erected, that attainment of the primary ends of the legislation was often exceedingly difficult. To a considerable extent, the act of 1947 removes this barrier. Under terms of the act, the local planning authorities—county and county borough councils—are charged with drafting plans for their areas. Provision is made for planning committees and subcommittees and for joint planning agencies with jurisdiction over two or more local planning authorities. It is specified, too, that Parliament may veto involuntary combinations of local planning groups, and that county district councils may be delegated certain planning powers by their county councils. Local plans had to be submitted for approval to the Minister of Housing and Local Government by 1952, and fresh surveys and reviews of plans are required every five years.

Scope and Implementation of Plans. Local planning authorities are instructed to draft basic plans covering major road improvements, the areas to be reserved for agricultural purposes, the direction in which the town is to expand, and the section or sections to be designated for comprehensive redevelopment. A plan is expected also to indicate the steps to be taken to implement it, and to designate the land to be taken over from private owners. Advertisement of proposed plans, hearings, and circulation of approved plans may be required by regulations issued by the Ministry of Housing and Local Government.

After a plan has been approved, owners of land to be developed must receive permission before proceeding, though if the local authorities refuse they may appeal to the minister. Ordinarily, no compensation is due when permission to develop is refused. If, however, the land cannot be beneficially used in its existing state, and development approval is not given, the owner may demand that the government buy the property; and if the Ministry of Housing and Local Government decides that the land cannot be beneficially used as

claimed, the local authorities must buy it at its "existing use value." [1] Not only is land therefore restricted to uses in keeping with the approved plan, but the details of its development are regulated by the public authorities. Any increase in the value of privately owned land resulting from a grant of permission to develop under the original act had to be paid into the public treasury rather than retained as personal profit; and until the development charge, as this was called, had been determined by the Central Land Board and paid into the treasury or guaranteed, the development could not take place. Even if land was bought for approved industrial or building purposes, the purchaser had to pay into the treasury any added value of the land resulting from his improvements. Obviously, under this system private speculators and promoters were not given much encouragement. In order, however, to compensate private owners for this drastic change in property status, the act of 1947 authorized the distribution of £300,000,000 to those claiming depreciation in value of freehold and leasehold interests in land. There was widespread dissatisfaction with the development charge aspect of the program which was characterized by Harold Macmillan, Minister of Housing and Local Government, as "one of the major obstacles today to real development." [2] Late in 1952 the Conservative government announced the immediate dropping of the development charges and the £300,000,000 compensation fund, promising a detailed revision of the 1947 act at an early date.

New Towns. Britain is not only giving attention to the planning of existing towns, with special emphasis on the reconstruction of bombed areas, the clearing of slums, and the moving of large numbers of people to suburban residential districts, but has actually embarked on the construction of a number of entirely new towns.[3] These are somewhat varied in character, but stress has been placed on economic self-sufficiency, and an effort has been made to attract industrial enterprises which would give employment to the residents. The new towns are presumed to be situated in areas which, after careful study, are found to be appropriate for urban settlement.

[1] "Compensation is determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser for the land on the basis that it was to continue in its existing use and there was no permission to change its use."

[2] See *London Times*, April 21, 1952.

[3] For the legal provisions, see *The New Town Act, 1946*, 9 & 10 Geo. 6, Ch. 68.

The initial planning, though entrusted to experts, frequently proved superficial since it ignored basic problems of drainage, sewage, and traffic. For various reasons the progress in the construction of the new towns has been less rapid than was scheduled. Nevertheless, such towns as Hemel Hempstead could by 1952 point to more than one thousand residential units together with various public structures and a half dozen or more industrial plants.

Housing. With an expanding population and extensive war damage to existing structures, Britain entered the postwar period with an acute housing shortage. A public housing program carried on largely by the local government authorities aided by generous government subsidies has been responsible for approximately four out of five of the 200,000 or more housing units constructed annually.

CHAPTER IX



POPULAR REPRESENTATION IN THE HOUSE OF COMMONS

On the left bank of the Thames, midway between Chelsea Bridge and the Tower, stands the largest and most impressive Gothic structure in the world, the Palace of Westminster; and within its massive walls sits, appropriately enough, the oldest, the largest, the most powerful, and perhaps the most interesting of modern legislatures.[1] Not only is the British Parliament[2] the major instrumentality of popular government in one of the world's principal democracies; it is, in a very genuine sense, the "mother of parliaments," whose progeny is to be found in every English-speaking country, our own included.

How Parliament originated and acquired its present form has been explained in an earlier chapter.[3] From the present point, we shall be concerned rather with the institution as it stands today—first of all, in this and the succeeding chapter, with the structure of the two houses, including the important matter of parliamentary suffrage and elections; afterwards, in chapters to follow, with functions, organization, and procedures. And we start with the House of Commons, because of the very substantial primacy which that body enjoys.

[1] On the damage done to the building by German bombs in 1941, see p. 237 below. Restoration of the devastated section was undertaken following the war and finally completed in 1950, though the Lords did not return to their chamber loaned to the Commons until late in 1951.

[2] Formerly, the "Parliament of the United Kingdom of Great Britain and Ireland," but nowadays, under enactment of April 12, 1927, the "Parliament of Great Britain and Northern Ireland." On the corresponding change in the style and title of the sovereign, see p. 57 above.

[3] See pp. 9-13 above.

STRUCTURAL ASPECTS—CONSTITUENCIES

Representation of Different Parts of the United Kingdom. The Parliament that sits at Westminster is, of course, more than merely an English parliament in the narrower sense of the term; it is, as indicated above, the Parliament of Great Britain and Northern Ireland. It became, indeed, the Parliament of the United Kingdom through the admission of representatives of the Welsh counties to the House of Commons in the reign of Henry VIII, the abandonment of a separate Scottish parliament in favor of representation of the north country at Westminster in 1707, and a similar step taken for Ireland at the close of the eighteenth century. Upon the establishment of the Irish Free State in 1922, however, all Irish representation in the popular branch ceased except in the case of half a dozen northern counties which retained their connection with Great Britain; and this change—reducing the Irish quota at a stroke from 105 to 13—brought down the total number of Commons members from 707 to the 615 which constituted the figure until readjustments of constituencies in 1944 raised it to 640. Further readjustments followed, and finally a Representation of the People Act of 1948, putting the matter (as will be explained) on a somewhat flexible basis, prescribed only that for Great Britain the number shall not be "substantially greater or less" than 613 (including not less than 71 for Scotland nor 35 for Wales) and for Northern Ireland 12. The House of Lords also contains members from all four areas, although in its case geographical representation has little significance.[1]

Shift in the Character of Constituencies. A second structural feature of the House of Commons is that all of its 600-odd members are elected by voters grouped in constituencies laid out on geographical lines.[2] Such geographical grouping is pretty much taken for granted nowadays. But it is interesting to observe that in earlier times it was merely incidental to the main idea in representation, namely, that it was classes or interests—landholders, merchants, guildsmen, etc.—that were entitled to have spokesmen in the elective assembly,

[1] See pp. 214-216 below.

[2] A purist would perhaps say that a "constituency" is properly a body of people represented, while a "district" is a territorial division within which they dwell. The former term, however, is commonly employed in Britain exactly as we in the United States employ the latter; the law indeed defines a constituency as "an area having separate representation in the House of Commons." For practical purposes, the two may be used interchangeably.

and not simple aggregations of people who happened to live in particular areas. To be sure, in England the elements referred to were always represented in accordance with county or borough boundaries. But this was merely a matter of convenience. Representation was primarily functional, or occupational, and only incidentally geographical; and so it long remained. In the nineteenth century, however, an altogether different situation arose. By stages to be mentioned presently, the parliamentary suffrage was extended to the general mass (even if not yet to quite all) of the people. Previous privileged functional groups became submerged in a numerous and heterogeneous electorate; and of necessity the unit of representation became largely a numerical aggregate—the enfranchised people, of all sorts, dwelling in a definite region marked off on a map. From a functional (or at all events a functional-geographical) basis, the entire scheme of representation shifted to a basis best described as numerical-geographical. The House of Lords continued to be—as it still is—a body made up largely on functional lines. But the popular, elective branch emerged as a chamber in which the functional principle found legal recognition only in the election of a dozen "university members" by degree-holders of specified individual or associated institutions of higher learning; and under the Representation of the People Act of 1948, even that relic of functionalism has disappeared. All Commoners at present sit for areas which are geographical in character, just as do American congressmen.[1]

The Single-Member Plan. Until late in the nineteenth century, counties and boroughs commonly remained undivided for purposes of parliamentary representation, each as a whole returning a specified quota of members—which in the great majority of cases (in England at all events), and regardless of size or population, was two. Progressive broadening of the electorate raised, however, the problem of apportioning representation to population in a more exact manner, and as a means to that end counties and boroughs were gradually partitioned into constituencies electing a single member. The Reform Act of 1832 added to the small number of single-member constituencies then existing by taking away one seat from each of 31 less populous boroughs; and although the Reform Act of 1867 moved in the opposite direction by giving 13 constituencies three members apiece, the Redistribution Act of 1885 definitely adopted

[1] For a list of constituencies, see *The Times House of Commons, 1951* (London, 1951).

the single-member plan, breaking all of the counties, and all of the multiple-member boroughs except 23, into areas returning one member only. Later on, only 12 scattered boroughs and the City of London [1] were found returning as many as two members; and a Redistribution of Seats Act of 1944 and Representation of the People Act of 1948 eliminated even these exceptions. If the oft-proposed plan of proportional representation were ever to be adopted, single-member would have to give way to multi-member districts. But there is no present prospect of such a development; and meanwhile the single-member system continues in universal use. Just as congressional districts in the United States never cut across state boundaries, so British parliamentary districts are commonly contained wholly within a single county or borough,[2] and in fact are made to correspond, where practicable, with local-government administrative areas. Whereas, however, American congressional districts in any given state are known merely by number, every British constituency has a distinct name, *e.g.*, the Borough of Oxford, the Central Division of Portsmouth, or the East Grinstead Division of East Sussex.[3]

Redistribution of Seats—Former Neglect. In the United States, the constitution requires Congress to reapportion seats in the national House of Representatives among the states after every decennial census, the object being, of course, to keep congressional districts substantially equal in population, so that a vote will count for as much in one place as in another. Curiously, there never was, until a few years ago, any general law on the subject in Great Britain, nor even any informal requirement imposed by custom; and although decennial censuses were taken consistently from 1801 onwards, general redistributions of seats took place only at very lengthy and irregular intervals. The only redistributions, indeed, in three hundred years aimed at anything approaching uniform constituencies were those of 1885 and 1918; and they were made only after conditions had become shockingly bad, and with no provision for preventing equally unsatisfactory situations from arising again with the lapse of time.

[1] An area at the center of the metropolis having separate government.

[2] Exceptions arise when, for example, a borough incorporated for purposes of municipal government takes in new territory or otherwise alters its boundaries, because such changes have no effect upon the boundaries of "parliamentary" boroughs.

[3] It should be observed that the counties which figure in connection with parliamentary elections are the administrative counties created in 1888, not the historic counties. See p. 362 below.

Redistributions of 1944-48. As will appear, a war was required to bring the country (in 1918) to a liberalization of the restricted suffrage inherited from the nineteenth century. A war—with the heavy dislocation of population entailed—was required also to bring it to an effective attack upon the redistribution problem. By 1944, nine years had lapsed since the last general election; another election there presently must be; yet constituencies had grown so grossly unequal that any election on the basis of them as they stood would be a mockery. In the autumn of that year, Parliament therefore passed a House of Commons (Redistribution of Seats) Act—supplemented by amending legislation in 1945, 1947, and 1948—(1) making a number of immediate readjustments (by dividing large constituencies) whose net effect was to raise the total number of members temporarily from 615 to 640, (2) abolishing all double-member constituencies except the City of London; and (3) introducing for the first time, not the American principle of periodic redistribution, but instead arrangements under which redistribution should thenceforth be a more or less continuous process. With a view to an early general redistribution (such as had last been made in 1918), the legislation provided for four separate and permanent "boundary commissions" for England, Wales and Monmouthshire, Scotland, and Northern Ireland which were to report redistribution plans for their respective areas as bases for a comprehensive redistribution act; and not only this, but these commissions were in future, at intervals of from three to seven years, to report changes revealed as desirable by fresh general reviews of the situations existing in the different areas, and with authority, too, to recommend changes in particular constituencies at any time. In view of the casual manner in which redistribution had always theretofore been dealt with in Britain, this innovation was indeed significant, looking as it did to even closer correlation of representation with population than contemplated or realized in the American scheme of decennial reapportionments. It became part of the British plan also that the boundary commissions, operating in all instances under the chairmanship of the speaker of the House of Commons, should consist entirely of civil servants, to the exclusion of all politicians, thus minimizing the dangers of gerrymandering.

Between 1946 and 1948, the new boundary commissions gave the constituency maps of their respective jurisdictions a thorough comb-

ing over, and on the basis of their findings and recommendations Parliament adopted, as a schedule attached to the Representation of the People Act of 1948, a complete enumeration and definition of both county and borough constituencies throughout the realm.[1] The theory at least is that general over-all redistribution legislation may never again be required, because, under the watchful eye of the commissions, individual readjustments will be made here and there over the country as need appears, with arrangements at all times kept abreast of population growth and shifts. In the United States, Congress apportions seats to the states, but districts are laid out by, and can be changed only by, the state legislatures. In Great Britain, where there is nothing corresponding to our states, constituencies can be created or altered only by the national government. Formerly, this meant a direct act of Parliament, just as necessary for a minor boundary change in an individual constituency as for a nation-wide redistribution. Under the act of 1944, however, changes recommended by the commissioners can be put into effect by order-in-council, although such order must be laid before Parliament, which has a chance to hold it up.

THE PARLIAMENTARY SUFFRAGE—PAST AND PRESENT

The Situation When the Nineteenth Century Opened. Members of the House of Commons are chosen today by an electorate that falls not far short of including all adult men and women. Only for slightly more than two decades, however, has this been true; and prior to "reform acts" of the nineteenth century, the suffrage was restricted indeed. In the counties, a law of 1420 confined voting to male inhabitants owning land of a yearly rental value of 40 shillings; and in 1800 the number of such "40-shilling freeholders," all told, in both England and Wales hardly exceeded a quarter of a million. In the boroughs, the theory was that all freemen were entitled to vote. But in numerous instances enfranchised freemen had come to be limited to certain groups of property holders or taxpayers or the members of particular guilds; and while in scattered boroughs there was some approach to manhood voting, in a far larger number the voters were but an insignificant fraction—with in many instances, too, the borough so completely under the thumb of some wealthy patron that no freedom of choice was left to the people at all. The

[1] The standard number of electors per constituency was about 57,000.

truth is that the Britain of the early nineteenth century was in no real sense a democratic country. One branch of Parliament consisted entirely of persons sitting by hereditary right, along with the higher clergy of an established church; the other branch contained only a handful of members chosen freely by a broad electorate, with large populations in the lately swollen northern cities either grossly underrepresented or not represented at all;[1] administrators and judges commonly owed their positions to men who acknowledged little or no responsibility to the people, and were themselves invariably of the "governing class"; local government in the counties, and very frequently in the boroughs, was in the hands of petty oligarchies; the actual governing powers were the crown, the church, and the aristocracy.[2]

Some people—many indeed—were satisfied with things as they were. Blackstone in 1765 wrote complacently of the beneficent system of lawmaking by "gentlemen of the kingdom delegated by their country to Parliament"; Burke in 1790 proclaimed the system "perfectly adequate to all the purposes for which a representation of the people can be desired or devised." Already, however, John Locke, as early as 1690, had denounced the "gross absurdities" of the existing distribution of electoral power. And in 1783, the younger Pitt, speaking on the floor of the House of Commons, admitted frankly that "this house is not the representative of the people of Great Britain; it is the representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, of foreign potentates."

[1] The monumental treatise on the House of Commons before 1832, covering every significant aspect of the subject, is E. Porritt, *The Unreformed House of Commons; Parliamentary Representation before 1832*, 2 vols. (2nd ed., Cambridge, 1909).

[2] "In the well ordered state of England, certain families, chosen by a natural process which everybody understood and nobody could explain, were always available to furnish the House with members and the crown with ministers. These families formed together the governing or legislatory body, out of which the shires and boroughs chose their representatives; they, in the mixed constitution, were the aristocratic element restraining the excesses of the crown and the multitude, and in their turn restrained, or stimulated, by both. Some of these families were titled; the majority were not. They were not a closed caste because commerce and the law, the East Indies and the West Indies, were constantly adding to their numbers. They made up the two houses of Parliament, which was not yet thought of as being in the main a legislative body. Its function was to control the executive, to vote supplies and see that they were prudently spent, to decide the issues of peace and war, and to call ministers to account." G. M. Young, in E. Barker [ed.], *The Character of England* (Oxford, 1947), 93.

The Movement for Reform. By the time when Pitt voiced this disturbing observation, there were many to applaud his words. Reform societies were agitating for manhood suffrage and equal electoral districts; and, save for the French Revolution and the wars that followed, some improvement might have come before the century ended. The restoration of international peace in 1815 left the Tory party entrenched in office, and for a decade and a half nothing happened. The forces of reform, however, had a good case; and the growing need for pioneering legislation to meet the social and economic difficulties flowing from the wars and from the new industrial age—legislation such as could be hoped for only from a liberalized Parliament—ultimately compelled action. The walls of opposition began to crumble in 1830, when the Tories fell from power and the Whig ministry of Earl Grey came in. Many of the Whigs were aristocratic enough; Grey himself was an aristocrat. But the party as a whole was prepared to endorse, and the new ministry to push, a reform conceived on moderate lines; and in 1832 the Great Reform Bill was placed on the statute-book.

Reform Act of 1832. This measure is commonly considered one of the most important in British legislative history, and rightly, since it gave the country's political system a slant or bent which has led straight to the democracy of the present day. This it did, not merely by increasing the number of voters at the moment, but by basing the parliamentary suffrage for the first time, in counties and boroughs alike, upon a single form of qualification, *i.e.*, the rental value of property owned or used. Involving, as this did, the fixing of qualifications in terms of arbitrarily stated sums, it foreordained that every fresh agitation on the subject would thereafter have as its objective a lowering of the prevailing figures, until, the vanishing point having been reached, full democracy should finally have been arrived at. The act of 1832 was drawn on such lines that it gave the suffrage to hardly a quarter of a million people who had not possessed it before. It did not confer, and was not intended to confer, political power on the masses, urban or rural. Indeed, voters in some boroughs actually found themselves disfranchised. A good beginning, however, was made; and along with the broadening of the electorate, the worst defects of the existing layout of constituencies were remedied by a redistribution of almost 150 seats, leaving no populous section of the country without somewhat increased representation.

It was this measure, too, that first required qualified persons to be registered in order to vote.

Reform Act of 1867. Those responsible for the act of 1832 considered that it went quite far enough; but other people felt differently, and in the next few years the discussion passed into a new stage in which a group of radical and militant reformers known as Chartists [1] carried on a spectacular campaign for their "six points," *i.e.,* universal manhood suffrage, equal electoral districts, voting by secret ballot, annual parliamentary elections, abolition of the property qualification for members of the House of Commons, and payment of salaries to members out of the public treasury. Chartism as a movement did not survive to see its program realized, but by keeping its various issues before the nation for 20 years it contributed not only to the abolition of property qualifications for members in 1858, but to the enactment of a second major reform bill, in 1867, enfranchising the bulk of the urban working class and enlarging the electorate, in all, by almost a million.

Representation of the People Act of 1884. The principal groups of people still outside the pale were the agricultural laborers and the miners, both belonging mainly to county constituencies, and it was inevitable that sooner or later they would be made the subject of similar legislation. The ice had been broken; the old electoral system was gone in any event; and it was a source of no surprise when, in 1884, Gladstone redeemed a campaign pledge by introducing a bill extending to the counties the same electoral regulations that had been given the boroughs 17 years previously. After once rejecting the measure as it came up from the Commons, the House of Lords assented to it on the understanding that it would be followed by a bill providing for a redistribution of seats; and this second bill duly became law in 1885. Meanwhile the first measure, extending the existing borough franchises to the counties, multiplied county electors by almost three and thereby added to the lists, in the United Kingdom as a whole, twice as many new voters as were created by the act of 1867.[2]

[1] Their program was set forth in a document known as the "People's Charter." Actually it was the Conservatives who passed the Act.

[2] The parliamentary reforms of the entire period 1832-85 are dealt with most conveniently in C. Seymour, *Electoral Reform in England and Wales, 1832-1885* (New Haven, 1915). Also see K. MacKenzie, *The English Parliament; A Study of Its Nature and Historic Development* (London, 1950).

Representation of the People Act of 1918. As left by the legislation of 1884-85, the electoral system stood practically unchanged for more than 30 years. During all this time, almost any Englishman, if challenged on the subject, would have argued that his government was "democratic"; and certainly it was so regarded by the world generally. There were, however, some rather serious limitations, arising not only from the aristocratic character of the House of Lords, but from various surviving deficiencies of the House of Commons as well; and much discussion of further reform was heard, especially after 1900. As events proved, World War I paved the way for a more comprehensive, and at the same time less partisan, reconstruction of the electoral system than anyone could have hoped for previously; and, no less unexpectedly, the reform was achieved while the contest was actually going on. It was, of course, not by choice that the Lloyd-George coalition government turned its attention to electoral questions while the nation was still fighting for its life within hearing of the Channel ports. Rather, it was compelled to do so by the sheer breakdown of the electoral system, caused by wholesale enlistments in the army and by the further dislocation of population arising from the development of war industries. The situation was bad enough in county, municipal, and district elections. But a parliamentary election under the abnormal conditions existing would have been a farce. By successive special acts, and with general consent, the life of the parliament chosen in December, 1910, was prolonged, in order to defer, and perhaps to avoid altogether, a war-time election. A general election, however, there eventually would have to be; and whether before or after the cessation of hostilities, it admittedly would demand, in all justice, a radically altered system of registration and voting, if not new franchises and other important changes. At the instigation of the cabinet, Parliament therefore took up the matter in the summer of 1916; an exceptionally representative and capable "Speaker's Conference"—so-called because appointed and presided over by Speaker Lowther—was set to studying the subject; a carefully prepared report was submitted in 1917; and early in 1918 a new Representation of the People Act became law. In this epochal statute—constituting the country's basic electoral code until superseded in part by the new Representation of the People Act of 1948—many relevant matters (redistribution of seats, registration of voters, plural voting, absent voting, and the like) received due

attention. Most fundamental, however, were the suffrage provisions under which the number of voters was raised at a stroke from some 8,500,000 to above 21,000,000; and this is its aspect calling for attention here.

Manhood Suffrage. Through the centuries, the suffrage had continued to be defined entirely in terms of property. In 1918, a man still voted, not as a person or citizen, but as an owner, occupier, or user of houses, lands, or business premises. The voter did not have to *own* his property; and the occupational requirements were comparatively easy to meet. Nevertheless there were many men who were not "occupiers," nor yet "lodgers" or anything else that came within the limits of the law. Besides, the law itself was so complicated that nobody but lawyers professed to understand it. The first demand of electoral reformers had, accordingly, been for a simplification of the existing system, coupled with provision for full manhood suffrage.

Effort to adapt electoral machinery to changed conditions created by the war soon convinced the Speaker's Conference that the traditional property basis for voting ought to be discarded and the principle adopted that the suffrage is a personal privilege, to be enjoyed by the individual simply as a citizen; the two houses, in turn, accepted this view, even though for the time being men and women did not obtain the ballot on identical terms. The qualifications required of male electors at last became relatively simple. As they still stand, any male British subject, 21 years of age or over, and not prevented by legal incapacity, is entitled to have his name on the voters' list in the constituency in which he resides—although under the legislation of 1948 whether or not he may vote at a given election depends upon whether he was resident in the constituency on November 20 in the case of an election falling between the next March 15 and October 2, and on June 15 in the case of one falling between the next October 1 and March 16.[1] Neither tax-paying nor educational qualifications—familiar enough in the United States—have any place in the requirements.[2]

[1] For Northern Ireland, the dates are somewhat different.

[2] Qualifications for voting in local, *i.e.*, county and borough, elections were not affected by the legislation of 1918, but on the contrary continued to be tied up with the ownership or occupancy of property. In 1946, however, they were made uniform with the requirements for voting in parliamentary elections.

Woman Suffrage. Another suffrage question which came to the fore soon after the opening of the present century was the enfranchisement of women. As early as 1847, the writer of a widely circulated pamphlet argued that as long as both sexes were not "given a just representation" good government was impossible; and although John Stuart Mill failed in 1867 to get a clause into the reform act of that year making female taxpayers parliamentary electors, an amendment to the Municipal Corporations Act of 1869 gave them the ballot in municipal elections. A national society to promote the cause was founded in 1867; many private members' bills conferring the parliamentary franchise made their appearance in succeeding decades; and in 1903 a newly organized Woman's Social and Political Union launched a spectacular campaign aimed at forcing the introduction of a bill sponsored by the cabinet, such as alone would stand any real chance of becoming law. Furthermore, from having looked only to obtaining the parliamentary ballot for women under the property qualifications then applying to men, the movement advanced, by 1909, to the point of envisaging the enfranchisement of substantially the entire adult female population.

Impetus from World War I. The outbreak of war in 1914 seemed to end all hope for early legislation on the subject. The ultimate effect was, however, quite the reverse. Within two and a half years, the conflict brought the suffragists an advantage which no amount of agitation had ever won for them, *i.e.,* the active backing of the cabinet; and an additional few months carried their cause to a victorious conclusion which might not have been reached in a full decade of peace. Now that men were to have the suffrage *as persons,* rather than simply as owners or occupiers of property, it was more than ever difficult to withhold it from women. Indeed, in the existing juncture—in the face of women's superb services to the nation during the war—to withhold it was quite impossible. Powerful opposition, of course, was raised. All of the old anti-suffrage arguments were heard again, and in addition it was contended, with a certain amount of plausibility, that a woman's enfranchisement act ought not to be put on the statute-book without a referendum, or by a parliament which had overrun its time by two years, or while three million men, including more than one-fifth of the members of the House of Commons, were absent in military service. There was the awkward situation, too, that the war had so depleted the man-power of

the nation that if women were given the suffrage on the same terms as men, there would be a heavy preponderance of female voters, even after the soldiers should have returned from overseas. And when it was proposed that the masculinity of the electorate be safeguarded by giving qualified women the ballot only at the age of 30, it was objected, on the one side, that this would be arbitrary, illogical, and unfair (especially as more than three-fourths of the women employed in the munition plants were under that age), and, on the other, that even if it were done, the disparity, as a matter of practical policy, could not long be maintained.

The Original Age Limitation. There was, at the time, however, no feasible alternative, and accordingly the act as passed conferred the parliamentary suffrage on every female British subject 30 years of age, or over, who was herself, or whose husband was, entitled to be registered as a local-government elector by virtue of the occupation of a dwelling-house, without regard to value, or of land or other premises of the yearly rental value of £5. This sounds more complicated than it really was. The cardinal points are (1) that the suffrage for women of requisite age, unlike that for men, was to be determined in relation to local, *i.e.*, county or borough, government status; (2) that a woman who was entitled to vote in local elections by reason of either of the specified property relationships might vote, if duly registered, for a member of Parliament; and (3) that, even though she was not a local-government elector, she could still vote in a parliamentary election if her husband was a local elector on either specified basis.[1]

This Limitation Removed. This legislation marked a long step in the direction of equal suffrage for men and women, but nevertheless deliberately stopped short of establishing it. Unlike men, women could not qualify independently, as simple residents; and there was a differential of nine years in favor of men in the age requirement. Everybody understood that this discrimination in the matter of age was designed primarily to meet an abnormal situation created by the war, and from the first it was safe to assume that after the male popu-

[1] The act of 1918 and the suffrage system for which it provided are described at greater length in W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 105-132, and H. L. Morris, *Parliamentary Franchise Reform in England from 1885 to 1918* (New York, 1921), Chap. ix. On the enfranchisement of women, see R. Strachey, *The Cause; A Short History of the Women's Movement in Great Britain* (London, 1928).

lation should have regained something like its customary numerical proportion the law would be changed. Hardly was the act on the statute-book, indeed, before those who had been responsible for the triumph set about bringing their work to its logical conclusion; and after a decade of persistent agitation, a measure meeting substantially all demands—the Representation of the People (Equal Franchise) Act of 1928—became law. Notwithstanding much heated opposition to the so-called "vote for flappers," the voting age for women was reduced to 21, and all other provisions of the 1918 law which subjected women to tests different from those applied to men were repealed. The effect was to add more than 5,000,000 women to the electorate, bringing up the total of female voters to something like 15,000,000, as compared with 13,000,000 men—a grand total of 28,000,000, or about 60 per cent of the entire population of the country, as compared with four per cent in 1831.[1]

Plural Voting Abolished (1948). Until of late, British electoral arrangements presented an anomaly which stirred no end of astonished comment among observers from democratic countries, accustomed as they were to "one man, one vote" as an axiom of democratic government. Coming down from days when the suffrage was closely tied up with property, the practice (until 1918) was to allow a person to vote, at any given parliamentary election, in any and every constituency in which he possessed the necessary qualifications (residence then not being a prerequisite). One might vote only once, at a given election, in any one division of a county or borough. But if he slept in Kensington, had an office in the City of London, and maintained a country place in Surrey, he was entitled to vote in all three places; and until 1918, a general election was spread over a period of approximately two weeks, partly at least to enable the plural voter, before the days of the motor car, to get from one constituency to another and vote anywhere from two or three to perhaps half a dozen times. As would be surmised, the great majority of the country's more than half a million persons entitled to exercise this privilege were members of the Conservative party, and one will not be surprised to learn that long before the present century, abolition of plural voting stood high on the list of electoral reforms favored by the Liberal party. When Labor came upon the scene, it naturally was at least as much disturbed; and in the Representation of the

[1] By 1951, the electorate had grown to 34,914,112.

People Act of 1918 these combined forces were able to secure a clause, not abolishing the plural vote entirely, but at least curbing it by restricting the number of votes that any elector might cast in a given election to two—on the basis of residence; on that of "occupation" of land or other premises (in a different constituency) of an annual rental value of £10 for purposes of business, a trade, or a profession; or as a university graduate. As time went on, all chances disappeared that the Liberal party would ever be in power and able to wipe plural voting completely off the books. But nothing became more certain than that if and when Labor came into genuine control, the same end would be attained; and the Representation of the People Act of 1948 accomplished the result in national elections with a single blunt provision that "a person shall not be entitled . . . to vote in more than one constituency."

PARLIAMENTARY ELECTIONS—NOMINATIONS AND CAMPAIGNS

Irregular Intervals between Elections. Members of legislative bodies in the United States invariably have fixed terms (two, four, six years, as the case may be), and hence are elected at intervals of uniform length. In Britain, the same is true of county and borough councillors, but not of members of the House of Commons. The latter are chosen anew whenever, and as often as, a previous House is dissolved. The Parliament Act of 1911 does indeed make the maximum life of a parliament—and therefore the maximum period between elections—five years. But under extraordinary conditions, even this limitation may be waived, as happened when, for war-time reasons, the parliament elected in December, 1910, prolonged its own existence until November, 1918, and that chosen in 1935 doubled its normal maximum by continuing until 1945.

Dissolutions Controlled by the Cabinet. From the time when the Reform Act of 1867 prescribed that parliaments should no longer terminate automatically upon the death of the sovereign, virtually the only way in which a parliament has been brought to an end has been by deliberate dissolution, formally decreed by the king-in-council, but actually decided upon by the cabinet. Of course, a parliament might conceivably go out of existence simply by expiration, *i.e.*, by reaching the limit of its five-year mandate. But in point of fact this is very rarely allowed to happen. Nearly always there is a dissolution—prompted sometimes by the desire of a tottering min-

istry to save itself by an appeal to the country, sometimes by the acknowledged obligation resting upon a newly installed ministry to go to the people for an endorsement and mandate, and again sometimes by the decision of a ministry, when enjoying full parliamentary support, to seize a favorable occasion for an electoral triumph conferring a new lease on official life. Three or four years may pass without an election. On the other hand, there may be two elections in a single year, as in 1910, or one in each of three successive years, as in 1922-24. Except in so far as their hands are forced by failure of support in the House of Commons, the matter lies entirely with the prime minister and his associates in the cabinet; and it goes without saying that this gives them and their party a decided tactical advantage. They can nurse the country along until conditions are right, and then announce a dissolution; indeed, they may deliberately "spring an election" so timed as to catch their opponents off guard, although the trick is familiar and all parties try to be constantly ready. The ministers, to be sure, will not make their decision lightly; for their fellow-partisans do not relish being put to the trouble and expense of seeking reëlection any more than do other people, and besides there is always a possibility of miscalculation. One of the cabinet system's main advantages is that elections under it can take place whenever (and usually only when) there are genuine issues to be settled. Under the American fixed-term plan, parties and candidates are sometimes hard put to it to find issues when election time automatically comes around. There are arguments for longer, as well as for shorter, intervals between elections. But in any event there is a good deal to be said for a system which permits an election to be held whenever affairs reach a point where the government needs to be guided by a fresh expression of the will of the electorate.

Writs for a New Parliament. When an appeal to the country has been decided upon, a royal proclamation is issued which not only dissolves the two houses but indicates the desire of the king to "meet our people and to have their advice in Parliament," and announces that the Lord Chancellor and the governor of Northern Ireland have been instructed to issue the necessary writs. Writs of *summons* are sent to the members of the House of Lords (except the Scottish representative peers) individually; writs of *election* are dispatched to sheriffs of counties, mayors of boroughs, and chairmen of urban district councils, requiring them, as "returning officers,"

to make proper arrangements for the selection of members of the lower house. Thus is set in motion the electoral machinery, which does not stop until the new House of Commons has been chosen and convoked.

Nomination of Candidates. British elections proceed with alacrity, and on the eighth day after the proclamation (Sundays and holidays excluded) all nominations must be made. On its face, the nominating process is exceedingly simple. There is neither convention nor primary, and all that is required by law is that a person who aspires to be a candidate shall, on the prescribed day, file with the returning officer a paper setting forth his name, residence, and business or profession, together with the names and addresses of two registered voters of the constituency who propose and second him and of eight others who "assent"—this, and one other thing, namely, a deposit of £150, to be forfeited unless the candidate proves to be unopposed or receives more than one-eighth of the total vote cast in his constituency on polling day. That this later safeguard against frivolous or useless candidacies is effective is indicated by the fact that as a rule, despite the situation in 1950, not more than 30 or 40 candidates in the entire country are compelled to pay the forfeit.[1]

How Candidates Are Actually Selected. Of course, there is more to the matter of nominations than the rather casual procedure outlined. When a candidate is to be selected in a constituency, there is practically certain to be a local party organization—a Conservative "association" or a Labor "party branch" (in some 140 constituencies local trade unions put up the Labor nominee)—to go into action; and what invariably happens is that this organization, or more likely its executive committee, looks over the field, listens to speeches by various aspirants, balances off the claims of one against those of another and arrives at a decision. A Conservative organization may, if it likes, consult the central office of the party at London and get suggested names of party members on its list (likely, of course, to be non-residents of the constituency) who are favorably regarded, or who perchance have to be taken care of somewhere. There is no compulsion, however, to accept such names, and the right of final decision locally is jealously guarded. In the case of Labor, there

[1] For most Labor candidates, the requirement mentioned would be burdensome, and perhaps prohibitive, if it had to be shouldered individually. All, however, are protected against substantial loss by an insurance fund maintained by the party.

may be more control from the center. Not only is consultation with the top party authorities at London obligatory, but the local organization must consider any names presented by them, and also must submit its final choice for formal headquarters endorsement. There are, of course, independent candidates, but rarely many; the usual situation is simply a two-cornered, or more likely a three-cornered, contest.[1]

Qualifications. Who is eligible to be nominated? In other words, what qualifications must a person have in order to be elected and seated at Westminster? Many different regulations have been in effect at various times. Measures passed in the fifteenth century required residence in the county or borough represented. These soon fell into abeyance; but religious tests imposed rigid restrictions, and in the eighteenth century property requirements were added. The last obsolete residential requirement was repealed in 1774, and many members now sit for constituencies in which they do not live;[2] property qualifications were swept away in 1858; and the last survival of religious tests is to be seen in the present rule disqualifying clergymen of the Church of England,[3] ministers of the Church of Scotland, and Roman Catholic priests. English peers are, of course, not eligible. The only positive requirements are that the member shall be of age, a British subject (by birth or naturalization), and willing to take a very simple oath or affirmation of allegiance compatible with any shade of religious belief or disbelief. Women first became eligible under the terms of a Parliament (Qualification of Women) Act of 1918; and a few have been elected—the first to serve having been the American-born Lady Astor.

The House of Commons as a Mirror of the Nation. What sorts of people become candidates for seats in Parliament, and win them? The answer is "many, if not all, kinds"—especially since the Labor party attained its present importance. On the green benches (*red* benches at the time the House temporarily occupied the Lords' cham-

[1] In the 1951 election, there were 1,364 party candidates as against 12 independents.

[2] Under American practice, members of Congress must be residents of the state, but not necessarily of the district, from which they are elected. Except in a few instances in the largest cities, however, congressmen are—by usage as old as Congress itself—invariably residents of their districts, and it is not worth while for an outsider to seek election. See J. Bryce, *The American Commonwealth* (4th ed.), I, 191-195, and H. W. Horwill, *The Usages of the American Constitution*, Chap. ix.

[3] Since the disestablishment of the Anglican Church in Wales in 1920, Anglican clergymen in that part of the realm are eligible.

ber) sit great landowners, sons of peers, bank and company directors, coal and iron magnates, along with business men, lawyers, teachers, journalists, clergymen, farmers, trade union officials, and present or past manual laborers. Hardly a business, a social class, a profession, or an interest is devoid of representation. There are, however, limitations. Membership requires time and money; few can undertake it unless blessed with a good deal of leisure and also independent means, or perchance subsidized; and the number of such in Britain today is far from what it once was. Attendance is required during the greater part of the year, and the cost of securing election, "nursing" one's constituency, and living in London is for most people prohibitive. A lawyer or broker or insurance man may be able to eke out a living from his profession, and a trade union or coöperative society official may get enough assistance from his organization to carry him through. But it is the retired, rather than the active, business man who is likely to be found; the landowner rather than the farmer; the labor official rather than the laboring man.[1] The membership is far less dominated by lawyers than is that of American legislatures. Some years ago, when there were 262 members of the legal profession in the House of Representatives at Washington (practically half of the total), there were only 90 in the considerably more numerous House of Commons. And this permits broader representation of other elements in the body politic, and contributes to making the House of Commons a somewhat more exact cross-section of the British population as a whole than is our House of Representatives of the American people generally. There are, however, important gaps.[2]

Brevity of Campaigns. Electoral campaigns in the United States are long-drawn-out, and often rather tedious, affairs. In Britain, they

[1] On members' salaries, see p. 262, note 2, below. Although twice increased during the last dozen years, they still afford no financial independence.

[2] The personnel of the House of Commons from 1918 to 1935 is analyzed instructively in J. F. S. Ross, *Parliamentary Representation* (rev. ed., London, 1948). Writing in 1947, a British statesman with long experience in public life has said: "The House of Commons 50 years ago consisted almost entirely of frock-coated, top-hatted men of substance, young sons [of peers], landlords, big business men, leaders in the professions, none of them dependent on politics for a living, few of them able and willing to give their whole time to public work. It was, in fact, composed of the men who in the literal sense of the word owned and directed the country. Since then the House has been changed out of all recognition. In 1895 the House was nearly equally divided between the landowning class, big business, and the professions, the last mainly lawyers. In the present House, professional men in the widest sense of the word form the main body of some 250, with some 170

are at least never long-drawn-out. There is a sense, of course, in which they may be said to be going on most of the time. The parties are perpetually sparring for advantage. Annual local elections and by-elections to fill vacant seats keep up the spirit of contest. Men who propose to go in for a parliamentary career address public gatherings, subscribe to civic and philanthropic causes, and in a dozen other ways keep themselves before and ingratiate themselves with the people of the constituency to which they are pinning their hopes. Members who want to continue their public careers "nurse" their constituencies in similar fashion. And of course when a dissolution looms in the offing, party committees and candidates set actively to work without awaiting the moment when it will actually befall. The "campaign," however, in the stricter sense of the word, is limited to less than three weeks. Nominations are made eight days after dissolution, and the people go to the polls after another nine days; in these 18 or 19 days, all told, the battle of the ballots must be fought.

Platforms. Brevity is not the only respect in which the British campaign differs from the American. There is no political platform in quite the sense in which we have it in this country. To be sure, the national conferences, or congresses, held by all of the parties at least once a year invariably adopt resolutions setting forth party principles and policies. Furthermore, at the opening of a campaign a general statement of the issues to be pressed in that contest is likely to come from the prime minister (on behalf of the party in power), and similarly from the opposition leader or leaders. Every candidate is, however, entitled to issue his own address or manifesto to the people of his constituency, and on this pronouncement—which may differ rather sharply from any general statement issued by his party and from the addresses of other candidates bearing the same party label—he makes his fight. Authorized by law to send one communication post-free to every voter in his constituency, the candidate can circulate his manifesto without other expense than for printing; and this is the way in which he usually launches his campaign.

Appeals to the Voters. The country is more wrought up at some elections that at others, and contests are keener in some constituencies than in others—with always some constituencies in which, for

manual workers or ex-manual workers as the second largest group, and the balance, mostly in the Opposition [then Conservative] ranks, divided between business men and the old landowning and services class. L. S. Amery, *Thoughts on the Constitution* (London, 1947), 40-41.

lack of competition, there is no contest at all. But even in the most one-sided fight in the most apathetic election, the appeal to the voters tends to be of the whirlwind variety, with every reputable means known to politicians the world over employed—and, of course, sometimes expedients not quite so irreproachable. Meetings are held in halls and parks, and on street corners; advertisements are placed in newspapers; literature is sent to the voters through the mails; billboards are plastered with cartoons, slogans, and appeals; "sandwich-men" are employed by the day to trudge along crowded streets bearing placards soliciting votes; house-to-house canvassing is carried on by volunteer friends and supporters of the candidate (hired canvassers are forbidden by law) with a thoroughness hardly encountered in any other country. Radio-broadcasting came into use as a campaign device more slowly than in the United States. But it has been employed extensively in the elections since 1930, and in the future more voters are likely to be swayed via the microphone than by printed literature or public meetings.[1]

Campaign Expenditures. As has been indicated, the campaign is run to some extent with the aid of voluntary, unpaid workers. But there are many things to be settled for—halls used for meetings, newspaper advertisements, radio time, postage, printing, billboard space, the services of "sandwich-men" [2]—and without some rather stringent regulation, the wooing of the electors would be likely to prove a decidely costly performance. It was such, indeed, in former times, not only because no statutory limits were placed upon expenditures that were inherently proper, but because of the very general practice of buying votes, with money or something equivalent.

[1] The feature of the British campaign that would be most likely to interest, and indeed amaze, the American observer is the "heckling" of candidates and other speakers by their audiences. Speakers at political meetings in America are occasionally interrupted by having questions shot at them from the floor or gallery, but incidents of the kind are so rare as to stir comment. In Britain, the quizzing proceeds so mercilessly that many campaign addresses become little more than a series of questions, replies, interjections, retorts, thrusts, and parries. It is of no use for the speaker to grow impatient or lose his temper; heckling is part of the game, and he may as well make up his mind to meet it and turn it to his own advantage as best he can. If he is sufficiently quick-witted, tactful, and well-informed to be able to stand up impressively under the barrage, he may easily command more sympathy and win more votes than by the most smooth-flowing and masterful formal speech that he could hope to deliver. In so far as the radio supplants public meetings, it will undoubtedly take the color out of campaigns; as a recent writer has remarked, you can turn off the loud speaker, but you can't heckle it.

[2] Printing, stationery, and the like represented well over one-half the total expenditures, agents cost about 8 per cent, public meetings 6 per cent in 1951.

Corrupt and Illegal Practices; The Graduated Plan of Expenditures. Today a different state of things obtains.[1] A Corrupt and Illegal Practices Prevention Act of 1883, consolidating earlier legislation on the subject, and stiffened by later amendments (including most recently a substantial section in the Representation of the People Act of 1949) effectively regulates campaign expenditures—and, indeed, electoral manners generally. This it does (1) by defining and penalizing *corrupt* practices, *e.g.*, bribery, treating, intimidation, personation, and falsifying the count, all of which are acts involving moral turpitude; (2) by defining and more lightly penalizing *illegal* practices, *i.e.*, acts which, while not inherently immoral, are deemed contrary to good electoral practice, such as the hiring of canvassers, paying for conveyances used in getting voters to the polls, or voting or attempting to vote in more districts than the law allows; and (3) by limiting the amount of money which candidates may spend, or which may be spent in their behalf. In the matter of the amount, it has always been recognized that it would be unfair to fix a flat maximum sum; obviously it will cost more to carry on an equally intensive campaign in a county constituency, with the people somewhat scattered, than in a borough constituency. Hence as early as 1883 a sliding scale was adopted in terms of numbers of voters. As the law stood until of late, the maximum permissible expenditure—computed from the time when the party organization formally "adopted" the candidate—was in county constituencies 6*d.* (12 cents) per elector, and in borough constituencies 5*d.* (10 cents). The Representation of the People Act of 1949, however, changed this to a base sum of £450 in both county and borough constituencies, plus 2*d.* per registered elector in county constituencies and 1½*d.* per elector in borough constituencies. Every candidate must have a single authorized agent charged with the disbursement of money in his behalf, and within 35 days after an election this agent must submit to the returning officer a sworn statement covering all receipts and outlays. The heavy increase of the electorate under the suffrage legislation of 1918 and 1928 permits, of course, the outlay of rather large sums; and the records of election cases brought into the courts indicate that the limits are sometimes transgressed. Fur-

[1] In 1951, the actual average expenditure for Conservative candidates was £778, £697 for Labor candidates, and £459 for Liberal. See J. F. S. Ross, "The Incidence of Election Expenses," *Polit. Quart.*, Apr.-June, 1952, 178.

thermore, the American plan of placing restrictions upon the sources from which funds may be drawn and requiring publicity for contributions has not been tried. The regulations thus far imposed have, however, purified politics appreciably by restraining the outpouring of money by candidates and their backers, and in doing so have made it possible for men of moderate means to stand for election who otherwise would be at grave disadvantage as against wealthier and more lavish competitors. An additional source of relief is the payment, since 1918, of the costs of the election itself—polling-stations, printing, clerk hire, fees and travelling expenses of returning officers, etc.—out of the national treasury, rather than from assessments levied upon the candidates. On the other hand, no law touches the outlays that may be made before and after the brief "electoral period"; and few persons who propose to seek election, or reëlection, are so happily situated as not to be obliged to spend generously, and with as much grace as they can muster, on all sorts of local charities and other causes dear to the hearts of the people from whom their votes must come.[1]

THE CONDUCT OF ELECTIONS

Registration of Voters. When the campaign has run its course and polling day arrives, who is entitled to vote? Manifestly, only persons who come within the bounds of the suffrage laws, chiefly the acts of 1918 and 1928. There is, however, a further important requirement; such persons may vote only if their names are on the electoral register of the constituency. The policy of keeping an official, complete, and permanent list of qualified voters in each district was introduced by the Reform Act of 1832; and under laws of 1918 and 1926, there was, in every county and borough, a registration officer—commonly the clerk of the local council—whose duty it was, under the general direction of the Home Office at London, to compile and revise the area's somewhat differing lists of parliamentary and local electors, sending from house to house in July of each year canvassers who entered on the previous year's lists all changes required for bringing them up to date. Conditions in wartime naturally interfered with the free working of this system, and special *ad hoc* arrangements had to be improvised. The Representation of the People Act of 1948, however, reintroduced a regular plan, under which

[1] On British party finances, see pp. 332-333 below, and especially J. K. Pollock, *Money and Politics Abroad* (New York, 1932), Chaps. ii-x.

indeed two registers a year (spring and autumn) are prepared instead of one.[1] Provisional lists prepared normally by the clerks of local councils are displayed in the town or county hall, in post-offices and libraries, and even at the doors of churches and chapels, so that any one missed may discover and report the fact and other errors may be noted and corrected; and having passed such scrutiny, a list stands for six months, beginning March 15 and October 1, respectively, with no one permitted to vote in his constituency during the period unless his name appears in proper form.

Nomination Day and Polling Day. Formerly, when the sheriffs and mayors, as returning officers, received writs of election, they exercised their discretion, within limits set by law, in fixing the day for nominations to be formally made in their respective constituencies, and also the polling day if one was necessary. As a consequence, from a week to upwards of two weeks elapsed from the time when the first results were known until the last ones were declared, and it was often possible for the constituencies voting late to foresee how the contest was coming out and to swing their votes accordingly if there was any motive for doing so. In any event, the country was kept in electoral turmoil for days upon days. The act of 1918, however, changed all this. As already indicated, the eighth day after the proclamation goes forth is now nomination day for all constituencies, and all polling takes place nine days thereafter. Nomination day is also *election* day in any constituencies in which, for lack of rival candidates, there is no contest; in such cases, the single candidate is formally nominated, the returning officer declares his election, and the transaction completes itself without any voting at all. And there are always situations of the sort—sometimes many of them.[2] Where, however—as usually is the case—there is a contest, nomination day marks only a preliminary stage, with the candidates put officially into the running, and election adjourned to the ninth succeeding day in order that a "poll," or count of votes, may be held to decide which candidate shall have the seat.

[1] The fact that parliamentary and local-government electors are now identical somewhat simplifies the task.

[2] It is hardly necessary to point out that, on account of these constituencies in which the electors are not brought to the polls, the popular vote of the country as actually recorded does not indicate the total popular strength of the various parties. Even so, the proportion of qualified voters going to the polls is commonly a good deal higher than in the United States. In the general election of 1945, it was 82.6 per cent; in 1950, 84.0 per cent, and in 1951, 82.5 per cent.

The Secret Ballot. Until less than three-quarters of a century ago, voting was by show of hands at a public meeting of the electors; and it is hardly necessary to add that polling days were often tumultuous occasions. Rivers of beer were set flowing; bribes were openly offered and accepted; organized bands of "bludgeon-men" went about intimidating and coercing electors; non-voters thrust themselves joyously into the fray; political convictions were expressed in terms of rotten apples and dead cats; heads were broken and a generally riotous time was had by all. From 1832 onwards, reformers persistently demanded the introduction of voting by secret ballot. The change did not come, however, until 1872, and even then it was made over the protest of no less enlightened a student of government than John Stuart Mill.[1] The Parliamentary and Municipal Elections Act (commonly known as the Ballot Act) passed in the year mentioned was limited to an eight-year period, and from the expiration of that time until 1918 it was kept alive solely by being included in an annual blanket act providing for the continuance of sundry expiring laws. Thereupon, however, it was converted from an annual into a permanent statute; and certainly no feature of British electoral procedure is now to be regarded as more firmly established.

The Process of Polling. What happens when Mr. X., green-grocer of Putney, or Mrs. Y, housewife of Cheltenham, steps into the polling place (usually an elementary school) prepared to do his or her part to save the nation from disaster? First of all, a poll clerk asks for the name and address. These obtained, the information is checked against the registration list; and if there is no disagreement the elector is handed a ballot. It would be a novel and disconcerting experience for any elector in Britain to find in his hands a "blanket" ballot, or a sheaf of half a dozen separate ballots, of the sort with which the American voter is too often called upon to wrestle. For, in national elections invariably, and in local elections usually, he has to make a choice among only two or three candidates, for but a single position. Consequently, the ballot which he receives at a parliamentary election is a very simple affair—a bit of white paper hardly larger than an ordinary postal card, numbered on the back and bearing the official stamp on back and front, but devoid of party names and

[1] Mill's argument was that, the suffrage being a public trust, confided to a limited number of the community, the general public, for whose benefit it was exercised, was entitled to see how it was used, openly and in the light of day. *Representative Government*, Chap. x, "On the Mode of Voting" (ed. by A. D. Lindsay, pp. 298-312).

emblems, and indeed containing nothing except the names, addresses, and vocations of the candidates, arranged in alphabetical order. These ballots are put up in the style of check-books, each paper having a counterfoil or stub; and as the poll-clerk detaches a paper and gives it to an elector, he writes on the stub the elector's number on the register. Taking his paper to a screened compartment, the voter makes a cross in the space to the right of the name of the candidate of his choice; and then, folding the ballot so as to conceal the marking, but leaving the stamp exposed, he drops it in the metal ballot box and goes his way.[1]

The Electoral Count. Contrary to American practice, the count is made, not at the several polling places, but at some central point in the constituency (usually the town hall or county hall); and it is made by the returning officer and one or more assistants in the presence of the candidates' election agents.[2] Furthermore, before it is made all of the ballots are mixed together, so that the result is never published for individual polling places, or precincts, but only for the constituency as a whole. When the outcome is determined, the writ which served as the returning officer's authority is endorsed with a certificate of election, and, together with all of the ballot-papers, is transmitted to the clerk of the crown in chancery, an official in the Lord Chancellor's office, by whom the writ was originally sent out. This official copies into a book the names of all persons certified as elected and delivers it to the clerk of the House of Commons to be used in making up the roll when the new parliament assembles.

Contested Elections. Certification of the successful candidate by the returning officer of the constituency is not necessarily the last stage or step in the electoral process. For if a defeated candidate—or, for that matter, any voter—believes that there has been a miscount, or that the victor or his agents have been guilty of corrupt or illegal practices, or that the victor is ineligible, he can petition to have the election invalidated. If the question is merely one of legal eligibility, the House itself settles it. But if it relates to any electoral irregularity, it goes, not to the House, but to two judges of the King's Bench

[1] Starting with the act of 1918, provision has been made for voting by mail, and also proxy voting, under carefully prescribed conditions.

[2] Candidates also may be present, and wives or husbands of such. In addition, "counting agents" may attend in behalf of a candidate, on request of the election agent.

division of the High Court of Justice,[1] selected for each case by the whole body of judges in that division. They take evidence in the county or borough in which the election occurred and certify a report to the House, in accordance with which the member in question keeps his seat or loses it. In the United States, disputed elections are commonly decided by investigation and vote of the body concerned, and formerly the same was true in Great Britain. Partisan handling of electoral contests in that country led, however, in 1868, to adoption of the present considerably better method. Protests are not numerous, and the actual voiding of an election is a rare occurrence.

QUESTIONS OF FURTHER ELECTORAL REFORM

As a device of popular government, the electoral system described has much to commend it. The suffrage is practically as broad as it can be made (unless perchance the voting age were reduced below 21), and the drafters of the elaborate Representation of the People Act of 1948 were able to dismiss the subject with a single paragraph of five lines; the traditionally complicated and troublesome problem of redistribution of seats has been brought to what is hoped will prove an enduring solution; the time-honored question relating to plural voting that always used to take prominence in any discussion of electoral reform has apparently finally been disposed of; illogical and troublesome situations have been eliminated by making parliamentary and local-government electorates identical; fairness and honesty in elections have been perhaps as effectually secured as anywhere.

Major Election. Of really significant electoral problems remaining, there seem to be only two or three; and none of these now commands the attention of 20 or 30 years ago—although they relate to fundamentals that may again, at any time, become subjects of active controversy. The first is the question of ensuring majority

[1] In cases relating to England and Wales; the Court of Session, in cases relating to Scotland; and the High Court of Justice, in those relating to Northern Ireland.

The point may be injected here that members of the House of Commons cannot retire by simple resignation—a disability dating back to the days when membership was an irksome duty. If for any reason a member wants to give up his seat, he must apply for some office (usually the nominal one of steward of the Chiltern Hundreds) which disqualifies the incumbent for membership. Receiving it, he automatically vacates his parliamentary seat—after which, perchance on the same day, he resigns the office, leaving it to be applied for by the next man who wants to go back to private life.

election in single-member constituencies. In the old days of the Conservative-Liberal bi-party system, elections within constituencies were almost invariably contests between two, and only two, candidates; and one or the other triumphed by polling a majority of all the votes cast. With the rise of Labor as a major party, however, a new situation arose in which contests very frequently were three-cornered, with the winner polling more votes than either of his rivals, but not more than the two of them together; in other words, election was often by plurality only, with the successful candidate perhaps polling hardly more than a third of the constituency's aggregate vote.[1] On principle alone, it could, of course, be argued that any elected representative should have been supported by a majority, not simply a minority, of his constituents. To this theoretical consideration was added, however, the circumstance that in actual operation the system worked mainly to the disadvantage of candidates of the Liberal party; and over many years that dwindling party fought earnestly for an "alternative vote" plan under which the voters in three-cornered contests would be expected to indicate first, second, and third preferences among candidates and in case of lack of a majority of firsts for any candidate, an effective majority for some one of the three should be arrived at by dropping the candidate standing lowest and distributing his seconds, and if necessary, his thirds also. The Conservative party always sturdily opposed this scheme; Labor wavered, but became hostile; and naturally no action resulted. With the country once more, to all intents and purposes, on a bi-party basis, the matter has declined in importance, although there still are three-cornered elections, and any tendency of such to increase would again make "alternative voting" a live issue.

Minority Representation. A second basic question of electoral mechanics which in recent decades has attracted much attention—that of minority-representation—looks in quite a different direction. The object of majority-election reformers has been to bring it about that members will never represent mere minorities in their districts; the object of minority-representation reformers, on the other hand, has been to provide a way by which the representation of minorities can be assured. Interest in minority representation arose simulta-

[1] As recently as the election of 1950, for example, there were three-cornered contests for no fewer than 408 out of a total of 623 contested seats, and in 181 of the number the victor polled something less than a majority.

neously with the movement for a broader suffrage and gained in intensity as the electorate progressively expanded and minorities, as well as majorities, grew larger and more articulate. Various devices were put forward, but interest eventually centered upon "proportional representation," as employed in certain Continental countries and to a very limited extent in the United States also today—the essence of the plan being the substitution of multi-member constituencies for single-member ones and the allotment of a constituency's seats among the candidates at any given election in proportion to votes polled. At various times (but never at the *same* time), all three parties have manifested interest in such a system. The Conservative House of Lords voted for it repeatedly in 1918; as a minority party likely to profit, the Liberals have been for it consistently for a genera tion; before attaining full stature, Labor advocated it eagerly—although, with conditions changed, later turning sharply against it. But neither of the two principal parties now sees anything to be gained from the plan.[1]

University Representation. In the face of bitter criticism, the Labor government in 1948 provided for the abolition of the 12 seats which the universities of the United Kingdom had in the House of Commons. Although many considered the issue permanently settled, the Conservatives promised if returned to power in 1951 to restore university representation. Pressure of public business delayed such action after the Conservatives took office and at the time of this writing (late 1952) no legislation had been enacted.[2]

[1] Advocates of the proportional plan naturally point to such present anomalies as (1) the Conservative party polling but 53 per cent of the popular vote in 1935, yet winning 70 per cent of the seats; and (2) the Labor party polling only 48 per cent of the popular vote in 1945, yet also securing 70 per cent of the seats.

The proportional system is advocated for Britain in S. R. Daniels, *The Case for Electoral Reform* (London, 1938); A. C. Turner, *The Post-War House of Commons* (Glasgow, 1942); and J. F. S. Ross, *Parliamentary Representation* (rev. ed., London, 1948). It is opposed in G. Horwill, *Proportional Representation; Its Dangers and Defects* (London, 1925), and H. Finer, *The Case Against Proportional Representation* (Fabian Society Tract, 1924).

[2] For additional treatment, see T. L. Humberstone, *University Representation* (London, 1951).

CHAPTER X



THE HOUSE OF LORDS AND THE PROBLEM OF A SECOND CHAMBER

An Historic Institution Becomes a Problem. Until hardly more than a hundred years ago, the House of Commons was less conspicuous, and had less actual power, than the venerable body sitting at the opposite end of Westminster Palace. Nowadays, however, the situation is far otherwise. A "second" chamber has become "secondary" as well; as recently as the general election of 1935, a major political party, *i.e.*, Labor, was on record for doing away with it altogether; and though English precedent was in earlier days largely responsible for the spread of the bicameral system around the world, English experience with the House of Lords in the past half-century has had a good deal to do with influencing foreign states to write into their constitutions provisions endowing their second chambers with cautiously [redacted]ised powers of restraint, but little or nothing more. What to do with the House of Lords has, indeed come to be one of Britain's most perplexing constitutional questions.

COMPONENT ELEMENTS

Descended historically from the Great Council of the Norman-Angevin kings, and left in the position of a separate chamber by the rise of the House of Commons in the fourteenth century, the House of Lords nowadays includes as many as six distinct categories, or

[1] But though the long-standing question of reconstructing the chamber's membership has naturally received attention, no action on that matter has been taken because of the difference of opinion as to how to change the present organization and the pressing economic and other complicated problems. However, in its 1951 manifesto the Conservative party intimated that it would attempt to reach a solution.

groups, of members: [1] (1) princes of the royal blood, (2) hereditary peers, (3) representative peers of Scotland, (4) representative peers of Ireland, (5) lords of appeal (or "law lords"), and (6) lords spiritual. Even a hasty review of these various elements will go far toward revealing why the chamber should today be widely regarded as an unsatisfactory legislative body.

1. Princes of the Royal Blood. The first group need not detain us. It consists simply of such male members of the royal family as are of age and within certain specified degrees of relationship, and it has no practical importance, since its members, numbering not more than two or three at any given time, rarely if ever attend sittings of the upper chamber or ever take part in its deliberations.

2. Hereditary Peers Sitting by Their Own Right. By far the most important group numerically is the hereditary peers of England and of the United Kingdom. Indeed, more than nine-tenths of the total membership belong in this category; and it is mainly the lavishness with which peerages have been created during the last two centuries that has enlarged the body to its present surprising proportions. With slight exceptions (to be noted presently), all peers are *ipso facto* members of the House of Lords. The term "peer" means "equal"; and its earliest use in English constitutional terminology was to denote the feudal tenants-in-chief of the crown, all of whom were literally *peers* one of another. As the separation of greater barons from lesser ones progressed, the term remained applicable to the greater ones only, who, as we have seen, formed an important element in the developing House of Lords; and before the end of the fourteenth century it was being used to denote exclusively those members of the baronage who were accustomed to receive a personal writ of summons when a parliament was to be held. Gradually the principle was established, not only that a baron who once received a writ of summons was entitled to receive a writ on all later occasions when a new parliament was to meet, but also that the receipt of such a writ, even a single time, operated to confer an hereditary right, and, in addition, that a peerage descending by inheritance must be accepted and held until death by the proper heir.[2] More than once it

[1] The total varies from time to time—in 1952, there were 842 members. During the period 1900-1949, 546 new peers were created.

[2] This does not mean, however, that a man who is offered a peerage not previously existing is obliged to accept it. Gladstone, for example, repeatedly refused to be made a peer.

has happened that a member of the House of Commons who would have preferred to continue his career in that body was compelled, upon coming into a peerage, to accept transfer to the less active and important House of Lords. Possession of a peerage is a purely personal matter. It gives the possessor himself certain privileges, mainly a title and a seat in the House of Lords. But his children, including the heir to the title as long as he is merely heir, remain commoners.[1] The peerage is, therefore, quite unlike the nobility of various earlier Continental countries, which invested families, and not merely individuals, with special status; properly, it should not be referred to as a nobility at all. Furthermore, the division of peers into five ranks, or grades—duke, marquis, earl, viscount, and baron—while of considerable social significance, is of no political import.

How Peers Are Created. Technically, peers are created—that is to say, new peerages are established—by the sovereign, but in practice the matter is controlled by the prime minister, perhaps after consultation; and the object may be to honor men of distinction in law, letters, science, war, statecraft, or business, or to win the favor and support (contributions to party funds) of persons of influence or wealth, or to change the political complexion of the house sufficiently to enable a hotly contested measure to be passed,[2] or to keep in Parliament a useful man who for one reason or another cannot continue finding a seat in the House of Commons, or, of late, to assure the Labor party some representation in a body to which it formerly was alien.[3] There is no limit upon the number that may be created, or upon the kind, except that, under existing law, the crown cannot add to the historic Scottish peerage by creating a peer of Scotland, or direct the devolution of a dignity otherwise than in accordance with rules applying to the transmission of land. Some of the older peerages can be inherited and transmitted by women, and vigorous efforts (led by such women as Viscountess Rhondda and

[1] Custom permits eldest sons to bear "courtesy" titles, which sometimes cause bewilderment among the uninitiated; but such persons are none the less commoners. The eldest son of the Marquis of Salisbury, for example, uses his father's secondary title, Viscount Cranborne.

[2] Thus in 1712 Queen Anne and her ministers created 12 new peers in a batch so as to obtain a majority for the treaty of Utrecht. More often, the mere threat to create peers on a large scale has sufficed to overcome opposition, as in 1832 when the Reform Bill was pending and in 1911 when the Parliament Bill was under debate.

[3] As, for example, when the late Sidney Webb became Lord Passfield in 1929.

Lady Astor) have been made in the last quarter-century to induce the House of Lords to give seats to "peeresses in their own right," of whom there are at present 25. This object, however, has not been attained.[1]

3. Representative Peers of Scotland. A third group of members consists of the representative peers of Scotland. The Act of Union of 1707 made no provision for the creation of Scottish peers, and as a result of lapses of various kinds the number of such peerages (160 at the time of the Union) has fallen off sharply. In numerous instances, too, a peer of Scotland has been honored with a peerage of Great Britain or (since 1800) of the United Kingdom; and such a peerage, carrying with it an independent right to a seat in the House of Lords, naturally takes precedence. Of persons holding Scottish peerages only, there are hardly more than a score; and it is this group, meeting in Holyrood Palace, Edinburgh, that chooses, from its own numbers, at the beginning of each parliament, 16 persons to sit under the Act of Union as Scottish representative peers.

4. Irish Representative Peers. A fourth group of members is the Irish representative peers. When the Act of Union of 1801 was passed, the Irish peerage was numerous, and the measure provided, first, that thereafter—until the number should have been reduced from the existing 234 to 100[2]—the crown should create only one such peerage for every three that became extinct, and, second, that the Irish peerage should be represented in the House of Lords by 28 of its number, elected for life by the peerage itself. Many Irish peers have received superior peerages of the United Kingdom, and have seats at Westminster by reason of that fact; and only some 60 remain who are Irish peers only. The settlement under which the Irish Free State was established in 1922, however, made no provision for elections, and, none having taken place since that date, the actual number of Irish representative peers fell to 15 by 1936, five by 1952, and soon will reach the vanishing point.[3]

5. Lords of Appeal in Ordinary. A fifth group of members is

[1] On the development and status of the peerage, see W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 200-241. A complete classified list of peers will be found in the annual issues of *Whitaker's Almanack*. Few existing peerages date back more than 200 years.

[2] This lower figure was reached in 1921.

[3] Irish peers (though not Scottish) not sitting in the House of Lords are eligible to be elected to the House of Commons. The "father" of the latter body in 1950, Earl Winterton, was a case in point.

made up of the "lords of appeal in ordinary." One of the functions of the House of Lords being to serve as a final court of appeal from the higher courts of England, Scotland, and Northern Ireland, it is imperative that the body contain at least a few able jurists prepared to devote their attention conscientiously to judicial business, and, further, that such business, because of its technical nature, be transacted solely by this group of experts, together with any of the general run of members who may happen to have equivalent qualifications. In 1856, the House refused to admit a distinguished judge whom Queen Victoria had created a life peer with a view to reinforcing the judicial element, alleging that the crown no longer had power to bestow peerages of other than the hereditary variety. Twenty years later an Appellate Jurisdiction Act authorized the appointment of two (afterwards increased to four, later to six, still later to seven, and recently to nine) lords of appeal in ordinary with the title of baron; and legislation of 1887 gave life tenure to such members. These lords confine their speeches in the House to legal matters and usually sit on the cross benches.

6. Ecclesiastical Members. Finally, there are the ecclesiastical members—not peers, but "lords spiritual." In the fifteenth century, the lords spiritual outnumbered the lords temporal. Upon the dissolution of the monasteries, however, in the reign of Henry VIII, the abbots dropped out, and the spiritual contingent fell into a minority. Nowadays it is numerically insignificant, being restricted by statute to 26. Scotland, whose established church is Presbyterian, has no ecclesiastical members. Under the Act of Union of 1801, Ireland had four; but since the disestablishment of the Anglican Church in that island in 1869 it has had none. From the date mentioned to 1920, England and Wales shared the 26 clerical seats. Upon the disestablishment of the Anglican Church in Wales and Monmouthshire, however, the four bishops from that section were withdrawn, leaving the ecclesiastical quota purely English; and such it remains today. By statute, the archbishops of Canterbury and York and three of the bishops, namely, those of London, Durham, and Winchester, are always entitled to writs of summons. This leaves 21 seats for the remaining 28 English bishops, who receive writs of summons in the order of the length of time they have been in charge of sees. When a sitting bishop dies or resigns, the one next on the list, in the order of seniority, becomes entitled to a writ, and the others advance a step

nearer the goal. Once in possession of a seat, a bishop or archbishop retains it as long as he holds a see. But of course he does not transmit it to his heirs, nor (save in the case of the five mentioned above) to his successor in office.

A MODERN ANACHRONISM

A branch of Parliament constructed on the lines indicated could hardly fail to be dignified and impressive; and the rôle played by the House of Lords through hundreds of years of English history has, on the whole, been honorable and useful. As already indicated, however, the second chamber has in the past half-century furnished the country with one of its major constitutional problems; and the remainder of the present chapter must be devoted to pointing out how this came about, what consequences have followed, and how the matter stands since 1947-49, when, after a protracted lull, the issue was again brought into the forefront of political controversy.

Faults as a Legislative Body. Long-existing dissatisfaction with the chamber as a supreme court of appeal was largely removed by the introduction of the group of law lords in the later nineteenth century. But criticism of it as a legislative body, starting something like a hundred years ago, and swelling to a mighty protest in the early years of the present century, has never been allayed more than momentarily. The indictment is aimed at three characteristics. One is the predominantly hereditary character of the membership; with over 90 per cent of those who take the oath sitting solely by hereditary right, the chamber is in a class quite by itself among modern legislative bodies, and seems to belong to an age long since past. A second is the palpable fact that while certain groups and interests, *e.g.*, the large landholders and big business, are represented heavily, others of undeniable importance, associated rather with the middle and lower classes, are represented but scantily or not at all. A third is the circumstance that the House as a whole is irrevocably wedded to the principles and policies of a single political party, *i.e.*, Conservative, notwithstanding that this party normally commands the allegiance of half or even less than half of the electorate. Other grounds of dissatisfaction exist of course—for example, the disinclination of the bulk of the members to take part in the business of the House,

or even to attend sittings.[1] But the most serious complaints spring from the three aspects mentioned.

Why are these features any more a source of criticism, dispute, and protest in our time than in the days of Walpole and the Pitts? The answer is two-fold: first, because to some extent they represent conditions that had not arisen at this earlier period (for example, the monopoly of control enjoyed by a single party), and, second, because in the interval the country has experienced profound democratizing changes in political opinion and machinery as noted in various chapters of this book.

Failure of the House of Lords to Keep Step with the Rest of the Government. Consider what has happened. A century or so ago (before 1832), the political system could only by courtesy be termed popular; certainly it was not democratic under any present-day definition of the word. The House of Commons was, of course, the most "popular" part of it. Yet, as we have seen, that body was hardly more representative of the general mass of the people than was the House of Lords itself. The two houses alike—as was true also of the agencies of justice, administration, and local government—were largely in the hands of the aristocracy, and as a rule found little difficulty in working together harmoniously. The Reform Act of 1832, however, broadened the basis of the lower house by giving predominance to important middle-class elements, and the acts of 1867 and 1884 gave the parliamentary suffrage to the great majority of male inhabitants in both town and country. At the same time, the ripening of the cabinet system brought the working executive within reach of effective public control, through the medium of the democratized lower chamber. But the House of Lords underwent no such transformation. On the contrary, it remained, as it still is, an inherently conservative body, in the main representing the interests of property, instinctively hostile to changes threatening the established order, and identified with all of the forces that tended to perpetuate the propertied class and the Anglican Church as pillars of the state. By simply holding its ground while other branches of the government underwent progressive popu-

[1] About 100 members attend with fair regularity, and of these perhaps 60 take an active part in the proceedings. However, Lord Samuel recently remarked: "If all the 800 members were to attend on all occasions, the institution would instantly collapse. In fact I think this is undoubtedly the only institution in the world which is kept efficient by the persistent absenteeism of the great majority of its members." *Hansard*, Jan. 27, 1948.

larization, the second chamber became, more and more, a political anachronism—an assembly of men who were lawmakers by the accident of birth.

The Party Aspect. This was a change that took place outside the walls of the historic chamber. But toward the close of the past century another almost equally important development occurred inside. This was the conversion of what had been a bi-partisan body into a body composed, to all intents and purposes, of men of a single party. If any particular date is to be mentioned in connection with this shift, it would be 1886, the year in which the Liberal party split asunder on Gladstone's first home rule bill; for the upshot of that schism was the secession from the Liberal party of a good many of the members of rank and position, naturally including a sizable number of those who sat in the hereditary chamber. From that time forth, the Lords became, and remained, overwhelmingly Conservative; in a total membership, in 1905, of over 600, there were exactly 45 Liberals, and even in 1914, after Liberal ministries had been providing peerages for their supporters for upwards of a decade, there were only 116. Manifestly, any Liberal ministry had from the outset to reckon with an unsympathetic upper chamber, without whose assent, however, it could place upon the statute-book none of the measures in which it was interested.

THE LIBERAL PARTY AND HOUSE OF LORDS REFORM—THE PARLIAMENT ACT OF 1911

Demand for Curbing the Lords' Powers. Down to some 40 years ago, people who talked about "reforming the Lords" were likely to be thinking only of improvements that might be made in the membership of the chamber. Most often it was suggested that inactive or unworthy hereditary peers be excluded, and that a sizable quota of life peers be substituted, to be drawn from men of attainment in law, diplomacy, and other professions and arts. Resolutions or bills looking to these ends—sponsored in several instances by members of the second chamber itself—made their appearance as early as 1869. No action, however, resulted; and interest eventually shifted to the question of curbing the chamber's power to veto measures which the ministers and popular branch wanted translated into law. Naturally, it was the Liberals who brought this alternative proposal to the fore. Many Conservatives would have been entirely willing to see

the structure of the chamber overhauled; but for obvious reasons they had no interest in seeing its powers curtailed. The Liberals, on the other hand— while also favoring a reconstruction of membership— were concerned chiefly about the matter of powers. Gladstone's government of 1893 failed in its larger objectives because of the Lords' veto; and the Campbell-Bannerman ministry of 1905, although supported by the largest majority that any party had ever enjoyed in the House of Commons, promptly came up against the same disheartening obstacle.[1]

The Question of Reform in 1909-11. The upshot was that when, in 1909, the Lords made bold to reject the annual Finance Bill because of increased taxation which it imposed on land and other forms of wealth, the Liberal government of Herbert Asquith —after appealing to the country and winning a sufficient victory to impel the upper house to give way and allow the new taxes to become law—staked its very existence upon an immediate and drastic reduction of second-chamber powers. Leading peers sought to placate the embittered Liberals with proposals for reconstruction of membership, but the ministers refused to be diverted from their plan; and the outcome justified their stand, although not until after the country had seen exciting times. Following a second general election in 1910, turning almost entirely on the second-chamber issue, the government's Parliament Bill finally, in the summer of 1911, surmounted the one serious hurdle in its pathway, *i.e.,* the hostility of the branch whose powers were to be reduced.

The Parliament Act. The triumphant Liberals had by no means thrown overboard the idea of reconstructing the upper chamber on more democratic lines, and in its preamble the Parliament Act promised supplementary legislation to this end.[2] The measure now in hand, however, dealt rather with the matter of powers, its general object being to provide ways by which finance bills could quickly, and other bills eventually, be made law whether the House of Lords agreed to them or not. These arrangements might or might not be perpetuated after the chamber should have been reconstructed; but until then, at all events, they were to make impossible the recurrence of anything like the happenings of 1909.

[1] The relations of the two branches through a hundred years are sketched in E. Allyn, *Lords versus Commons; A Century of Conflict and Compromise, 1830-1930* (New York, 1930).

[2] For the text of the measure, see R. K. Gooch, *Source Book,* 329-332.

1. Money Bills. As to finance measures, the act reads as follows: "If a money bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that house, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an act of Parliament on the royal assent being signified, notwithstanding that the House of Lords have not assented to the bill." The term "money bill" is so defined as to include measures relating not only to taxation but also to appropriations, loans, and audits; [1] and power to decide whether a given measure is or is not a money bill, within the meaning of the act, is given to the speaker of the House of Commons, with no appeal from his decision.

2. Other Bills. This was as far as the events of 1909-10 alone would have required the authors of the measure to go. But the Liberals and their Irish Nationalist and Labor allies had hardly less sharply in mind the defeat of Gladstone's home rule bill of 1893, of the plural voting bill of 1906, and of other largely or wholly non-financial measures; and accordingly the second major provision became this: that any other public bill (except a bill to confirm a provisional order or to extend the maximum duration of Parliament beyond the period fixed by law), if passed by the House of Commons in three successive sessions, whether or not of the same parliament, and if sent up to the House of Lords at least one month, in each case, before the close of the session, but rejected by that chamber in each of those sessions, should, unless the House of Commons directed to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding that the House of Lords had not given its approval to the bill. It was required that at least two years must have elapsed between the date of the second reading of such a bill (*i.e.*, the first real opportunity for discussion of it) in the first of these sessions of the House of Commons and the third reading, or final passage, of the bill in the third of the sessions. To come within the provisions of the act, the measure, furthermore, had to be, at its initial and final appearances, the "same bill"; that is, it must not have been altered at any stage save as made necessary by the lapse of time.

[1] Only, however, if relating *exclusively* to one of these matters. Bills mainly but not exclusively financial do not come within the scope of the provision.

3. Abridged Duration of a Parliament. With its legislative power thus increased, the House of Commons must, it was agreed, be kept in even closer touch with public opinion than in the past, and to this end the act fixed the maximum life of a parliament—in other words, the maximum interval between general elections—at five years, instead of the seven prescribed by law for almost two hundred years previously.

Constitutional Change without Much Practical Effect. Without much doubt, the foregoing legislation introduced the most drastic change in the English constitution ever accomplished by deliberate enactment at a given time. Structurally, the historic bicameral Parliament was indeed left intact. But whereas the two houses had always been legally equal, in the sense that no law could be enacted without the assent of both, the priority long exercised by the popular branch as a matter of practice now became a rule of law: within limits, the second chamber might continue to delay legislation; but in the face of sufficiently determined House of Commons majorities, it could not finally prevent action. To be sure, for a full generation the practical effect was slight; year after year, finance bills continued to be passed by both houses after the traditional manner; and while the law's provisions concerning non-financial legislation were invoked a few times in 1912-14, not more than two measures were ever placed on the statute-book without the Lords' assent, and neither of these ever took effect as passed.[1] If the reason be sought, it can readily be found, too, in the political circumstances of the times—circumstances largely obviating conflicts between the two houses calculated to bring the terms of the act into play. During World War I, coalition government prevailed and politics was largely suspended; for more than 20 years thereafter, the Conservative party was largely or wholly in control, with the House of Lords naturally giving no trouble;[2] and World War II saw coalition revived and politics again suspended. During all of this time, the power of the House of Com-

[1] A Welsh Church Disestablishment Act (1914), amended before becoming operative; and a Government of Ireland Act (1914), repealed before coming into force, constituted the only measures placed on the statute books without the consent of the House of Lords during the comparatively long period.

[2] The period was broken by short-lived Labor governments in 1924 and 1929-31; but they had no independent parliamentary majorities, and even had it been otherwise, would not have been in office long enough to make use of the Parliament Act in connection with general legislation.

mons to enact legislation independently, and in defiance of the second chamber, remained a gun behind the door, but one never needing to be used.

DEVELOPMENTS SINCE 1918

Proposals for Structural Reform. The second-chamber problem as a whole had, however, in no wise been solved. Even if the newer arrangements relating to powers had been acceptable to all political elements (as they certainly were not), there was still the question of the chamber's membership—indeed, back of that, the question of whether a second chamber was needed at all. In the Parliament Act itself, the Liberal government of the day had, as we have seen, announced its intention, once the question of powers was disposed of, to proceed with legislation substituting for the House of Lords as then existing "a second chamber constituted on a popular instead of an hereditary basis"; and although World War I intervened before anything could be done—with the result, too, of leaving the Liberal party permanently shorn of power—the issue, for a few years, retained enough vitality to evoke a number of proposals and plans.

The Bryce Report (1918). Conspicuous among reform projects was one brought forward in 1918 by an able and widely representative parliamentary commission—the Conference on the Reform of the Second Chamber—presided over by Lord Bryce. Starting with the premise that any reformed House of Lords ought to have some continuity with the existing body, the Conference urged that the new chamber should nevertheless "have popular authority behind it," should be freely accessible "to the whole of His Majesty's subjects," should be "responsive to the thoughts and sentiments of the people," and should be so constituted that no one set of political opinions would be likely to have "a marked and permanent predominance" in it. Various methods of making up a second chamber meeting these requirements were considered and rejected: nomination by the sovereign on advice of the ministers, election by the House of Commons, election by county and borough councils, direct election by the people. The plan finally proposed was, in brief, that the total number of members should be reduced to 327, of whom 81 should be chosen from the whole body of peers by a standing joint committee of the two houses, and the remaining 246 should be chosen, in appropriate quotas, by 13 electoral colleges, each consisting of the mem-

bers of the House of Commons sitting for the constituencies contained in one of the 13 districts or areas into which the country was to be divided for the purpose. All members should be elected for 12-year terms (one-third of each of the two groups retiring every four years); and for election to the second and larger group, qualifications should be substantially the same as for members of the House of Commons.[1]

Other Proposals, but No Action. The scheme was too much of a compromise to be wholly acceptable in any quarter, and it never received the attention that it deserved. The Lloyd George coalition government, surviving from the war years, did, indeed, go so far in 1922 as to submit to the House of Lords five resolutions embodying several features of the "Bryce plan." But little interest was aroused, and the proposals were pigeonholed. Assuming that sooner or later something would have to be done, and preferring that action be taken at a time when the friends of the second chamber held the whip-hand, the Conservative government of Stanley Baldwin (1924-29) promised that the problem would be dealt with during the life of the then existing parliament. The subject, however, was potentially explosive; the nation was not stirred up about it; and years slipped by with nothing done—beyond perfunctory introduction of new resolutions, and equally perfunctory debate. Labor, when in office in 1924, had not dared take up the problem. Again in 1929-31 it held back; the matter was deemed as important as ever, yet not of such urgency as to warrant running the risk of wrecking the government. The "national" ministry of Ramsay MacDonald dating from 1931 was, in its turn, preoccupied with other things; and with Baldwin once more at the helm, after the spring of 1935, the chances of action in the near future seemed lessened rather than the reverse. Through further years, the issue remained in abeyance. Substantially all political elements conceded that further reforms were desirable. The question was, what reforms?

The Issue Revived in 1947-48. A wartime general election of 1945 had the extraordinary result of yielding the Labor party its first clear majority in the House of Commons and of enabling it, consequently, to organize for the first time a government enjoying full scope

[1] *Report of the Conference on the Reform of the Second Chamber,* Cmd. 9038 (1918), reprinted in H. L. McBain and L. Rogers, *New Constitutions of Europe,* 573-601.

for independent action. For years, political elements solicitous about the House of Lords had feared precisely such a situation; and, now that it had arisen, it was a foregone conclusion that a new chapter in the prolonged but recently dormant second-chamber controversy would be inaugurated. To be sure, no changes could be effected offhand: neither membership nor powers could be touched, nor certainly the second chamber abolished, without the assent of the House of Lords itself, or, in lieu of that, the enactment of legislation under the slow procedures of the Parliament Act. But the magnitude of the Labor majority in the Commons, the manifest leftward swing of national sentiment, and the almost universal conviction that sooner or later the second chamber would have to be drastically overhauled, made it manifestly possible that action, once started, might be carried to almost any length.

The Labor government quickly squared itself around and entered upon a broad program of nationalizing and welfare legislation. From the viewpoint of the heavily preponderant Conservative forces in the House of Lords, such a course could not, as a matter of general policy, be other than objectionable; and all the factors seemed assembling for the Attlee government sooner or later to head into more or less the same baffling situation confronted back in 1905-11 by the Liberals under Herbert Asquith. To be sure, the Conservative second chamber accepted as best it could the implications of the general election verdict and, while expressing profound disagreement with Socialist policy, refrained from forcing a direct issue, confining its efforts rather to remedying what it considered—sometimes quite rightly—the principal faults of the bills as submitted. To be sure, too, it swallowed hard and permitted numerous more or less amended nationalizing and kindred measures to be placed on the statute-book. It, however, also delayed and obstructed as it could; and in the case of several projects by which the Attlee government set particular store, *e.g.*, the Transport Nationalization Bill, the National Health Bill, and the Town and Country Planning Bill, it forced amendments which the ministers accepted only because the alternative was prolonged delay under the terms of the Parliament Act, or indeed no legislation at all. No one was surprised, therefore, when, during the summer of 1947, the Attlee government let it be known that if returned to power in the next general election (which under normal procedure must fall not later than

1950), it would undertake legislation sharply altering both composition and powers of the second chamber.[1] There was no suggestion of any design to interfere with the peerage as an institution, or of any intention to attempt to bring about the second chamber's actual suppression. But it *was* indicated that one objective would be to do away with the second chamber's hereditary aspect and restrict it to members appointed solely for their record of public service or other earned distinction, and that another, equally important, would be to make it impossible in future for the second chamber to block legislation.

A Bill to Amend the Parliament Act. Before long it developed, too, that the cabinet was not prepared to await the uncertain outcome of a future election to start action. The matter of deepest immediate concern was, of course, the existing power of the second chamber to force a delay of at least two years in the enactment of general public legislation; and naturally this became the initial point of attack. At the opening of Parliament in October, 1947, the government tossed a bombshell into the ranks of the opposition by unexpectedly announcing, in the Speech from the Throne, its intention to introduce immediately a bill to amend the Parliament Act by reducing from three sessions to two and from two years to one the maximum period during which measures passed by the House of Commons could be held up. The upshot was a sharp parliamentary and party battle covering many months and involving great bitterness in certain quarters. Arguing that the bill as duly introduced on behalf of the government was reasonable, that it did not jeopardize the existence of the second chamber, that it was required as a precaution against abuse of the delaying power, and that by their verdict of 1945 the people had expressed themselves in favor of such legislation, Labor leaders insisted that the measure be passed first, as a necessary preliminary to any additional second-chamber reforms. Conservative leaders, on the other hand, urged postponement until all-party conferences could be held. In November, the bill was advanced to committee stage in the Commons by a vote of 345 to 194, with Laborites and Conservatives dividing strictly on party lines and the handful of Liberals split on the issue; and early in the following February, final passage was achieved.

Conservative Proposals. In the meantime, a Conservative com-

[1] See D. G. Hitchner, "The Labour Government and the House of Lords," *Western Polit. Quart.*, Jan., 1948.

mittee headed by the Marquis of Salisbury, grandson of Queen Victoria's prime minister and opposition leader in the upper chamber, had been working on plans for membership reform, and—considering that it was "now or never" if the chamber was to survive—had come up with a scheme under which hereditary membership should be eliminated, all members of a sharply reduced chamber should sit by virtue only of appointment for conspicuous service, and all should receive the same salaries as members of the other branch.

Conference of Party Leaders. With the one-year bill safely passed in the lower chamber, Labor leaders agreed to participate in three-party discussions of the general problem. The composition of the House of Lords was first considered and there appeared to be a substantial agreement on the following general principles:

"(1) The Second Chamber should be complementary to and not a rival to the Lower House, and, with this end in view, the reform of the House of Lords should be based on a modification of its existing constitution as opposed to the establishment of a Second Chamber of a completely new type based on some system of election.

"(2) The revised constitution of the House of Lords should be such as to secure as far as practicable that a permanent majority is not assured for any one political Party.

"(3) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed Second Chamber.

"(4) Members of the Second Chamber should be styled 'Lords of Parliament' and would be appointed on grounds of personal distinction or public service. They might be drawn either from Hereditary Peers, or from commoners who would be created Life Peers.

"(5) Women should be capable of being appointed Lords of Parliament in like manner as men.

"(6) Provision should be made for the inclusion in the Second Chamber of certain descendants of the Sovereign, certain Lords Spiritual and the Law Lords.

"(7) In order that persons without private means should not be excluded, some remuneration would be payable to members of the Second Chamber.

"(8) Peers who were not Lords of Parliament should be entitled to stand for election to the House of Commons, and also to vote at elections in the same manner as other citizens.

"(9) Some provision should be made for the disqualification of a member of the Second Chamber who neglects, or becomes no longer able or fitted, to perform his duties as such." [1]

But in discussing the issue of powers the Conference found it impossible to reach a conclusion.

Rejection by the House of Lords. Meanwhile, Conservative leaders had pledged that the pending bill would either be passed or rejected in the upper house before the end of the session; and on June 9, following a debate on a lofty plane, and by a vote of 177 to 81, it was rejected at second reading, with all Labor and Liberal peers supporting the measure, but practically all Conservatives opposing it. This outcome left the Labor government with two alternatives. One was to accept momentary defeat and prepare for throwing the entire issue of "peers versus people" into the general election scheduled for 1950. The other was to plan an interim special parliamentary session, with a view to getting the amending bill passed in the necessary three successive sessions and within the required two years. The cabinet chose the latter course, and during a brief special parliamentary session in the following September the measure was passed a second time by the Commons and promptly rejected a second time by the Lords.[2]

For the period of 1949-51 neither party gave much attention to the House of Lords, but in the 1951 election the Conservatives promised that, if returned to power, they would attempt to deal with the reform of the House of Lords.

SOME LARGER ASPECTS OF THE GENERAL PROBLEM

During the past half-century, the nation at times seemed reasonably close to a reform of its second chamber; the next decade could conceivably see a full settlement arrived at. Rather than further tempt fate by prophecy, however, it may be useful, in closing the present chapter, to offer a bit of comment on selected aspects of the problem viewed in the large.

[1] For its report, see *Parliament Bill, 1947: Agreed Statement on Conclusion of Conference of Party Leaders, Feb.-April, 1948,* Cmd. 7380.

[2] In the one chamber, the vote (on third reading) was 323 to 195, with Liberal members supporting the government; in the other, it was 204 to 34 (for rejection)—a vote of very unusual size for the House of Lords—with the Liberals opposing the government.

Does Britain Need a Second Chamber? From first to last, the most fundamental question for men of all parties has been, of course, whether any second chamber ought to be maintained at all. To be sure, this would seem a curious issue for Britain, the mother of bicameral parliaments, to raise; and in point of fact it was not often raised until the Labor party came by the idea, some 40 years ago, that the House of Lords was so hopelessly out of keeping with democratic government that it ought to be suppressed root and branch.[1] Even though on record (at least as recently as the general election of 1935) as opposed not only to continuance of the House of Lords as it has been, but to having any second chamber at all (even an elective one), Labor nevertheless, as we have seen, is no longer pressing its traditional view; while general opinion outside that party undoubtedly is favorable to a second chamber. The all-party Conference of 1917-18 was unanimously of the opinion that a reconstructed House of Lords is an indispensable part of the British constitutional system, and its statement (in the "Bryce report") of the four uses to be served by such a body may be taken as expressing the opinion of large numbers of Englishmen on the subject. They are as follows:

> "1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions, during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.
>
> "2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.
>
> "3. The interposition of so much delay (and no more) in the passing of a bill into a law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be especially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or raise issues whereon the opinion of the country may appear to be almost equally divided.
>
> "4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if con-

[1] More than a hundred years ago, however, Jeremy Bentham argued powerfully against second chambers. See L. Rockow, "Bentham on the Theory of Second Chambers," *Amer. Polit. Sci. Rev.*, Aug., 1928.

ducted in an assembly whose debates and divisions do not involve the fate of the executive government." [1]

All of these functions are real and important, even though one or two of them could conceivably be discharged by some agency other than a second chamber; and it is interesting to observe that two prominent Labor writers of a quarter-century ago, Sidney and Beatrice Webb, while giving the House of Lords no place in an ideal constitutional system which they outlined,[2] nevertheless sought to make some alternative provision for the function of revision and for temporary suspension of legislation that might have been enacted too hastily. Indeed, on the ground that Britain has none of the safeguards afforded by a rigid constitution, by referendum procedure like that of Switzerland, or by judicial review like that of the United States, it is sometimes contended that she, beyond most other states, has need of a second chamber with full deliberative and revisory powers.

Much to Be Said for the House of Lords as It Has Been. It is easy to make cynical or witty remarks at the expense of the House of Lords as it has come down to our time. One recalls the *mot* of a former Liberal leader to the effect that the House "represents nobody but itself, and enjoys the full confidence of its constituents." Fair-minded persons are prepared to admit, however, that a good deal can be said also to the chamber's credit. Its roll is undeniably crowded with the names of members who lack both ability and interest. But neither the House of Commons nor any other legislative body is composed entirely, or perhaps even mainly, of men who are all that could be desired; and in the case of the House of Lords the unfit rarely darken the doors of the chamber, or, if present, take any active part. The work of the House is done very largely by men of genuine ability, interest, and experience; and of these there are, fortunately, many. Not all of the fittest do, or can, participate regularly. Some, after elevation to or inheritance of a peerage, very naturally and properly

[1] *Report of the Conference on the Reform of the Second Chamber*, 4. The relative advantages of unicameral and bicameral systems are set forth succinctly in J. W. Garner, *Political Science and Government*, 600-613. The subject is discussed with special reference to Britain in H. J. Laski, *The Problem of a Second Chamber* (Fabian Tract No. 213, London, 1925), and G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926), Chap. ii. In the one case, the conclusion is unfavorable, and in the other favorable, to a second chamber. Cf. R. Muir, *How Britain Is Governed* (3rd ed.), Chap. vii.

[2] Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), 110.

go on with their professional, scholarly, or business careers. They receive no salaries as members; and, after all, it must be remembered that for most of them membership is an involuntary matter, which cannot always be accepted as transcending other obligations already incurred. But it is doubtful whether, by and large, the actually operating House of Lords is surpassed in its resources of intelligence, integrity, and public spirit by the House of Commons. Industry, finance, agriculture, science, literature, religion—all are represented. Spiritual and intellectual, as well as material, forces find expression. The country is served from the red leather benches by men who have shared heavily in building up its wealth and culture, have administered many of its great dependencies, and have risen to its highest positions in law, diplomacy, war, statecraft, and learning. The fact is not to be overlooked, too, that many of the more active members have in their earlier days had the advantage of long service in the House of Commons—that, indeed, the popular branch is to a very considerable degree a nursery of the House of Lords.[1] No student of English history needs to be told that upon sundry occasions the upper house has interpreted the will of the nation, or the realities of a political situation, more correctly than the lower, and that more than once it has saved the country from hasty and ill-considered legislation.[2] It is not altogether the sort of a second chamber that Englishmen would plan if they were confronted today with the necessity of creating one *de novo*. But since it exists, and is so deeply woven into the texture of the national life, the most sensible course would seem to be, not to discard it outright, but rather to reconstruct it on some such lines as those laid down in the 1948 report. Certainly that would be most in

[1] As a rule, about one-fourth of the members of the House of Lords have at one time or another had seats in the other house. A member of the House of Commons recorded in 1857 the fact, "not unimportant to constitutional history," as he truly said, that, going over to the Lords from the Commons one evening, he observed that every one of the 30 peers then present had sat with him in the popular chamber.

[2] "It is striking that, on the average, in the principal debates on high policy which the Lords have held this year [1942], seven out of every ten speakers have been men who earned and did not inherit their titles; most of the other participants have either sat in the House of Commons at some time, or else belong to families distinguished in the service of the state for generations. It may be a popular idea that debates in the Lords are conducted by august, serious, slow-witted landed proprietors, and millionaires who bought peerages with princely donations for party funds. The stranger who went to the public gallery expecting this, and then found himself listening in succession, as he well might, to Lord Moyne, Lord Chatfield, . . . (to mention only men who did not inherit their titles), would not be far wrong if he decided that the Lords was a much more dangerous chamber in which to make an ill-informed speech than the Commons." *The Round Table*, Sept., 1942, p. 457.

keeping with the traditional method of English political development.

How the Body Might Be Reconstructed. So far as membership goes, the most reasonable program of reform would appear to be (1) adoption of the principle, first suggested by Lord Rosebery, that the possession of a peerage shall not of itself entitle the possessor to sit,[1] (2) admission to membership of a considerable number of persons representative of, and selected by, the whole number of hereditary peers, and (3) the introduction of a substantial quota of life or fixed-term members, appointed or selected for their legal attainments, political experience, and other qualities of fitness and eminence.

A body so constituted would still incline to conservatism; probably it would contain a Conservative majority, in the party sense, a good deal of the time. But a non-Conservative cabinet would hardly again find itself in the baffling situation of Liberalism 40 years ago, or even encounter the annoyances experienced by Labor after 1945. The chief difficulty would be to hit upon a satisfactory way of selecting the life or fixed-term members. In a country organized on a federal basis, it is relatively easy to construct a second chamber that will not simply duplicate the first; the people in small local groups can be represented directly in the lower house and the larger federated units or areas, as such, in the upper. Britain is not a federal state; at all events, so far as England is concerned, no obvious areas for upper-chamber representation exist. Still, as was the opinion of the Bryce commission, such areas quite conceivably might be created; indeed, that body considered that combinations of the existing historic counties could very well be made to serve. Decided advantages would arise, also, from arrangements under which a substantial quota of members would be chosen to represent important special groups or interests, including the great professions. Landowners, churches, universities, scientific bodies, chambers of commerce, legal and medical associations, and trade unions come readily to mind in this connection.

Would Such a Second Chamber Make Trouble? A second chamber made up on these lines would undoubtedly be respectable, capable, and vigorous; and this raises a further question, of which students of the subject have been aware. Would not such an upper chamber justly claim equality of powers with the popular house? Could it be kept on the subordinate plane to which the legislation of

[1] This principle already operates in respect to the Scottish and Irish peers. It ought not to be impossible to extend it to the entire peerage.

1911 and 1949 lowered the House of Lords, or would it be necessary to repeal the Parliament Acts and go back to the old plan of two strong and coördinate branches, such as prevails in the United States? Some years ago, the late Lord Balfour, in a public address, warned the lower chamber that a revamped House of Lords could not fail to mean an impairment of the ascendancy which the House of Commons has gained. The Bryce commission evidently feared something of the sort, and other voices have been raised, in all of the great parties, to the same effect. It was mainly apprehension at this point that once led Labor to urge, not that the chamber be merely reconstructed, but that it be abolished, thereby disposing at a stroke of all the problems that bicameralism, in the present form or any other, is capable of producing.[1]

Safeguards. Two things are, however, to be said. In the first place, other countries, *e.g.*, the former Czechoslovakia, have found it possible to reconcile able and useful second chambers with a heavy preponderance of power in the first and more distinctly popular chamber. This they have done by carefully drawn constitutional provisions, such as ought not to be beyond the ingenuity of British statecraft. In the second place, experience shows that in the long run an upper chamber, no matter how made up or endowed with constitutional authority, cannot maintain full parity of power and influence with the lower chamber under a cabinet system of government. The constitution of the Third French Republic purported to make the cabinet responsible to both the Senate and the Chamber of Deputies, and the Senate was an exceptionally capable and energetic body. Nevertheless, the Chamber of Deputies enjoyed a substantial preeminence in the actual control of national affairs. The framers of the Australian constitution deliberately provided for a popularly elected upper house, with a view to making it an effective counterpoise to the federal House of Representatives. But the idea failed. Today, a Commonwealth government recognizes the lower chamber as actually paramount, and the Senate can fairly be characterized as hardly more than a debating society. In Canada, likewise, the Senate—composed of life members appointed by the governor-general on advice of the ministers—is notoriously weak. The outcome could hardly be wholly different in Britain. It will not do to say with a writer of some years ago that the cabinet

[1] It was presumably this apprehension which caused the Labor party in early 1953 to reject an invitation from the Conservative government to participate in an all-party conference on the reform of the House of Lords.

system "is fatal to a bicameral legislature." As is proved by the experience of France, there is a legitimate and useful place for a second chamber in a cabinet system of government. But it cannot be denied that, as the same writer went on to say, "whatever the mode of selection or however able its personnel, the upper chamber will continue to play but a subordinate position in political life so long as the principle of the responsibility of the ministry to the House of Commons endures." [1]

Capacity Desirable Even in a "Secondary" Chamber. A point that must not be overlooked is that a subordinate position may at the same time be a highly honorable and useful position; and it stands to reason that if a second chamber is to be retained at all, it ought to be made up in such a manner as to bring into it the greatest possible amount of talent and diligence. The main use of a second chamber is to promote deliberateness of action, minimizing the chances of a legislature being swept off its feet by waves of passion or excitement. The object is not mere obstruction, flowing from inertia, incapacity, or partisanship. It is, instead, serious-minded criticism, deliberation, and revision, with a view to the general welfare rather than to class interest or partisan expediency. Properly discharged, the function of revision is no less exacting, and hardly less important, than that of initiation, or even that of final decision. The House of Lords has served the British nation well in the past. It may, of course, presently be cast into the discard. Wisely reconstructed, it should, however, be capable of still greater usefulness in years that lie ahead.[2]

[1] C. D. Allin, "The Position of Parliament," *Polit. Sci. Quar.*, June, 1914, pp. 242-243.

[2] Features and problems of the British second chamber are considered in comparison with those of other second chambers in H. W. V. Temperley, *Senates and Upper Chambers* (Oxford, 1910); J. A. R. Marriott, *Second Chambers* (new ed., Oxford, 1917); G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926); and H. B. Lees-Smith, *Second Chambers in Theory and Practice* (London, 1923). H. L. McBain and L. Rogers, *New Constitutions of Europe*, Chap. iii, is illuminating, as are also various articles in "The Second Chamber Problem; What the Experience of Other Countries Has to Teach Us," *New Statesman*, Feb. 7, 1914 (Supplement). Attention should be called also to H. J. Laski, *Parliamentary Government in England*, Chap. iii; C. Headlam and A. D. Cooper, *House of Lords or Senate?* (London, 1932); A. L. Rowse, *The Question of the House of Lords* (London, 1934); M. Lindsay, *Shall We Reform the Lords?* (London, 1948); and R. A. MacKay, *The Unreformed Senate of Canada* (Oxford, 1926).

CHAPTER XI

PARLIAMENTARY MACHINERY AND PAGEANTRY

Parliament as a Mechanism and a Pageant. There was a time when the organization of the English Parliament could be described in few and simple words; indeed, if one goes back far enough in parliamentary history, one finds hardly any organization at all. As centuries passed, however, and powers and functions multiplied, new and increasingly elaborate devices for promoting orderly and expeditious precedure were brought into play, until nowadays equipment in the form of officers, clerks, committees, rules, calendars, records—to say nothing of unwritten habits and usages—makes up one of the most complicated and imposing systems of its kind on the globe. Parliament is, indeed, a vast, vibrant machine which enacts statutes, levies taxes, appropriates money, interrogates ministers, and passes judgment on policy, under rules of procedure almost as precise, and sometimes nearly as rigid, as the laws governing the succession of the seasons. At the same time, it is not merely a mechanism, but also a pageant; and in the brief account of its organization and procedure to be given in the present chapter and the two that follow, some of its more human, as well as its legalistic, aspects may properly be brought into the picture.

PHYSICAL SURROUNDINGS

The Palace of Westminster. From the beginning of parliamentary history, the place of meeting has commonly been Westminster, once a separate city on the left bank of the Thames, but now incorporated in Greater London. The Palace of Westminster was long

the most important of the royal residences, and it was natural that its great halls and chambers, together with the adjacent abbey, should be utilized for parliamentary sittings. Most of the old building was destroyed by fire in 1834, and the huge, yet pleasing, neo-Gothic structure (covering eight acres and with 1,100 rooms) which nowadays is pointed out to the sight-seer, usually as "the Houses of Parliament," was erected in 1837-52. On the night of May 10, 1941, the historic building fell victim to a very heavy German air raid on London, and the portion in which the House of Commons was accustomed to sit was totally destroyed by resulting fire. Not much else was injured,[1] and with the House of Lords putting its chamber at the disposal of the Commons and moving its own deliberations to a still smaller but not inconvenient place known as the King's Robing Room, it became unnecessary for either body to look for quarters (except for three brief intervals of special danger) outside of the Palace. In 1944, rebuilding was undertaken; and after much discussion, it was decided to restore the shattered section on basically the former lines, at least at floor level. However, several years elapsed before the House of Commons took possession of a completely rebuilt and slightly more commodious chamber in October, 1950; the Lords were unable to regain the use of their chamber until after refurbishing was completed in 1951.

The Commons' Chamber. From opposite sides of a central hall, corridors lead to the rooms in which the sittings of the houses are held—rooms so located that, when their doors are open, the king's throne at the south end of the one is visible from the speaker's chair at the north end of the other. The rectangular hall occupied by the Commons is considerably smaller than one would expect, being, in fact, only about one-fourth as large as that occupied by the American House of Representatives. It is, indeed, capable of seating hardly more than half of the 600-odd members at any one time.[2] Since it

[1] Some piecemeal damage had, however, been done by earlier bombing. In 1939, there had been a definite plan for Parliament to move to Shakespeare's old village of Stratford-on-Avon, although naturally the place selected was not at that time announced. Later, the idea was abandoned when danger of German invasion was removed and when it became apparent that a new location (certain to become known to the enemy) would be little, if any, safer from bombing than the old one. The thought grew, too, that it would be unworthy of Parliament not to remain in London and face the common attack along with the rest of the population.

[2] Thereby provoking occasional quips about it being easier to win a seat than to get one! Naturally, when plans for rebuilding were under discussion a few years ago, the question had to be faced of whether to provide a chamber substantially

but rarely happens, however, that as many as half want to be in the chamber simultaneously, no great inconvenience results; and there is a decided gain in the matter of acoustics and sense of intimacy. The room is bisected by a broad aisle leading from the main entrance, at the farther end being "the table," used by the clerks and also as the resting place of the mace and of piles of books and papers, and beyond this the high-canopied chair of the speaker. Facing the aisle on each side, five rows of high-backed benches, covered with dark green leather and running the length of the room, slope upward tier upon tier to the walls; and through them cuts, transversely from wall to wall, a narrow cross-passage known as the "gangway." A sliding brass rail which can be drawn across the main aisle near the entrance forms the "bar" of the House, at which offenders against the dignity and privileges of the chamber are sometimes required, and more favored persons sometimes invited, to appear. A deep gallery (enlarged a bit in the course of the present reconstruction) runs entirely around the room. Sections of the portion facing the speaker are set apart for peers, for foreign ambassadors, and for distinguished strangers, with the remainder—known as the Members' Gallery—open to the public.[1] Above and behind the speaker's chair is the press gallery, with places for upwards of 200 persons. The side galleries, with space for about 100 persons, are held for the occupancy of members, but are not adapted to speech-making and are rarely tenanted.

The front bench at the upper end of the aisle, at the right of the speaker, is known as the Treasury, or Ministerial, Bench, and by custom is occupied by those members of the House who belong to the ministry or, at all events, such of the more important ones as it can accommodate. The corresponding bench at the speaker's left is similarly reserved for the leading members of the opposition, and hence is known as the Front Opposition Bench; persons who occupy it do so because of having been invited by the official opposition leader to share it with him.[2] The great bulk of members, having no

larger. Members, however, preferring the intimacy of debate which smaller dimensions permit, decided overwhelmingly against any change.

[1] Sittings behind closed doors are virtually unknown except in time of war. There were five such during World War I and considerably more during World War II.

[2] This may be as suitable a point as any at which to call attention to an extraordinary feature of the British parliamentary system, *i.e.*, the position of the opposition leader. If not a privy councillor when chosen to the post by his party, he is promptly made such; he draws a salary of £2,000 a year (temporarily sus-

claim to front-bench positions, range themselves, so far as their numbers permit, in squads behind their leaders, with a tendency for the less experienced ones, and also any of loose party connections, to content themselves with places "below the gangway." There is no definite assignment of seats to the general run of members, the only rule being that a member, having found a place that he likes, may reserve it for his own use—only for a single sitting, however—by depositing his hat in it, or under more recent informal agreement, his card. Except on unusual occasions, the visitor will not find more than 75 or 100 persons on the benches, the more by reason of the fact that, there being no desks, any member who wants to write, or even to read or otherwise occupy himself, seeks the library or other rooms adjoining, whence he can readily come if summoned to a "division."

The Lords' Chamber. Although relatively more commodious, because fewer members attend the sittings, the hall occupied by the Lords is even smaller than that used by the Commons. It is also more ornate. The speaker's chair is replaced by a crimson ottoman or lounge—the "woolsack" [1] on which (although it is technically outside of the chamber) the Lord Chancellor sits when presiding; and a gorgeous throne is provided for the sovereign's occupancy when he meets his faithful lords and commons at the opening of a parliament. Otherwise, the arrangements are much as in the House of Commons, with rows of red-upholstered benches facing each other on the two longer sides, no desks, a table in front of the woolsack, a bar, and galleries all the way around for the use of peeresses, the press, and miscellaneous visitors. Members who belong to the ministry occupy the front bench at the Lord Chancellor's right, and leaders of the opposition the front bench at his left; while the remaining members sit wherever they like, although usually on the same side of the room as the leaders of their party. Some attention is paid to seating according to rank when the sovereign is present, but at other times the only group, aside from government and op-

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pended by edict of the speaker during World War II when technically there was no opposition) from the Consolidated Fund; he is provided with an office adjacent to those of several of the ministers; at the opening of a parliament, he stands at the side of the prime minister; and he is constantly consulted by the prime minister and others in arranging the business of the House. Indeed, he peculiarly personifies a main function of Parliament—that of keeping watch on those engaged at any given time in carrying on the country's affairs.

[1] In the days of Elizabeth, the presiding official sat upon a sack actually filled with wool; hence the present name.

position leaders, that sits in a body in a fixed place is the ecclesiastical members, whose presence on the "episcopal bench" (really four benches to the right of the woolsack) is apparent enough to the visitor by reason of their flowing black gowns and ample white lawn sleeves.[1]

SESSIONS AND SITTINGS

So much for physical surroundings—which not only are picturesque but have considerable practical importance in helping make parliamentary methods and manners what they are.[2] How, in the next place, does Parliament meet and prepare itself for a session? How, also, does it disperse when a session comes to a close?

Prompt Convening of Parliament after a General Election. The matter of frequency of sessions has already been touched upon, and we have observed that, in point of fact, the two houses are in session considerably more than half of the time.[3] One aspect, however, which calls for special emphasis at this point is the promptness with which Parliament meets and begins work after a general election. There is no formal regulation governing the lapse of time between the election of a new House of Commons and the assembling of Parliament, but it is the practice to make the interval as brief as possible, and it rarely exceeds two or two and one-half weeks. There is a very good reason for this. Under the British system, the ministers

1 The prewar Parliament building and the rooms occupied by the two houses are described more fully in M. MacDonagh, *The Pageant of Parliament*, I, Chaps. vii, xx; II, Chap. v.

2 "The accident," wrote an English authority on parliamentary affairs some forty years ago, "that the House of Commons sits in a narrow room with benches facing each other, and not, like most Continental legislatures, in a semi-circular space, with seats arranged like those of a theater, makes for the two-party system and against groups shading into each other." C. Ilbert, *Parliament*, 124. All plans for rebuilding the shattered Palace after 1941 simply took for granted the continuance of this arrangement, and on more than one occasion Prime Minister Churchill spoke feelingly of its significance. "The House," Mr. Churchill once asserted, "should be oblong, not semi-circular. Here is a very potent factor in our political life. . . . I am a convinced supporter of the [two] party system in preference to the group system. The party system is much favored by an oblong form of chamber . . . Logic is a poor guide compared with custom. Logic, which has created in so many countries semi-circular assemblies [facilitating insensible gradations from right to left] which give to every member not only a seat to sit in, but often a desk to write at, with a lid to bang, has proved fatal to parliamentary government as we know it here in its home and in the land of its birth." *The Round Table*, Dec., 1943, pp. 59-60.

3 Every year, under normal conditions, they sit, with only brief adjournments over week-ends and holidays, from the end of January or the first part of February to late July or early August, and from late in October or early November until near Christmas. This period comprises a "session."

must at all times have the confidence and support of a majority in the House of Commons. In order to determine whether they have such support, it is necessary to call the House into session; any ministry continuing in office for a considerable period after election without causing Parliament to be summoned would be charged with trying to rule independently of popular mandate. The result is that a new House of Commons goes to work almost immediately after election, and certainly reflects—in so far as it is possible for any body so chosen to reflect—the sentiments and desires of the people at the moment.[1]

Adjournment, Prorogation, and Dissolution. Each house may adjourn at any time it chooses, without reference to the other; and neither can be adjourned by action of the crown. To adjourn means merely to interrupt the course of business temporarily, and matters which were pending are simply carried over without change of status. When, however, a session is to be brought to a close, the crown, *i.e.*, the sovereign acting on the advice of the ministers, must intervene. There must be a prorogation; and only the crown can prorogue. Prorogation both ends a session and terminates all pending business, so that a bill which has fallen short of enactment will have to start again at the beginning in the next session if it is to be kept alive. Both houses must be prorogued together, and to a definite date, although the opening of the new session may, in point of fact, be either postponed or advanced by later proclamation. Sometimes, too, a proclamation of dissolution is issued before the date arrives, which means that the old parliament will never meet again. Dissolution ends a parliament, although, as we have seen, it also sets in motion the machinery for electing a new one.

How a Session Is Opened. The two houses must invariably be summoned to meet simultaneously; and at the opening of a session the members gather, first of all, in their respective chambers. Thereupon an official messenger of the House of Lords invites the Com-

[1] Newly elected parliaments assemble promptly in all European democracies, as also in the British dominions. Formerly, the Congress of the United States, elected in November, did not enter upon its term until the following March 4, and in many instances did not meet until December following—13 months after election. The twentieth amendment to the national constitution, submitted to the states early in 1932 and proclaimed in effect in 1933, brought our usage more nearly into line with that of the rest of the world—although with Congress elected in early November and meeting for organization on the following January 3, there still is an interval of approximately two months.

moners to present themselves at the bar of the upper house, where they (or such of them as can squeeze into the small enclosure) hear read the letters patent authorizing the session, followed by announcement by the Lord Chancellor, in the event that the session is the first one of a new parliament, that it is the desire of the crown that they proceed to choose "some proper person" to be their speaker. Headed by the clerk, the Commoners withdraw to attend to this matter, and on the next day the newly elected official, accompanied by the members, presents himself at the bar of the Lords, announces his election, and, through the Lord Chancellor, receives, as a matter of form, the royal approbation. Having demanded and received a guarantee of the "ancient and undoubted rights and privileges of the Commons," [1] the speaker and the members retire to their own quarters, where each takes a simple oath (or makes an affirmation) of allegiance and personally signs the roll.[2]

If, as is not unusual, the king meets Parliament in person, he goes in state, probably the next day, to the House of Lords and there reads to the assembled lords and commoners a document prepared and placed in his hands by the prime minister, and termed the Speech from the Throne.[3] In this communication, bearing some analogy to the president's message in the United States, the government of the day comments on the general state of the realm, touches on foreign relations, requests the annual "supply," *i.e.*, appropriations, for the public services and bespeaks a sympathetic hearing for the budget later to be presented, and perhaps says something about the great measures that are to be introduced during the session. Frequently. the speech is couched, however, in colorless, if not cryptic, language,

[1] The privileges expressly asserted and demanded are free speech, freedom from arrest, access to the crown, and having the most favorable construction put upon proceedings. There are, however, other privileges, *e.g.*, the right to regulate its own proceedings, which the House does not specifically demand on this occasion. On this matter of privileges, see W. R. Anson, *op. cit.* (5th ed.), I, 162-198, and A. L. Lowell, *op. cit.*, I, Chap. xi. A valuable monograph is C. Wittke, *The History of English Parliamentary Privilege* (Columbus, 1921).

[2] In the Commons, members are sworn in in batches of five, and the roll is in the form of a leather-bound book opening at the bottom instead of at the side; in the Lords, members are sworn in one by one, and the signatures—"Birkenhead," "Morley," "Rosebery," etc.—are placed on a long sheet of paper which winds around a roller, *i.e.*, literally, a roll. The oath in both houses is: "I, ————, swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King ————, his heirs and successors, according to law. So help me, God."

[3] If the sovereign does not attend in person, he is represented by five scarlet-robed lords commissioners, and the speech is read by the Lord Chancellor. Queen Victoria, even though present, usually requested that official to read the document.

so that curiosity as to what the government's program is going to be is left largely unsatisfied. In any event, after the sovereign (or the commission) has withdrawn, the Commoners return to their chamber, and the speech is reread and an address in reply voted in each house, accompanied as a rule by debate bringing the policies of the rival parties into clear view, and sometimes extending over several days. Thereupon, committees are set up, bills introduced, and motions made; in short, the houses enter upon their regular activities. In the event that a session is not the first one of a parliament, the election of a speaker and the administration of oaths are, of course, omitted.

Some Quaint Ceremonies. Richard Cobden once spoke of the ceremonies connected with the opening of a session of Parliament as "attended by much barbaric pomp." Certainly they abound in the quaint and picturesque, and can hardly be understood without a knowledge of English history. One of the humors of the occasion is the search of the corridors, vaults, and cellars of Westminster Palace on the morning of the first day of a session to see that the building is safe for king, lords, and commoners to enter. Reminiscent of apprehensions stirred by the famous Gunpowder Plot of 1605, the precaution is perhaps not entirely meaningless in these days of recurring threats of Communist demonstrations. But the picture of twelve lusty Yeomen of the Guard (familiarly known as "beefeaters"), in full Tudor regalia, solemnly trudging through endless rooms, corridors, and subterranean passages carrying Elizabethan lanterns amid a blaze of electric light, and poking among gas fittings and steam pipes for concealed explosives, is calculated to draw a smile. Almost equally amusing is the practice in each house of giving a dummy bill a first reading *pro forma* before the Speech from the Throne is reread by the presiding officer, simply to show that the house has a right to debate other matters than those mentioned in the Speech and to initiate measures of its own. This sacred right once vindicated, the measure is promptly put aside and forgotten. Each house uses the same bill on every such occasion, and in the Commons an identical "property" document has been preserved for the purpose in the drawers of the table since 1852.

How a Session Is Closed. The ceremonies that bring a session to a close are the same whether it is expected that the existing parliament will meet again or whether, on the other hand, it is known that prorogation is merely preliminary to a dissolution. In earlier days,

the king usually appeared in person, and (the Commoners having been summoned to the bar of the Lords) read a Speech from the Throne announcing the prorogation. Nowadays, however, a session is customarily closed, just as it is sometimes opened, not by the king in person but by his commissioners, the prorogation speech being read by the Lord Chancellor. In any case, the speech never fails to congratulate "my lords and gentlemen" on the useful laws they have passed and to thank them for the supplies they have granted. Even if a dissolution is definitely intended, however, the communication scrupulously refrains from saying so, or even hinting at the fact. The ceremony over, the Lord Chancellor gathers up his long robes, and, attended by the purse-bearer and the mace-bearer, walks down to the bar of the Lords and disappears; so far as the upper chamber is concerned, the session is ended. In the Commons, however, it remains for the speaker to return, to "inform" the members where he has been, and to read the speech; whereupon, walking backwards, bowing to his empty chair, and closely followed by the sergeant-at-arms bearing the mace, he too disappears. If a dissolution is contemplated, everybody knows it, even though there has been such remarkable official reticence about it. The prospect need not disturb the peers; they know that they will be summoned again to the red benches. But the Commoners are situated differently. They must go back to their constituencies—or find new ones—and make a fight for reëlection, with the outcome in many cases uncertain. Many of them will not be seen again as members; for, as a defeated Commoner once sorrowfully remarked, it is far easier to go to the country than to return from it.[1]

Sittings of the Houses. Both houses of the American Congress regularly meet at noon, on all week-days of a session except as adjournments are taken for lengthier periods. The British House of Commons, under its standing orders, meets on the first four working days of the week at 2:30 P.M., on Friday (reserved for private business, petitions, notices, and motions) at 11 A.M., and on Saturday not at all except by special arrangement.[2] As at Washington, the

[1] The ceremonies connected with the opening, adjournment, prorogation, and dissolution of a parliament are described at greater length in W. R. Anson, *op. cit.* (5th ed.), I, 63-72, and G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (2nd ed., London, 1947), 99-109.

[2] During World War II, Parliament operated on a three-day week, but with the advent of the Labor government in 1945 a five-day week was resumed.

earlier portions of the day are reserved for committee work. Except on Friday, sittings continue uninterruptedly through the afternoon and into the night, with formerly 10:30 fixed as the normal hour for adjournment, but with now no limit at all except the endurance of the members. All-night sittings are not unknown. Under less pressure of work, and disinclined to lengthy debate, the House of Lords meets only on Monday to Thursday inclusive, and usually for sittings of not more than two hours or thereabouts.

A sitting is opened in the Commons by the stately march of the speaker, accompanied by chaplain, sergeant-at-arms, and mace-bearer, up the center aisle to the table; whereupon the chaplain reads a psalm (always the 67th) and three short prayers, the members facing the aisle during the former and, for some unknown reason, turning toward the wall during the latter. Visitors are not admitted to the galleries until prayers are over; and members of the ministry are conspicuous for their absence, not—as one writer facetiously suggests—because they are less in need of the benefits of prayer than are the private members, but because, unlike the latter, they are not under the necessity of being on hand to reserve their seats. Prayers ended, the mace is placed upon the table, the speaker assures himself that a quorum (40) is present, the doorkeeper shouts "Mr. Speaker at the chair"—and the day's business begins. The ceremony in the House of Lords is substantially the same, the ecclesiastical members taking turns in reading prayers.

"Who Goes Home?" Equally with the lighted lanterns of the beefeaters, the cry that resounds through lobby and corridor when at the close of a sitting the speaker leaves the chair carries one back to the London of long ago. The principal doorkeeper starts it. Stepping a pace or two into the lobby, he shouts "Who goes home?" The policemen stationed in the lobby take up the cry, which is echoed by their fellows at the doors of the library and the smoking-room, and wherever else they are likely to be heard by the more or less scattered members. Two hundred years ago, going home at midnight through the dimly lighted and poorly policed streets leading from Westminster to residential London was a hazardous undertaking, and hence at intervals during the evening squads of yeomen from the Tower were sent over to act as escorts to members desiring to leave. "Who goes home?" was the call employed to round up the departing groups; and although London's streets are now practically as safe

by night as by day and the convoy services of the beefeaters have long since been dispensed with, "Who goes home?" still breaks upon the midnight air exactly as when Charles II or Queen Anne reigned. More than that, as the members gather up papers and file out, the attendants still ply them with the admonition, "The usual time tomorrow, sir, the usual time tomorrow," precisely as if every one did not know that if there was any doubt about the House resuming business at 2:30 tomorrow, every newspaper would find material in the fact for a front-page story. Verily, as Sir Courtenay Ilbert has remarked, "the parliament at Westminster is not only a busy workshop; it is a museum of antiquities." [1]

OFFICERS OF THE HOUSE OF COMMONS—THE SPEAKER

Officers and Functions. Some of these quaint usages could be given up with no harm done except to make Parliament less picturesque. But officers, committees, rules—to which we now turn—are a different matter; they are indispensable. The most conspicuous and important officer in each house is, of course, the one who presides, *i.e.,* in the House of Commons, the speaker, and in the House of Lords, the Lord Chancellor. There are, however, other officers of dignity and authority. In the lower house, these are, chiefly, the clerk and his two assistants, the sergeant-at-arms and his deputies, and the chairman and deputy chairman of ways and means (now more commonly known as the chairman and deputy chairman of committees); to whom may be added, as an officer of ceremonial importance, the chaplain. The clerk and the sergeant-at-arms, together with their assistants, are appointed for life by the king on nomination of the prime minister; the chaplain is appointed by the speaker; the chairman and deputy chairman of committees are, like the speaker, elected by the House for the duration of a parliament, although, being (unlike all of the others) party men, they retire when the ministry that has nominated them goes out of office.

Little comment on the functions and duties of these officers is required, except in the case of the speaker. The chaplain appears at the opening of each sitting and reads the psalm and prayers. The clerk, whose place, with his aides, is at the table, signs all orders of the House, endorses bills sent or returned to the Lords, reads whatever is required to be read during the sittings, records the proceed-

[1] Preface to J. Redlich, *The Procedure of the House of Commons,* I, p. vi.

ings of the chamber, has custody of all records and other documents, and, in collaboration with the speaker, supervises the preparation of the official journal.[1] The sergeant-at-arms attends the speaker, preserves decorum in the chamber and its precincts, gives directions to the doorkeepers and messengers, enforces orders by the House, executes warrants issued by the speaker in its name, and presents at the bar persons qualified or ordered to appear there. The chairman of committees (in his absence, the deputy chairman) presides over the deliberations of the House when sitting as committee of the whole, and at other times on request of the speaker, and exercises general supervision over "private bill" legislation.[2]

The Speaker. The speakership is an office of much dignity, honor, and power. No one can say when it originated. But Sir Thomas Hungerford, chosen in 1377, was first to bear the title; and since he is reported to have had predecessors, the probability is that something of the kind existed from the earliest parliamentary beginnings. As will be recalled, the Commoners long had no direct part in legislation. All that they could do was to make requests of the king for new or amended laws or for redress of grievances; and the speaker was the member whom they employed to transmit their petitions and seek favorable consideration of them. He got his title from being the spokesman of the House in its dealings with the crown—from speaking *for,* not *to,* his fellow-members. He was never supposed to do much talking in the House, and nowadays he does none at all except in performing his duties as moderator.

1. Election. It was a triumph for the House of Commons when it gained the right to choose its own speaker. In earlier days, the king appointed; and long after the office became nominally elective the usage was, as Coke testified in 1648, for the sovereign to "name a discreet and learned man" whom the Commons then proceeded to "elect." To this day, the choice of the House is subject to the king's approval. No speaker-elect having been rejected, however, since 1679, the royal assent has become merely a matter of form. A speaker is chosen at the opening of each new parliament and serves

[1] Sir Thomas Erskine May, whose monumental *Parliamentary Practice; A Treatise on the Law, Privileges, Proceedings, and Usage of Parliament* (14th ed., by G. Campion, London, 1946) is the "bible" of parliamentary presiding officers throughout the British Empire, held the office of clerk for many years.

[2] A private bill is one having in view the interest of some particular locality, person, or group of persons, rather than of the people generally. See p. 275 below.

as long as the parliament lasts. If the incumbent during the preceding parliament is still a member, physically fit, and willing to continue, he may count on reëlection. If, however, a new man must be found, selection is made—just as, under similar circumstances, in the American House of Representatives—before the House itself convenes. At Washington, a candidate is named by the caucus of the majority party, and election by the House follows. At Westminster, the prime minister and other majority leaders look over the field and decide upon the right man, after making sure that the selection will be acceptable to the parliamentary rank and file of all political persuasions. A Conservative cabinet will always nominate a Conservative, and he will be elected on the floor of the House in the first instance primarily or entirely by Conservative votes. But once in office, he may expect to be reëlected indefinitely, and without opposition, whatever party is in power.[1]

2. Duties. We have it from a speaker of Queen Elizabeth's time (Yelverton), who should have known what he was talking about, that a speaker ought to be "a man big and comely, stately and well-spoken, his voice great, his carriage majestical, his nature haughty, and his purse plentiful." The plentiful purse is still a convenience, though the haughty nature can easily be overdone. But in any case the speaker must still be a man of parts—able, vigilant, imperturbable, tactful. All of these qualities, and more, he will require in the discharge of his onerous and delicate duties. Sitting in his high-canopied chair, in wig and gown, he presides a good deal of the time whenever the House is in session. He decides who shall have the floor—a matter not so often simplified by advance agreement as in the American House of Representatives, and especially in Continental legislatures—and all speeches and remarks are addressed to him, not to the House. He warns disorderly members and suspends them from sittings, and, with the aid of the sergeant-at-arms, preserves decorum suitable to a deliberative assembly, adjourning the

[1] The last instance in which reëlection was opposed was the case of Speaker Sutton in 1835. He was narrowly defeated because of having been too active in the counsels of his party. Some threat of resistance to a reëlection in 1895 did not materialize. When a new man must be found, there is usually a minority, as well as a majority, candidate. The speaker until late 1951, Clifton Brown, was advanced from the deputy speakership in mid-session in 1943 upon the death of Speaker FitzRoy; and although (like his predecessor) of Conservative antecedents, he was reëlected without opposition when a new Labor-dominated Parliament convened in 1945. No one is likely to be considered for the post who has not sat in the House of Commons for many years and become thoroughly familiar with its procedure.

House if disorder becomes too serious to be dealt with by the force at the command of the sergeant-at-arms. He interprets and applies the rules. He puts questions and announces the results of votes. He decides points of order, and for that purpose must be a thorough master of the technicalities of procedure. Hardly a situation can arise that has not arisen before, and if the speaker knows the precedents he cannot go far wrong. Knowing the precedents of the British House of Commons is, however, no simple matter. In any event, the speaker's rulings are final; "the Chair, like the Pope," humorously replied Speaker Lowther when asked how errors that he made could be rectified, "is infallible." The only requirement is that the speaker shall make his rulings in such a manner that the members will have complete confidence that they represent, not the speaker's own will imposed upon the House, but rather the will of the House itself as embodied in its rules and precedents.[1] Under the Parliament Act of 1911, it falls to the speaker to decide (if there is doubt) whether a given bill is or is not a money bill—a decision which may, of course, go far toward determining the measure's fate. Upon him also occasionally devolves the task of appointing the members of great conferences or commissions, such as the one which did the spadework preliminary to the electoral reform act of 1918. Indeed, he sometimes presides over such conferences.

3. Non-Partisan Position. In all of these activities, the speaker refrains scrupulously from any display of personal sympathies or partisan leanings. He never takes the floor to engage in debate, even when the House is sitting as committee of the whole. He never votes except to break a tie, and in the rare instances in which this becomes necessary he, if possible, gives his casting vote in such a way as to avoid making the decision final, thereby giving the House another opportunity to consider the question. The constituency which he represents is, of course, in effect disfranchised; but it has its reward in the distinction which he brings it, and it almost unfailingly reëlects him to his seat without opposition.[2] Outside, no less than inside, of

[1] "The great thing, Mr. Speaker, about the office which you now hold," said a former Clydeside rebel, James Maxton, addressing the newly elected Speaker Brown, "is the fact that the man who occupies your position sits there not maintained by the force of bayonets, with no powerful bodyguard, no powerful statutes. The man who occupies that position occupies it because he has the confidence and respect of his fellow-members."

[2] This practice, however, lapsed momentarily in 1935 when a candidate was put up to contest Speaker FitzRoy's seat. The incident stirred much disapproval and

the House, the speaker abstains from every form and suggestion of partisanship. He never publicly discusses or voices an opinion on party issues; he never attends a party meeting; he has no connections with party newspapers; he never sets foot in a political club; he never mingles with his fellow-members socially in the Palace's tea rooms or smoking rooms; he does not even make a campaign for his own re-election. The speaker of the American House of Representatives is, quite frankly, a party man—with, to be sure, less power that can be used for partisan purposes than before the "revolution" of 1910-11, but nevertheless an official who serves, and is expected to serve, the interests of his party in so far as it can be done without too flagrant unfairness to the opposition. The contrast with the speakership at Westminster is indeed striking. This is not to say that the American speakership is necessarily on a wrong basis. Traditions and circumstances differ in the two countries, and the history of the American, as of the English, office has, on the whole, been honorable. But, as would be expected, the deference paid the chair at Westminster is considerably greater than at Washington, having often been, as Sir Courtenay Ilbert remarks, "the theme of admiring comment by foreign observers." [1]

4. Perquisites. As is befitting so assiduous a servant of the state, the speaker has certain perquisites. He receives a salary of £5,000 a year. Since 1857, he has had an official residence in the north wing of the Palace of Westminster extending from the Clock Tower to the Thames; and there, being repressed politically but not socially, he holds levées of a sort permitted by convention to no other commoner. In the official order of precedence, as fixed by an order-in-council of 1919, he ranks next after the Lord President of the Council, which makes him the seventh subject of the realm. And when he finally chooses to retire, he is elevated to the peerage as a viscount and liberally pensioned.[2]

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led to a proposal (not adopted) for legislation expressly assuring a speaker's automatic reëlection in his constituency.

[1] *Parliament*, 140–141. It may be added that in the Commonwealth parliaments the speaker is commonly changed with the party in power, after the American manner.

[2] Upon retiring from the speakership in 1928, Mr. John H. Whitley, however—assigning "personal reasons" for his decision—broke with precedent of more than a hundred years by declining the offer of a peerage. The earlier history of the speakership is recorded conveniently in E. Porritt, *Unreformed House of Commons*, I, Chaps. xxi-xxii, and more fully, in a biographical fashion, in A. I. Dasent, *The Speakers of the House of Commons from the Earliest Times to the Present Day*

COMMITTEES IN THE HOUSE OF COMMONS

Legislative bodies the world over save time and gain in efficiency by delegating detailed consideration of bills and other proposals to committees. The British House of Commons is no exception to the rule. As early as the reign of Elizabeth, it was not unusual to refer a bill, after its second reading, to what we should now call a select committee, *i.e.*, a group of members specially designated to study the measure and report on it; and in the last half-century—notably since 1919—the amount of service required from committees has been steadily increasing. Committees now employed are of five main types: (1) the committee of the whole house, (2) select committees on public bills, (3) sessional committees on public bills, (4) "grand," or standing, committees on public bills, and (5) committees on private bills.

1. Committee of the Whole. The committee of the whole consists of the entire membership, and differs from the House itself only in that (1) it is presided over, not by the speaker, but by an official known as chairman of ways and means (or his deputy), who sits, not in the speaker's chair, but in the clerk's chair at the table, (2) the mace, symbol of the speaker's authority, is for the time being placed under the table, (3) a motion need not be seconded, (4) the "previous question"—aimed at cutting off debate—cannot be moved, and (5) members are allowed to speak any number of times on the same question. Procedure is thus considerably less formal and restricted than in the House as such, making for flexibility, even though hardly speed, in the handling of vital and complicated matters. When its work is done, the committee "rises," the House again comes into session, the speaker resumes the chair, the mace is put back in its regular place, and the chairman of ways and means (or deputy) reports for adoption whatever conclusions the committee has arrived at.

Until some 50 years ago, bills of a public nature were far more commonly referred to committee of the whole than otherwise.[1] After, however, provision was made in 1907 for increased use of standing

(New York, 1911). The best brief description and interpretation of the office is J. Redlich, *Procedure of the House of Commons*, II, 131-155; and a great deal of interesting and significant information can be gleaned from J. W. Lowther, *A Speaker's Commentaries*, 2 vols. (London, 1925). The author of these *Commentaries* —the later Lord Ullswater—was speaker from 1905 to 1921.

committees, the proportion reserved for committee of the whole fell off, and nowadays measures are so treated only if money bills, if the House so designates on grounds of urgency, or if the party in power lacks a working majority (a margin of about 60 seats).[1] All budgetary estimates and proposals submitted by the Chancellor of the Exchequer and all resolutions leading up to the great appropriation and finance acts,[2] are considered in committee of the whole—committee of the whole on supply (or simply committee of supply) when relating to appropriations, committee of ways and means when pertaining to revenues. In the past, cabinets have commonly considered it advantageous for all, or nearly all, controversial measures in which they had a vital interest to be considered in committee of the whole, and thus kept in the open, rather than turned over to smaller and more isolated committees; and most significant government bills were taken care of in that way. Taking office in 1945 with an ambitious program of nationalizing and reform legislation, the Labor government of Clement Attlee, however, adopted a different attitude. The rapid progress desired could not possibly be attained if all committee work on *all* important bills were permitted to absorb time and attention of the entire House; and under recommendation of a select committee charged with speeding up the legislative process, the plan was adopted of systematically referring long and complicated measures to standing committees—a plan, too, that worked well, not only in that without exception the various bills were reported back to the House on time, but in that they commonly were returned almost unchanged. With discussion on the floor considerably abbreviated as a result, there was complaint on the ground of too much haste for business of such moment. After waiting long for the opportunity that had come to them, Labor leaders, however, were impatient; and within two or three years a dozen or more major pieces of legislation were enacted, each of which, under an earlier tempo, would very nearly have monopolized an entire session. In committee of the whole when used—although procedure remains more flexible than in the House as such—the political atmosphere is no longer materially different: party discipline is almost equally in evidence; the minister in charge dominates debates; voting is controlled by the whips; a government defeat is a serious matter.

[1] In 1952, all controversial public bills were so handled due to the narrow Conservative margin.

[2] See p. 288 below.

2. Select Committees. Select committees consist, as a rule, of not more than 15 members, and are created from time to time to investigate and report upon designated subjects on which legislation is pending or contemplated, whether or not an actual bill is at the same time referred; through them chiefly the House collects evidence, examines witnesses, and in other ways obtains information required for intelligent action on large and complicated matters.[1] Each such committee chooses its own chairman; each keeps detailed records of its proceedings, which are included, along with its formal report, in the published parliamentary papers of the session; and after the task for which it was set up has been completed, the committee passes out of existence. Formerly, the members were usually designated by the committee of selection, which itself consists of 11 members chosen by the House at the beginning of each session. But nowadays the names of the persons who are to constitute such a committee are commonly included in the motion of the member moving the committee's appointment, and he is supposed to have secured their agreement to serve. The number of select committees is, of course, variable, but rarely small; something like a score are usually provided for in the course of a session.[2]

3. Standing Committees: (a) Origin and Nature. Not until 1882 did the House of Commons arrive at the point of providing for standing committees—originally known as "grand" committees. The rules permit as many such committees to be set up as business requires, and the number has varied from two in earlier days to as high as six. Most recently, however, there have been four. All are appointed at the opening of the first session of a new parliament and last (with such changes of personnel as may prove necessary) until that parliament is prorogued. The device was accepted grudgingly and only because measures had grown too numerous and complicated to be considered exclusively (as the House would have preferred) in committee of the whole; and, being looked upon simply as substitutes for the committee of the whole, the standing committees conform to that body in nature and procedure as closely as conditions permit. To begin with, all are large. Each has 20 regular members;

[1] Outside of Parliament, similar investigative work is done on an increasing scale by royal commissions and departmental committees.

[2] Several select committees are appointed every session; these include the committees on privileges, on public estimates, on petitions, on publications, on kitchen and refreshment rooms, and on statutory instruments.

but, in addition, for the consideration of any particular bill the committee of selection, which designates all members (after conference with government and opposition leaders) may add up to 30 other persons—bringing the possible maximum to 50, although most commonly the number is between 30 and 40. In the second place, standing committees, like the committee of the whole, are committees on no definite subjects or branches of legislation; instead, they are merely groups of members, designated as the A, B, C, and Scottish committees, and (except for the last mentioned and one giving precedence to private members' bills) receiving measures assigned to them by the speaker indiscriminately.[1] To be sure, the members specially added for the consideration of particular bills are supposed to be chosen with regard to their acquaintance with the subjects with which the bills deal. But of the regular membership (except, as explained herewith in the case of the Scottish committee) this is not, and cannot be, true. The plan thus differs sharply from that found in the United States and in Continental parliamentary bodies, where standing committees are usually made up with a view to handling bills relating to specified subjects—foreign affairs, finance, commerce, agriculture, etc. Further important contrasts with American standing committees, *e.g.*, in the national Senate and House of Representatives, appear in the fact (1) that while the British committees are made up so as to include representatives of all of the major political parties, there is no very exact proportioning of party quotas, and (2) that there is no such rigid method of determining the rank of committee members, including succession to chairmanships—committee chairmen being designated rather by the speaker of the House from a "chairman's panel" of not fewer than 10, also named by the speaker himself.

(b) Workings. Notwithstanding that many important government bills continue to be handled in committee of the whole, standing committees usually have so much to do[2] that the House has found itself

[1] The Scottish committee, to which all public bills relating to Scotland exclusively and referred to a standing committee are sent, consists of all of the 70-odd Scottish members of the House, plus from 10 to 15 members added for the consideration of particular measures. Any committee, furthermore, to which is referred a bill relating exclusively to Wales and Monmouthshire must have added to it for purposes of that measure all members sitting for constituencies in those areas.

[2] But, due to the small margin of seats held by the Labor government of 1950 and the Conservative government elected in 1951, standing committees have recently been less important, since almost all controversial bills have had to be handled by the committee of the whole.

obliged to amend its rules so as to permit such committees to sit while the House itself is in session (except for the daily period from 1:00 P.M. to 3:30 P.M.), subject to the natural requirement that when a division is called in the House, committee proceedings shall be suspended long enough to permit the members to go to the chamber and vote. Having passed second reading, and therefore having been approved by the House in respect to the principles involved, bills sent to standing committees are expected to be scrutinized and polished so thoroughly that, except in the case of those that stir the greatest differences of opinion, they will, on being reported out, consume no great amount of additional working time of the House as a whole. They may, of course, be reported out in an amended form which the cabinet—their real author and sponsor in the majority of instances—would not prefer; and this may give rise to extended discussion and eventual compromise. Cabinets might prefer ideally to have no committee reference except to committee of the whole, where the ministers can keep their hands on deliberations, but the pressure of business is now such that standing committees are essential to the effective handling of bills. Government proposals, however, rarely encounter at Westminster the rough usage in standing committee which in France used to add notoriously to the miseries of ministerial life. In contrast, too, with the situation in practically all American legislative bodies, where many—indeed most—measures "die in committee," *i.e.*, are permanently pigeonholed, every bill referred to a standing committee in the House of Commons is required to be reported out.[1]

(c) Some Proposals. The standing committee system in the House of Commons has, on the whole, proved its worth. It is interesting, however, to observe that there is growing sentiment in favor of changes in it, especially such as would (1) reduce the number of members (including those specially appointed for particular bills) to from 10 to 30 (perhaps an average of 20), with a view to more efficient deliberation, and (2) secure more expertness, both on the part of committee members themselves and by providing means for obtaining informed advice from civil servants and others.[2] Still beyond this, it is proposed that the number of standing committees be raised to

[1] For a discussion of the rôle of standing committees prior to 1951, see J. G. S. Shearer, "Standing Committees in the House of Commons 1945-50," *Parliamentary Affairs*, Aug., 1950.

[2] Public hearings, which have so large a place in American committee procedure, are practically unknown in European legislatures.

10 or a dozen and (what is especially important) be constituted so as to function each in a particular field—a field, furthermore, corresponding rather closely to that of one of the great executive departments, such as the Home Office, the Ministry of Health, or the Board of Trade. This, of course, would mean a shift in the direction of the standing committee system of the United States, in which each committee specializes in some major subject of legislation, becomes more or less expert on it, and handles only bills that relate to it. It is even proposed that, once the system were revamped on the lines suggested, *all* bills should be "sent upstairs," *i.e.,* referred to standing committees, with the committee of the whole entirely abandoned, as indeed it has been (except for one or two purposes) in the American Senate. The system described above embodies a few changes introduced after Labor came into control of the House. But it will be observed that none of the major readjustments just mentioned was made (except for some slight reduction in the size of committees); and from this it may be deduced that changes of any far-reaching character are unlikely.[1]

ORGANIZATION OF THE HOUSE OF LORDS

What of the form of organization in the less democratic, more leisurely House of Lords? To start with, and contrary to the situation in the House of Commons, officers are almost all appointive. The most conspicuous—although less powerful than might be expected—is the severely judicial figure in big gray wig and black silk gown who occupies the woolsack, *i.e.,* the Lord Chancellor. The duty of presiding at sittings of the House of Lords is, of course, only one of many that fall to this extraordinary dignitary. Any man who reaches the lord chancellorship may or may not already be a peer. If he is not, the defect can easily be, and invariably is, remedied. There is, however, no legal necessity that this be done, because the theory is that the woolsack is outside the precincts of the chamber; and the presiding official, *as such,* is not a member. As already intimated, the powers allowed the Chancellor fall far short of those commonly assigned a moderator. For instance, if two or three members simultaneously

[1] For a favorable discussion of the proposals mentioned, see W. I. Jennings, *Parliamentary Reform,* Chap. iv. A fuller account of the British standing committee system will be found in G. F. M. Campion, *op. cit.,* Chap. vii. The committees which handle private bills in the House of Commons are dealt with in another place (see pp. 275-276 below).

attempt to address the chamber, the House itself, not the chair, decides which shall have the floor. Order in debate is enforced, not by the Chancellor, but by the House, and when the members speak, they address, not the chair, but "My Lords." As a peer, the Chancellor may, and regularly does, speak and vote, on party lines, like any other member; but in no case does he have a casting vote.

The House of Lords employs no general system of standing committees. Besides committee of the whole, however, large use is made of select (including sessional) committees; and there is a so-called "standing" committee for textual revision, made up, however, at the beginning of each session, to which every bill, after adoption in committee of the whole, is referred unless the House orders otherwise. Sessional committees consist either of all members present during the session (being thus identical in personnel with the committee of the whole) or of smaller, and sometimes indefinite, numbers of members. Other select committees are named by the House itself, usually with the power to appoint their own chairman; and proposals may be referred to them at any time between the second and third readings when additional information is desired.[1]

[1] On Parliament at work, see S. Gordon, *Our Parliament* (4th ed., London, 1952), Chap. vii; Lord Hemingford, *What Parliament Is and Does* (New York, 1948); Q. M. Hogg, *The Purpose of Parliament* (London, 1946); A. P. Herbert, *Independent Member* (New York, 1951); E. Taylor, *Daily Life in Parliament* (New York, 1951).

CHAPTER XII

PARLIAMENT AT WORK—LAW-MAKING

RULES OF PROCEDURE

Development. Turning to the ways in which Parliament carries on its various activities, we find at the outset that, whatever the business in hand, both houses deal with it in accordance with accepted rules of procedure. In earlier days, these rules developed slowly and consisted almost entirely of unwritten precedent and usage. In the leisurely eighteenth century—a golden age of parliamentary oratory, but an epoch of relatively little major legislation—this customary law (in the House of Commons, at all events) took on the aspect of a vast, technical, mysterious, stereotyped body of practices which may have served well enough at the time, but which in the new era after 1832 grew increasingly cumbersome and unsatisfactory.[1] The "keen wind of democracy" had begun to whistle through the Palace of Westminster; popular demand for remedial legislation mounted to unprecedented proportions; multiplying problems tested parliamentary efficiency as never before; and to a steadily increasing extent lawmaking, instead of being left, in the main, to private members, became a matter of ministerial leadership and initiative. Under these changed conditions, the House of Commons, floundering amid a welter of time-consuming technicalities, began to cut its way out—doing so, naturally, by deliberately adopting new or revised rules in the interest of economy of effort and of time. Gradually, the jungle was to some extent cleared and a considerably simplified scheme of procedure arrived at, with custom still important, but with "orders," *i.e.*, definitely adopted regulations, also contributing

[1] C. Strateman, *The Liverpool Tractate; An Eighteenth-Century Manual on the Procedure of the House of Commons* (New York, 1937).

heavily. And this is the situation today. Custom and precedent still provide a great proportion of the rules under which the work of the House is carried on. But adopted orders—covering such matters as frequency and duration of sittings, allotment of time to different kinds of business, stages in the consideration of bills, kinds and composition of committees—supplement, summarize, and clarify. One is reminded of the way in which the general body of English law, or indeed the English constitution itself, took its present form; as "a supplementary chapter to the book of procedure," adopted orders or rules bear the same relation to the customary law of each house that acts of Parliament bear to the common law of the country.

Present Form and Status. In the United States, the Senate is organized continuously, and its adopted rules remain in effect until modified or repealed; whereas the House of Representatives is organized anew at the opening of every new Congress and must start off on each occasion by readopting the rules of the preceding House, in identical form or with such changes as dissatisfied members may be able to procure. The British House of Commons is in this matter nearer to the position of our Senate. To be sure, it is reorganized following every election. But the bulk of its written rules, once adopted, remain in effect, under the caption of "standing orders" (of which there are now nominally 96 for public business, but actually a few more because of irregular numbering[1]) as long as the House does not see fit to alter or displace them. Some, indeed, remain in effect indefinitely, as "general orders," without being classified technically as "standing." On the other hand, there are also "sessional orders," adopted for the duration of a session only. By simple majority vote of the House, any rule can be suspended, amended, or repealed at any time. But again we must bear in mind that to an amazing extent the basis for settling the steady stream of procedural questions arising is to be found, not in the adopted, printed orders or rules, but in the uncodified, and largely unwritten, customs and precedents of the House. The speaker (at all events with the aid of experts) must know these quite as well as the formal rules; and this is why his duties as moderator are so exacting. Few other members make any pretense to knowing them in more than a very general sort of way. Lord Palmerston admitted that he never fully mastered them;

[1] A separate set of standing orders for private business is even more voluminous, with 249 such orders included.

Gladstone was on many occasions an inadvertent offender against them. There was something more than humor in Parnell's reply to the Irish member who asked how he could learn the rules. The response was "By breaking them." [1]

SOME GENERAL ASPECTS OF PARLIAMENTARY WORK

Daily Order of Business in the House of Commons. It is in the rules (mainly the standing orders) that one will find laid down the sequence of ceremonies and actions that go to make up the routine of a parliamentary working day. Briefly, this order of business in the House of Commons is as follows. At the regular opening hour, which, as we have seen, is 2:30 P.M., the speaker's procession moves down the central aisle, the speaker in wig and gown, the chaplain in gown and stole, the sergeant-at-arms with his sword, and the mace-bearer with the mace. A psalm is read, followed by three short prayers. Thereupon the speaker takes the chair and business begins. First comes consideration of such private bills as may be listed on the printed orders of the day, followed by the presenting of petitions. For reasons that will be explained later, the former takes little time.[2] The latter also makes no heavy demands; for fewer petitions are presented now than formerly, and all that happens is that members having such communications to submit rise, announce the

[1] For three-quarters of a century, the standing orders, or rules, of the House of Commons have been printed in successive editions of a handbook entitled *The Manual of Procedure in the Public Business,* compiled by the clerk of the House. Since 1911, there has been published also, from time to time, *Standing Orders of the House of Commons,* the latest edition of which dates from 1948. Paralleling these are *Standing Orders of the House of Lords* and *Companion to the Standing Orders of the House of Lords on Public Business.* A very good sketch of the historical development of procedure will be found in G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (2nd ed., London, 1947), Chap. i; and the standing orders of the House of Commons (as of 1935) will be found conveniently reprinted in R. K. Gooch, *Source Book,* 277-308.

Legislative procedure in all English-speaking lands, and to a considerable extent in non-English-speaking countries as well, is based on the historic usages of the British Parliament. In nearly all of the British dominions, the constitution specifies that, in the absence of express direction to the contrary, the procedure of the legislature shall be in accordance with parliamentary procedure at Westminster. The manual of procedure which Thomas Jefferson drew up when serving as president of the Senate of the United States, and which is still the kernel of the great body of procedural rules developed at Washington, was based definitely upon eighteenth-century British practice. A treatise on that practice, written by Pierre Dumont but inspired by Jeremy Bentham, became a major influence in the framing of the rules of procedure for European parliaments which came into existence in the first half of the nineteenth century.

[2] See pp. 275-277 below.

fact (often without so much as telling what the petition requests), and, walking up the aisle, drop the papers into the yawning mouth of a big black bag suspended at the left of the speaker's chair.[1] The first stage of the sitting that draws much interest is "question time," when members may interrogate the ministers concerning administrative or other matters. As observed earlier, this right of asking questions is exercised freely; and it is hardly necessary to add that spectators in the galleries commonly find question-time the most interesting portion of a day's proceedings. Then comes the introduction of new members, if there be any, after which the speaker calls upon the clerk to read the orders of the day. The title of the first public bill listed on the day's "order paper" is thereupon read, and debate begins. The benches, empty for the most part during the dinner period, fill up as the evening wears on, and frequently interest mounts until a climax is reached in a final burst of oratory as Big Ben overhead booms the midnight hour. Sometimes the sitting extends later—occasionally, at times of special stress, throughout the night, or even longer. But ordinarily adjournment takes place by twelve o'clock, when the passer-by may still hear the time-honored call, "Who goes home?," and the attendants' ancient admonition, "The usual time tomorrow, sir; the usual time tomorrow."

Character of Debate. Etymologically, Parliament is a gathering for purposes of talk, or discussion; and while nowadays it does many important things without talking much about them—at all events on the floor—it is most completely itself, and most interesting to observers, when engaged in the give and take of debate. In the House of Lords, as we have seen, all speeches are addressed to "My Lords," and the chamber itself decides who shall have the floor if two or more members seek it at the same time. In the Commons, however, all remarks are addressed to "Mr. Speaker," who, assisted somewhat by lists put in his hands by the party whips, indicates the member who is to go on with a debate when another has left off speaking. In so far as possible, he will give both sides an equal opportunity for expression of opinion; and he will not permit a member to speak

[1] Record of all petitions presented is made in the journal of the House, and a committee on petitions looks over the documents to see that they are in proper form. But rarely are they heard of again. "As far as practical purposes are concerned, petitions might as well be dropped over the Terrace into the Thames as into the mouth of the appointed sack." H. Lucy, *Lords and Commoners*, 106.

twice upon the same question, unless it be to explain a portion of his speech which has been misunderstood, or in case an amendment has been moved which, in effect, constitutes a new question. In accordance with long-established usage (now embodied in the rules), he will not allow a member to read a speech from manuscript; [1] and he not only may warn one who is straying from the subject, or is merely repeating things he has already said, but may require him, after the third unheeded admonition, to terminate his remarks and give way to a fresh debater. Notwithstanding a good many tumultuous episodes in its history, especially at the hands of the Irish Nationalists, and later on of the Clydeside Laborites, the House of Commons rates high on the score of decorum. This does not mean, however, that the 50 to 100 members ordinarily to be observed sprawling on the green benches—unless it be on budget night or some other "full-dress" occasion—are always attentive to what is going on, or deferential toward those who are addressing them. Looking down from the visitors' gallery, one is likely, on the contrary, to see members casually strolling into and out of the chamber, others chatting and occasionally breaking into loud laughter, a few sitting abstractedly with their hats tilted over their eyes, a few waiting impatiently for a chance to make speeches of their own, still fewer listening with some appearance of genuine interest; while from the deep recesses of the speaker's chair sounds the reiterated "Order, order," designed to keep the confusion within limits reasonably compatible with the historic dignity of the place.[2]

[1] The use of notes is permissible, and the rule against reading speeches is not always enforced rigorously. Members speak from their places in the chamber, without mounting a rostrum as is usual in Continental parliaments.

[2] Members of the House are required by statute to be in attendance unless granted leave of absence on account of ill health or other urgent circumstances. This means only, however, that they must remain in London and participate in parliamentary work with reasonable fidelity; most of their time will ordinarily be spent in the lobbies, in the library, in committee rooms, on the Terrace, at clubs and theaters—anywhere but on the benches in the House. Regularity of attendance was stimulated somewhat by provision, in 1911, of an annual salary of £400 for members not already in receipt of salaries as ministers, as officers of the House, or as attachés of the royal household. Although increased in 1937 to £600 and in 1946 to £1,000, the additions did little more than make up for depreciation in money values since 1911, and the pay received still barely covers the added expense which membership entails, leaving most members under the necessity of supporting their families by going on as best they can with their private business or profession. Since 1939, retired members have had the benefit of a pension system, with all contributions to the fund made, however, by members and none by the state.

Parliamentary Oratory. Members are not more attentive to formal debate because many, if not most, of the speeches are not worth listening to, and because even if they were so, they would, as every one knows, have little or no effect on the fate of the measure under consideration. More and more, the actual work is done in committee, where—even in committee of the whole—discussion of an informal, conversational nature comes to closer grips with the matters in hand. The truth is that the House no longer has either time or taste for the expansive debates of the old days. Business crowds upon it; rules designed to expedite work tighten up from decade to decade; impatient members puncture bubbles of mere grandiloquence with satirical thrusts that drive all except the most thick-skinned offenders from the floor. That parliamentary oratory is not what it once was cannot be denied. But whether the change represents any real loss is another matter. Much of the eloquence that used to crowd the benches was mere emotionalism; much more was only stateliness and ponderousness of speech, with no discernible originality or richness of thought. It may have been effective once; on more than one occasion in earlier days, the records tell us, the House of Commons was so stirred by impassioned speeches that adjournment was taken to give members time to recover from the overpowering effects of a flight of eloquence. But nowadays the member who wants what he says to be listened to will speak briefly and to the point. He may easily produce more of an impression in 10 minutes than in two hours; indeed, the surest way to empty the benches, and to gain personal unpopularity besides, is to run beyond the 20 minutes within which, proverbially, converts to a cause, if won at all, are gathered in. Rare indeed in these times is the parliamentary debater of whom it could be written, as Ben Jonson wrote of Bacon, that "the fear of every man who heard him was lest he should make an end." [1]

Restriction of Debate. Early in the history of parliamentary bodies, it was found necessary to provide ways of bringing debate

[1] It is generally agreed that the House of Lords maintains a higher level of debate than the House of Commons. There is more time; there is at least as much ability; and only the leaders participate. A suggestion of Prime Minister Baldwin in 1925 that the debates of the House of Commons be broadcast by radio (as has been done very successfully in Australia and New Zealand) met with an unfavorable response. Arguments, it was feared, would tend to be addressed to the listeners-in rather than to the House itself. On British parliamentary oratory in general, see H. Lucy, *Lords and Commons*, Chap. iv; and on debate in the House of Commons, J. Redlich, *op. cit.*, III, 51-69, and T. E. May, *Treatise on the Law, Privileges, Proceedings, and Usage of the House of Commons* (14th ed., London, 1947), Chap. xii.

to a close, especially as a means of circumventing the obstructionist tactics of filibustering minorities. The Senate of the United States did, indeed, get along until 30-odd years ago without any formal devices for this purpose, and the British House of Lords still does so. As early as 1604, however, the House of Commons adopted a rule under which a motion that "the previous question be now put," if carried, caused a vote on the main question to be taken forthwith; and a similar regulation found a place in the first set of rules adopted by the national House of Representatives in the United States in 1789. In both cases, the "previous-question" rule has been found useful, but insufficient. Other rules have been adopted empowering the speaker to refuse to entertain a motion which he considers dilatory; the House of Commons forbids a member to speak more than once (except in committee) on a given question or motion, while the House of Representatives allows a member only one hour for a speech (with certain qualifications in both instances); and both bodies have brought into play various special regulations or procedures which pass under the general name of closure.

Forms of Closure. 1. Simple Closure. Closure in the House of Commons now takes three principal forms, *i.e.*, "simple closure," the "guillotine" (or closure by compartments), and the "kangaroo." The previous-question rule served reasonably well until toward the end of the nineteenth century. Then, however, it proved insufficient as a defense against peculiarly ingenious and persistent obstructionism indulged in by the Irish Nationalists, and in 1881 the House adopted a stronger device which in the following year found a place in the standing orders. The Nationalists have disappeared from the scene. But the new "urgency" rule, recast in 1888, has been found too useful to be given up. "After a question has been proposed," it reads, "a member rising in his place may claim to move 'that the question be now put,' and unless it shall appear to the chair that such a motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question 'that the question be now put' shall be put forthwith and decided without amendment or debate." Discussion may thus be cut off, and a vote precipitated, at any time —even while a member is speaking. At least 100 members (20 in a standing committee) must, however, have voted with the majority in support of the motion.

2. The "Guillotine": Closure by Compartments. Closure in this form worked well enough when the object was merely to terminate debate upon a single question. But it, in turn, proved inadequate when applied to large, complicated, and hotly contested measures. As early as 1887, when a bill of this nature relating to the administration of justice in Ireland was before the House, a more drastic procedure was brought into operation under which a motion might be made and carried that at a designated hour on a specified day the presiding officer should put to vote any and all questions necessary to end debate on the bill, irrespective of whether every part of the measure had at the time been discussed. From the point of view of government leaders bent upon securing passage of their bills, this was an effective and useful device; and whereas it had been invented solely as an extraordinary remedy to meet a particular situation, it was called into play on later occasions and apparently became a regular feature of parliamentary practice. The procedure's harshness, however, won for it the nickname of "guillotine"; and it could hardly have been expected to be popular with the rank and file of members. Besides, experience showed that it was likely to result in the earlier clauses of a bill being considered at length and the later ones not at all. Accordingly, when Gladstone's second home rule bill was before the House in 1893, a new plan was adopted under which the House agreed in advance upon an allotment of time to the various parts of the measure, debate on each part being terminated when the appointed time arrived and a vote thereupon taken on that part. Known sometimes as "closure by compartments," this improved form of guillotine became an established feature of House procedure; and it is interesting to observe that debate is frequently limited on similar lines in the American House of Representatives (occasionally in the Senate also), *i.e.,* by advance agreement on the amount of time during which discussion shall be allowed to continue on a given bill or specified part thereof.

3. "Kangaroo" Closure. The third form of closure, whimsically termed "kangaroo," has arisen from occasional authorization of the speaker (and chairmen of the various committees) to single out (hopping, kangaroo fashion, from proposal to proposal) those amendments to a motion which he deems most appropriate; whereupon those particular amendments may be debated and no others. Closure in this form, regularized by standing order in 1919, imposes

heavy responsibilities on the presiding officer; but it is a tribute to his impartiality, and it saves much time.[1]

Votes and Divisions. When debate upon the whole or a portion of a measure ends, a vote is taken; and it may or may not entail what is technically known as a "division." The speaker (or chairman in committee of the whole) puts the question to be voted on and calls for the ayes and noes. He announces the apparent result, and if his statement of it is not challenged, the vote is so recorded. If, however, there is objection, the order "Clear the lobby" is given, electric bells in every portion of the building are set ringing, policemen in the corridors shout "Division," and members troop in from smoking room, library, and restaurant, the more leisurely ones being urged along by whips of their party in order that when the prescribed two-minute period shall have elapsed, the party will be able to muster its full strength. At the end of the interval, the speaker or chairman puts the question a second time in the same form. If, as is practically certain to be the case, the announced result is again challenged, the chair orders the members to the "division lobbies." The ayes pass into a small room at the speaker's right and the noes into a similar one at his left, and all are counted and their votes recorded as they file back to their places in the chamber. The counting is done by tellers, four in number, designated by the chair. If the government leaders construe the vote as one of "confidence," two government and two opposition whips will be named; otherwise, any members may be pressed into service. The result having been ascertained, the tellers advance to the table, bow to the chair in unison, and one of those representing the majority announces the outcome.

[1] One will not be surprised to learn that in the Labor-dominated House of Commons after 1945 closure became a matter of very live interest and occasional heated controversy. With the government bent upon procuring enactment with minimum delay of an extensive series of complicated and sharply disputed measures in pursuance of its nationalization program—measures of a sort which under normal circumstances would rarely have gone through at the rate of more than one or two per session—it naturally was disposed to make full use of devices for cutting off time-consuming debate. Just as naturally, the Conservative opposition, hostile to most of the program, was prone to charge the ministers with employing "gestapo" methods in stifling discussion. Heated clashes occurred, for example, over a government guillotine motion on the Town and Country Planning Bill and the bill for nationalizing transport in March, 1947 (a motion which for the first time on record proposed to cut short committee stage as well as debate on the floor of the House); also in November, 1948, over placing a time limit on debate on the bill to nationalize the iron and steel industry. In both instances, as well as in others of the kind, the Labor majority was sufficient to carry the day by a heavy margin.

The average time consumed is only 15 minutes, as compared with the 30 to 35 minutes required for a roll-call in the American House of Representatives. Many divisions are called for and taken, however, which serve no purpose except to enable members to show their constituents that they have been attending faithfully to their parliamentary duties.[1]

Records. One who wishes to find out what has been said and done in Parliament on a given subject has at his disposal abundant documentary sources of information, chiefly the journals of the two houses and the "Parliamentary Debates." The journal of the House of Lords goes back to 1509; that of the House of Commons to 1547. In earlier times, both of these official records were encumbered—although often enlivened—by accounts of striking episodes and by notes on important speeches. In the seventeenth century, however, the clerks were forbidden to report the debates, and since that time the journals have consisted only of formal records of "votes and proceedings," *i.e.,* of things done rather than things said. In earlier days, too, reports and papers presented to the houses were often included. But these are now published separately, becoming part of the vast collection of parliamentary papers popularly known as "blue books."

For a long time after the House of Commons forbade its clerks to take notes on speeches, no records of debates were kept except such as were based on unofficial notes taken surreptitiously and published in defiance or evasion of parliamentary orders. A spirited contest over the matter in 1771 opened the way for freer reporting, but only in 1877 did the government begin to subsidize a famous series of "Debates" issued by the private publishing house of Hansard, and not until 1909 was the decision reached to displace this publication by one of a strictly official character, to be known as "Parliamentary Debates," and to be prepared by a staff of reporters in each house not connected with any newspaper or commercial publisher. Every day's debates are now reported *verbatim,* and the printed record not only is placed at once in the hands of all members,

[1] G. F. M. Campion, *op. cit.,* 178-184. In the House of Lords, important questions are decided almost invariably by division. When the question is put, the "contents," *i.e.,* those members who desire to register an affirmative vote, repair to the lobby at the right of the throne, the "non-contents," *i.e.,* those opposed to the proposal, take their places in the corresponding lobby at the left, and both groups are counted by tellers appointed by the presiding officer, two clerks also making a list of the contents and non-contents respectively as they reënter the room.

but also is made available in portly volumes for libraries and private purchasers.[1]

THE LEGISLATIVE PROCESS

Parliament Becomes a Legislature. Having thus seen something of the general conditions under which Parliament carries on its work, we turn to examine a little more closely two of its major activities or functions, *i.e.*, lawmaking and controlling national finance. It will be recalled that Parliament originally had no authority to make laws. That function belonged exclusively to the king, and the most that either house, as such, could do was to petition the crown for laws of specified character or on specified subjects. The king complied or refused as he chose; and even when he nominally complied, the new law often proved something very different from what had been requested. This led to demand, especially by the House of Commons, for a share in the work of lawmaking; and gradually, as we have seen, the demand was yielded to, until at last, by the fifteenth century, the two houses became (whatever else they were besides) full-orbed legislative bodies, formulating and introducing bills, giving these bills stated "readings," referring them to committees, voting on them, and finally sending them to the sovereign, no longer in the form of humble petitions, but as completed measures to which his full and prompt assent was respectfully requested. Long ago it became true that any sort of measure upon any conceivable subject might be introduced, and if a sufficient number of members of both houses were so minded, enacted into law. No measure might become law until it had been submitted to both houses; and this is still true, even though under the terms of the Parliament Act it is now easy for money bills, and not impossible for most other kinds of bills, to be made law without the assent of the House of Lords.

General Aspects of the Legislative Process. As matters now stand, a bill, in the ordinary course of things, is introduced in one house, put through three readings, sent to the other house, carried there through the same stages, deposited with the House of Lords to wait the royal assent,[2] and, after having been approved, is given

[1] G. F. M. Campion, *op. cit.*, 86-98. In 1909, the name "Hansard" disappeared from the published volumes, thereafter issued by His Majesty's Stationery Office, but in 1944 the speaker ordered it restored, for purely sentimental reasons.

[2] Except that money bills, after having their inning in the House of Lords, return to the custody of the House of Commons.

its place among the statutes of the realm. Bills, as a rule, may be introduced in either house—by a member who belongs to the government or by a private, *i. e.*, a non-ministerial, member. Certain classes of measures, however, may be introduced first in only a given house, *e.g.*, money bills in the House of Commons and judicial bills in the House of Lords.[1] Furthermore, the leadership and control of the ministers have come to be such that both the number and importance of private members' bills have been reduced to minor proportions; while the chances that such bills will be passed, in case they deal with large or controversial matters, has become exceedingly slender.[2] The procedure of the two chambers upon bills is broadly the same, although the more leisurely upper house has a more elastic method of doing business than the overworked popular branch.

The process of converting a public bill, whether introduced by a ministerial or by a private member, into an act of Parliament is long and intricate; usually it is spread over several weeks, or even months—occasionally, indeed, years, although in the latter case the bill will have to be introduced afresh at least a time or two in order to be kept alive.[3] The numerous stages that must be gone through have been found useful either as devices of convenience or as safeguards against hasty and ill-considered action. Some of them, to be sure, have become mere formalities, involving neither debate nor vote, and the process is decidedly more expeditious than it once was.

[1] More recent usage calls also, in general, for the introduction of non-controversial measures in the upper chamber.

[2] The year 1937, however, saw a private member's bill of first-rate importance become law. This was a Marriage Bill, introduced from a back bench with a view to correcting numerous generally recognized faults in the country's divorce system. Unquestionably the measure's passage arose from the fact that the government of the day chose to regard it as of no political significance and took no position on it. Even under such circumstances, however, a private member's bill may in effect be killed by the government as a result of little or no time being allowed for its consideration.

[3] By suspending the standing orders of both houses, it is, however, possible, in grave emergency, to carry a measure through all of its stages within a single day. The Defense of the Realm Act of 1914, a Gold Standard (Amending) Act of 1931, and an Emergency Powers Act of 1939 were made law in this fashion.

In connection with the initiation of legislation, it is to be observed that, in contrast with American congressional and other legislative committees, committees in the British Parliament do not themselves work out and introduce bills. A Government of India Bill of 1935 was put in shape by a joint committee of the two houses in which practically all political elements were represented; even then, however, there was a government draft with which to start. Joint committees are in effect small select committees of the two houses, sitting together. Ordinarily, their use is restricted to matters which do not raise political issues.

On the whole, the work of lawmaking is, however, still slow, and much thought continues to be given to modes of speeding it up, or at all events relieving the House of Commons of the excessive pressure of business under which, as every one agrees, it still labors.

Bill Drafting. The first step is, of course, the drawing up, or "drafting," of the bill itself. If it is a private member's measure, it is drafted by its sponsor, or by anyone whom he may employ for the purpose. If it is a government bill, it is prepared by skilled public draftsmen in the office of the Parliamentary Counsel to the Treasury —lawyers expert in the quaint and often prolix legal verbiage which custom, unmindful of the patience and convenience of the man in the street, still requires to be employed.[1] Being, in this case, a measure on whose fate the fortunes of cabinet and of party may depend, great care will be taken with not only its form but also its content. The minister in whose province it falls, or who for some other reason has been assigned the task, first prepares a rough outline, showing the main features of the project. Then the cabinet (which very likely has already discussed the general subject) scrutinizes the plan and makes such changes as it likes—or as conference with local authorities, civil servants, or indeed with informed and interested individuals, groups, or organizations outside of government circles, shows to be desirable. Gradually the crude sketch is elaborated into a fairly exact statement of points and principles. Then the official draftsmen are called in to work up the measure in detail, using the written memoranda that have been handed them, but also conferring almost daily with the ministers. Finally—after an interval of perhaps two or three months—the bill comes back into the hands of the cabinet in full array of numbered clauses, sections, and sub-sections, ready to be carried to Parliament and started on its hazardous journey. The expert service of the Parliamentary Counsel is, of course, designed to ensure that bills will be so drawn as to mean precisely what their sponsors want them to mean, and nothing else; and the end is so well attained that English statutes—in contrast too often with statutes in America, notwithstanding assistance rendered by numerous bill-drafting bureaus—rank exceptionally high in orderliness and clearness. Despite all precautions, however, bills as finally emerging from the rough and tumble of debate are, principally on account of

[1] Parliamentary counsel for this purpose was first provided in connection with the Home Office in 1837. The present connection with the Treasury dates from 1869.

amendments hastily inserted, sometimes considerably less clear than when presented at the clerk's table.[1]

How Bills Are Introduced. The procedure of getting bills before the House of Commons is not as complicated as it used to be. Until 1902, it was necessary, in order to introduce a bill, to ask and obtain leave. Nowadays, all that the introducer need do is to give notice of his intention to bring in a bill, and, when called upon by the speaker, to present his bill at the clerk's table quite without ceremony. The title of the bill (no longer the full text) is read aloud by the clerk—and the initial stage, *i.e.*, "first reading," is over. The bill is then printed and placed on the proper calendar to await its turn to be called up. Occasionally, however, a minister, introducing an important measure, makes a brief explanation of it, one equally short speech in criticism being allowed the other side. And once in a while a minister reverts to earlier usage by asking leave to introduce, thereby gaining an opportunity to make a long speech both explaining and defending his bill's contents. Considerable debate may follow; and of course the House must vote whether to grant or withhold the desired permission.

Second Reading. On a day fixed in advance by an order of the House, the introducer of the bill moves that it "be now read a second time"; and it is at this point that the battle between friends and foes of the measure really begins. The former explain and defend it in lengthy speeches; the latter criticize and attack it, usually ending by moving an unfavorable amendment. Sometimes the amendment states specific reasons why the second reading should not be proceeded with, but more frequently—employing what has come to be accepted as the most courteous method of dismissing a bill from further consideration—it runs simply, "that this bill be read a second time this day six months," or some other time at which the House is expected not to be in session. The debate on second reading is confined to the bill's aims, principles, and more basic provisions. There is no point to discussing details until preliminary discussion discloses whether the House is minded to enact any legislation of the kind at all; and any member who at this stage enters into the minutiae of the measure farther than is necessary to a consideration of its principles will be

[1] C. Ilbert, *Legislative Methods and Forms* (London, 1901), 77-79, and *The Mechanics of Law-Making* (New York, 1914), Chaps. i, iv-vi. The author of these books was for many years one of three officials in the Treasury known, respectively, as the first, second, and third "parliamentary counsel."

admonished or stopped by the chair. The debate ended, the motion is put. If the opposition prevails, the bill perishes; and while government bills almost always come through (failure to do so, being a government defeat, would quite possibly upset the ministry), the mortality of private members' bills at this stage is very great. A bill which passes second reading is "committed," bringing it up against another hurdle.

Committee Stage. Prior to 1907, the bill would normally have gone to committee of the whole. Nowadays it goes there if it is a money bill, at the request of ministers if of unusual importance or urgency, or if the government lacks a working majority; otherwise it goes to one of the regular standing committees as directed by the speaker. In any case, the opposition will almost certainly have rushed in a number of amendments designed to make the measure something different from what was intended by its authors and to force them into a position where they will have either to accept a modified bill that they do not like or withdraw their proposal from further consideration. Committee stage is, of course, the time for discussion of the bill in all its details, and one will not be surprised to learn that such discussion—interspersed, of course, with much business of other kinds—frequently occupies weeks, and even months. After second reading, a bill may, indeed, be referred to a select committee. This does not happen often, but when it does, a step is added to the process; for, after being returned by the select committee, the measure goes, as it would have in any case, to the committee of the whole or to one of the standing committees. Eventually the bill—unless in the meantime withdrawn—is reported back to the House, amended or otherwise. If reported by a standing committee, or in amended form by the committee of the whole, it is considered by the House afresh and in some detail; otherwise, "report stage" is a mere formality.

Third Reading. Finally comes the "third reading." Although the fate of the bill has by now been pretty well settled and little can be said that has not been said before—perhaps a dozen times—the opposition is reluctant to give up, and a set debate ensues in which the principles of the bill are once more attacked and defended. No further changes, however, except of a purely verbal character, can be made; the bill as it stands (unless sent back to committee) must either be adopted or rejected. The speaker puts the motion "that this

bill be now read the third time"; the division is taken; and the result is announced.

The Bill in the House of Lords. If successful, the bill then goes to the House of Lords. Formerly, ministers or other members whose bills had passed the Commons carried them personally to the upper house, often at the head of a sort of triumphal procession of supporters. But since 1855 the method has been for the clerk of the Commons to carry the measure to the bar of the Lords and there deliver it. What follows need not be related, because, as has been observed, procedure in the upper house is not materially different from that in the lower except in being simpler and, as a rule, speedier —mainly because the burden of responsibility for what is done rests more lightly upon the second chamber. After being read twice, measures are commonly considered in committee of the whole, referred to the standing committee for textual revision, reported back, and thereupon adopted or rejected.

Adjustment of Differences between the Two Houses. A bill which originated in the House of Commons is returned there from the House of Lords, and vice versa, whether or not it has been agreed to. If amendments have been added, the originating house may accept them, in which case the measure becomes law upon receiving the royal assent. But it may also, of course, reject them; and if both houses stand their ground, the bill fails. Two ways of overcoming disagreement have at times been resorted to with success. One is a conference between representatives of the two houses; the other is an exchange of written messages. A conference is a meeting of members, known as "managers," appointed by their respective houses —by "ancient rule," twice as many from the Commons as from the Lords. If it is designated a "free conference," the managers on behalf of the dissentient house present the reasons for their disagreement, and each group tries to bring the other around to its way of thinking, or at all events to hit upon a mode of getting the houses into agreement. If the conference is not "free," the statement of reasons is presented, but no argument is used or comment made.

Far, however, from establishing itself as an indispensable feature of parliamentary life, as has the somewhat similar conference committee in the procedure of the American Congress, the British conference has practically become obsolete. There has not been a free conference since 1836; and as long ago as 1851 the houses, by resolu-

tion, decided to receive reasons for disagreement, or for insistence on amendments, in the form only of written messages, unless one house or the other should demand a conference. So far as formal action goes, the method employed nowadays to bring the houses together is, therefore, the written message, drawn up by a committee of the house which sends it, and delivered by the clerk of that house to the corresponding official of the other. A message will normally entail a reply; and the exchange may be continued indefinitely. Practically, however, any adjustments reached are likely to flow, not from this rather stilted procedure, but from informal discussion among the party leaders. The cabinet, indeed, composed as it is of members drawn from both houses, may be regarded as, potentially, a sort of "free" conference, always available as an aid in ironing out differences. Since 1911, it has been possible, of course, for legislation to be enacted without agreement between the two houses at all —financial legislation by a very easy process, and other legislation by a longer and more difficult one. Experience indicates, however, that lawmaking in this fashion will be rare, and that normally the two houses must be brought into agreement on a bill unless the proposal is to fail. Recognizing this, and convinced that existing methods of overcoming differences are inadequate, the Conference on the Reform of the Second Chamber presided over by Lord Bryce recommended in its report of 1918 that the old method of the free conference be revived.

The Royal Assent. The houses having finally passed a bill in identical form, all that remains is the royal assent—bestowed indirectly and as a pure formality, to be sure, yet indispensable. The sovereign might, if he liked, confer it in person, and in earlier times he commonly did so. As described by Sir Courtenay Ilbert, the procedure actually employed nowadays, however, is as follows: "The assent is given periodically to batches of bills, as they are passed, the largest batch being usually at the end of the session. The ceremonial observed dates from Plantagenet times, and takes place in the House of Lords. The king is represented by lords commissioners, who sit in front of the throne, on a row of arm-chairs, arrayed in scarlet robes and little cocked hats. . . . At the bar of the House stands the speaker of the House of Commons, who has been summoned from that House. Behind him stand such members of the House of Commons as have followed him through the lobbies. A

clerk of the House of Lords reads out, in a sonorous voice, the commission which authorizes the assent to be given. The clerk of the crown at one side of the table reads out the title of each bill. The clerk of the parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the king's assent is signified: 'Little Peddlington Electricity Supply Act. *Le Roy le veult* ["The King wishes it"].' Between the two voices six centuries lie." [1]

Formerly, acts of Parliament were proclaimed by the sheriffs in the counties, but nowadays they are not officially announced to the public in any way whatsoever. Two copies of each measure are printed on special vellum, one to be preserved in the Rolls of Parliament, kept in the Victoria Tower, the other to be deposited in the Public Record Office. The dutiful subject is presumed to know the law, and ignorance of it cannot be pleaded as an excuse for violation. But he is left to find out what it is as best he can.[2]

PRIVATE BILL LEGISLATION—PROVISIONAL ORDERS

Private Bills. Reserving procedure on money bills for the next chapter, something may be added here on the handling of private bills and provisional orders. As defined in the House of Commons "Manual," a private bill is one whose object is "to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or body of persons." The object may be to grant a pension or privilege to an individual; or it may be to empower a municipality or private corporation to undertake some enterprise which by its nature involves limitation upon or interference with public or private (usually property) rights. Formerly such things were likely to be involved as building or extending a railroad, constructing a tramway, digging a canal, or erecting a gas or electric light plant. With such utilities now almost completely nationalized, however, private bill legislation no longer applies; and hence the

[1] *Parliament* (New York and London, 1911), 75-76. For approving finance bills, there is a similar but somewhat longer formula. If a bill were vetoed, the polite formula would be *Le Roy s' avisera*—"the King will think it over."

[2] The procedure of the House of Commons on public bills of a non-financial nature is described briefly in G. F. M. Campion, *op. cit.*, Chap. vi; A. L. Lowell, *op. cit.*, I, Chaps. xiii, xvii, xix; W. R. Anson, *op. cit.* (5th ed.), I, 267-280; and T. E. May, *op. cit.* (13th ed.), Chap. xv. C. Ilbert, *Legislative Methods and Forms* and *The Mechanics of Law-Making* cover the subject in more detail.

general scope for legislation of the kind—although still considerable —is no longer what it once was.

How Considered. Every private bill must go through the same stages in the two houses as a public bill. Whereas, however, a public bill may be introduced in either house without any preliminary proceedings beyond the mere planning of the bill itself, a private bill can be presented (again in either house) only in pursuance of (1) a petition filed with an official of each house known as "examiner of petitions for private bills," and with the government department having most to do with matters of the kind involved, and (2) notification of all owners or occupiers of land required, and of any and all other persons whose interests are likely to be directly affected. Furthermore, there is in each house a special type of committee for the handling of bills of this nature—at any rate, all that encounter opposition.[1] A private-bill committee in the House of Commons consist of four members, and in the House of Lords five; and as many such committees are set up in both houses during a session as the volume of business requires. As a rule, each committee receives a considerable batch of bills; and inasmuch as the inquiry on each proposal takes on the character of a quasi-judicial proceeding, with counsel and witnesses to be heard, service on the committees (compulsory under the rules) is a heavy drain on a member's time and energy, without compensating opportunity for personal distinction. Bills reported favorably are practically certain to be passed without discussion by the house receiving the report, and thereupon sent to the other branch.

Advantages and Disadvantages. The British method of handling private bills has two great merits. In the first place, even though it taxes individual members with much burdensome (and compulsory) committee work, it greatly economizes the time of the two houses as such. In American legislatures, as also in the French and other Continental parliaments, all such bills are dealt with in precisely the same manner as public bills. Any member may introduce as many of them as he likes,[2] and they simply take their chances

[1] Those unopposed are referred, as a matter of form, to a committee on unopposed bills.

[2] With a view to saving time in Congress, a Legislative Reorganization Act of 1946 curtailed "petty business" by turning over individual pensions, bridge-building projects, and the like, previously dealt with by private-bill legislation, to administrative agencies or courts. The measure stopped short, however, of covering the entire field, and numerous private or special bills are still introduced and passed.

along with bills of other sorts, often interfering with proper consideration of major public measures, yet with no guarantee that they will themselves receive the attention due them or that those of them that reach passage will be the most worthy. A second point is that private-bill legislation, under the British system, is kept entirely outside the realm of party politics. Ministers bear no responsibility for it, and rarely take any part in it, except as they may pass administratively upon proposals brought to the attention of their departments; in Parliament, Conservatives and Laborites are not sent into the division lobbies on private-bill issues. The entire procedure is based on the sensible idea that the thing to do is to secure careful, dispassionate, non-partisan examination of every project and to let the decision be reached, in effect, by those who have heard the evidence and consulted with the experts. Functioning substantially as a court, a private bill committee acts as a referee between the proposers and opponents of a project; and the houses almost invariably accept and ratify their committees' judgment. The one objection heard is that the method is expensive for both promoters and opponents of bills; and it is true that in order to get a private bill through—or to defeat one—it is frequently necessary to hire highly paid counsel, to take care of the travelling expenses of numerous witnesses, and to incur other costs, including the fee exacted whenever a private bill is introduced.[1]

Statutory Instruments. In many general statutes dealing with public health, transportation, poor relief, education, finance, and similar subjects, Parliament has conferred upon the appropriate executive agency power to issue "orders" automatically extending specified forms of authority to both municipalities and private corporations. Such orders are currently issued in large numbers and must now be sent to Parliament, where either House has the authority to annul them. Under the Statutory Instruments Act of 1946 they are referred in the House of Commons to a Select Committee on Statutory Instruments made up of 11 members (three members constitute a quorum) which is charged with reviewing them as far as form is involved—it does not consider the "merits of instruments." Assisted by the counsel

[1] The standard treatise on the subject, although old, is F. Clifford, *A History of Private Bill Legislation*, 2 vols. (London, 1885–87). Briefer discussions are to be found in G. F. M. Campion, *op. cit.*, Chap. ix, and W. I. Jennings, *Parliament*, Chap. xii.

to the speaker, it calls attention of the House of Commons to any instruments which appear defective.[1]

Provisional Orders. A century ago Parliament was heavily burdened with private bills and in order to reduce the load the provisional order system was introduced. This not only had the effect of cutting down on the number of private bills but provided a simpler procedure and warded off many ill-conceived proposals. Under this device, upon application of interested local governments and others, a minister or department can issue an order on a provisional basis which then has to be submitted to Parliament for confirmation, being handled much as any ordinary private bill. At the opening of the century many types of provisional orders were to be noted, including compulsory acquisition of land, altering local government boundaries, and giving authority to public utility bodies. During recent years, however, the scope of provisional orders has been greatly reduced, their place being taken largely by statutory instruments noted above. At present provisional orders are used mainly to repeal and amend local acts of Parliament.[2]

[1] It examined 632 instruments during the 1950 session and reported seven to the House of Commons.

[2] For a brief but useful discussion of the procedure of the House of Commons, see W. Harrison, *The Government of Britain* (rev. ed., London, 1952), Chap. iv. For a more critical study of parliamentary procedures, see Lord Campion [ed.], *Parliament: A Survey* (London, 1952). Sir Cecil Carr's chapter on delegated legislation is especially relevant to the topics discussed just above.

CHAPTER XIII

PARLIAMENT AT WORK—FINANCE

EXTENT AND FORMS OF PARLIAMENTARY CONTROL

The principal lever by which Parliament raised itself to its present supremacy was the power of the purse; and to this potent instrument it still resolutely clings. To be sure, one branch, *i.e.*, the House of Lords, has lost all effective control over financial legislation, so that, in this domain, "Parliament" has, to all intents and purposes, come to mean only "House of Commons." [1] To be sure, too, the initiation of fiscal policy and the preparation of finance bills, as well as, of course, the collection of revenues and the disbursement of funds, fall to the crown, functioning to a degree through the cabinet, but primarily through an establishment which the student of English government encounters almost as often as he meets the cabinet and Parliament, *i.e.*, the Treasury. After the cabinet, however, has decided upon and introduced great measures relating to agriculture, trade, or education, it cannot put them into operation until Parliament acts; and similarly, after the Treasury has prepared financial plans for a year, it is at the end of its tether until Parliament gives its approval: independently, it cannot tax, borrow (except under special war-time conditions), or spend.

Four Main Parliamentary Functions. Four main things it therefore falls to Parliament to do: (1) to determine—invariably on lines recommended by the Treasury—the sources from which, and the con-

[1] It is to be observed, however, that no money bill can become law until the House of Lords has been allowed a month's time in which to consider it if it so chooses. On the other hand, such a bill, duly passed by the Commons, becomes an "act of Parliament" irrespective of whether the upper chamber approves, rejects, or takes no notice.

ditions under which, the national revenues shall be raised; [1] (2) to grant the money estimated by the Treasury to be necessary to carry on the regular work and newer enterprises of the government, and to appropriate these grants to particular ends; (3) to inquire into and criticize the ways in which the funds are actually spent; and (4) to see that the accounts of the spending authorities are examined and properly audited. No taxes may be laid without express parliamentary sanction, and no public money may be spent without similar authority, conferred either in annual or other specific appropriation acts or in permanent statutes. Furthermore, ministers are continuously subject to questioning on the floor of Parliament concerning the use of public money under their direction; and the accounts of the spending departments and officers are audited minutely—not only by the Comptroller and Auditor-General, who to all intents and purposes is a servant of Parliament, but also by a full-powered, nonpartisan parliamentary committee (the committee on public accounts), under a chairman drawn from the opposition.

HOW APPROPRIATIONS ARE MADE

Such are the basic conditions under which the power of the purse is now wielded at Westminster; and our next concern is to see how Parliament goes about voting taxes and expenditures, *i.e.*, the methods of financial, as distinguished from other, legislation. To do this, it will be best to trace the order of procedure (including the preliminary work of the Treasury), first for appropriation bills and afterwards for bills designed to raise revenue.

The Estimates of Expenditure. We take expenditures first because that is what the government itself does; certainly it is not illogical to find out what is going to be spent before trying to decide how much money to raise and how to raise it.[2] The first step, then, in making financial arrangements for a given fiscal year is to prepare the estimates of expenditure. To be sure, Parliament does not have to make fresh provision for all expenditures every twelve months. Out-

[1] It is Parliament also that authorizes taxation by local authorities; but that subject falls outside the scope of the present chapter.

[2] This, of course, is not the method in *private* finance; a prudent individual or corporation must usually plan expenditures only after finding how much there will be to be spent. Having reliable means of raising whatever amounts will be needed (within bounds), governments can safely plan outlays first. Even they, however, may be obliged to revise estimates of expenditure downward when it appears that sufficient funds cannot be raised conveniently or wisely.

lays for support of the royal establishment, the salaries and pensions of judges, interest on the national debt, the public expense of conducting parliamentary elections, and other Consolidated Fund services or charges, while initially authorized and at all times alterable by Parliament, go on from year to year until changed by new enactment; and this takes care of a very substantial fraction of the annual national disbursement.[1] The estimates of which we are here speaking are, rather, for the "supply services"—mainly the army, navy, air force, and civil service—provision for which is made for but a single year at a time. They apply to outlays which, as to amount if not as to general purpose, are matters of discretion, or policy, and hence are, and should be, subject to frequent reconsideration. Every request for an appropriation, it may be added, is required to be submitted to Parliament in the form of an "estimate," *i.e.*, a written statement showing precisely how much money is expected to be needed for a designated purpose, together with a request that the specified sum be granted for the purpose indicated.

How Prepared. How are the estimates got ready for Parliament's attention? First of all, matters of general policy that might entail large changes of expenditure, *e.g.*, social insurance or a housing program, an increase of the army, a new naval base, are threshed out in conferences between the officers of the Treasury and representatives of the departments concerned, and also, in the case of matters as important as those mentioned, in cabinet discussions. The departments thus get a reasonably definite idea of how far the Treasury is willing to go in support of the projects, and of what outlays can be planned without risk of cabinet disapproval. On October 1 preceding the fiscal year for which the estimates are to be prepared (beginning the following April 1), the Treasury sends a circular letter to all officials responsible for estimates requesting them to make up and submit estimates of the expenses of their departments, offices, or services during the coming year.[2] All are asked to plan as economically as possible, and, in particular, not to adopt the easy method of simply taking the estimates of the past year as the starting point for those of the next. The responsible officers of the departments thereupon set their staffs to compiling and entering figures, using

[1] See p. 114 above. In normal times, these Consolidated Fund charges amount to about one-quarter of the total annual expenditure.

[2] For a specimen letter, see N. L. Hill and H. W. Stoke, *op. cit.*, (2nd ed.), 145-147.

forms sent out from the Treasury on which comparative data have already been entered.

Treasury Control. At all stages of the work, close contact is maintained with the Chancellor of the Exchequer and other Treasury officials; the rules, indeed, require that, in so far as possible, additions, omissions, or other alterations of the existing arrangements shall be referred to the Treasury before the departmental proposals as a whole are formally presented. If the Treasury demurs, the department may carry a proposal to the cabinet. But such appeals are rarely made unless the question is one of exceptional importance; and there is a strong presumption that the cabinet—which, as a matter of fact, never itself considers the estimates for a given year in their totality—will back up the Treasury in any position that it takes. The result is, as one writer puts it, that the estimates, when finally submitted by the departments, "represent little more than the statement of proposals that have already been agreed upon between the various submitting departments and the Treasury." [1] The sum total of these estimates as finally approved by the Treasury, added to the amounts required for Consolidated Fund services, gives the expenditure which will have to be met out of the revenue for the year if no deficit is to be incurred—and if no unanticipated demands arise. Ordinarily, all estimates of expenditure, in complete form, are in the Treasury's hands by January 15; whereupon the estimates clerk, making sure that there is nothing in them which the Treasury has not approved, has them printed in five huge quarto volumes, commonly aggregating some 1,500 pages.

Self-imposed Restrictions upon Parliament. No request or proposal looking to a charge upon the public revenue will be received or given attention in Parliament unless the outlay is asked for or supported by the crown, which in effect means the Treasury. First adopted by the House of Commons in 1706, and made a standing order in 1713,[2] this rule totally prevents private members from introducing appropriation bills or resolutions, *i.e.*, from moving that a specific sum be granted for a specific purpose—although it is not

1 W. F. Willoughby *et al.*, *Financial Administration of Great Britain* (New York, 1917), 61. It must not be inferred, however, that the Treasury's rôle is an easy one.

2 Standing Order 63—one of the oldest of those now in effect. The rule reads as follows: "This House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament, unless recommended by the crown."

construed to debar such members from introducing resolutions favoring or opposing some specified kind of expenditure in principle; or (under carefully guarded conditions) from moving amendments which would have the effect of involving expenditure. The general rule, however, operates to prevent nearly all of the evils long associated in the United States with the congressional pork-barrel. The House of Commons can decide whether to grant as much money for a given purpose as the government has asked, but not to grant more (unless the government can be prevailed upon to modify its request); and it has denied itself the privilege of voting any money at all for objects lying quite outside the government's plans. There is, of course, nothing to prevent a private member from bringing such pressure to bear as he can upon a minister or department to propose, and upon the Treasury to endorse, some item of expenditure from which his constituents will benefit; and a good deal of this sort of thing is done. Once the estimates have gone to the House of Commons, however, not much opportunity to add anything to them remains—which is one of the reasons why lobbying, although by no means unknown at Westminster, is considerably less in evidence than in the American national and state capitals. Under British conditions, the place to try to exert influence is the government offices, not the legislature.

Consideration of the Estimates in the House of Commons. Under regular practice, the government's estimates of expenditure are presented to the House of Commons between the middle of February and the end of March—the estimates for the civil service by the Financial Secretary to the Treasury, those for the army, the navy, and the air force by the Secretary of State for War, the First Lord of the Admiralty, and the Minister for Air, respectively. Already, near the beginning of the session, the House has set up a form of committee of the whole known as "committee of supply," under the chairmanship of the chairman of committees; and after the estimates have been referred to this committee by the House and a brief preliminary debate on "grievances" has taken place—a debate once important, but now meaningless, since Parliament holds the remedy for grievances in its own hands—the estimates are taken up for such scrutiny as time permits, and with a view to the adoption of resolutions which can be reported back to the House as bases for appropriation bills. Only 26 days (until of late only 20) are allowed for the purpose, scattered throughout the session.

"Votes on Account." The estimates (except for the army) are considered in separate groups termed "votes"—some 150 in all—corresponding as closely as possible to distinct services, and divided into subheads and items to facilitate rapid scrutiny and concentrated discussion. Each "vote" becomes the basis of a "resolution of supply," which, after adoption in committee, is reported to the House. There is not time to consider all of the votes before April 1; and yet the government must have authority by that date to spend something under practically every vote.[1] Accordingly, the committee early adopts a series of resolutions known as "votes on account." giving the government provisional authority to spend a limited sum under every vote, without committing Parliament ultimately to grant, or even the committee itself to endorse, the total amount asked for under any of the heads. In this way, however, the government finds itself on April 1 armed with provisional authority to spend on the supply services sums sufficient to last until about the following August, when the session will end. Legally, the authority is strictly provisional; no appropriations, in the proper sense of the word, have yet been made, and the resolutions that have been passed will have no validity beyond the end of the session.

Ways and Means. Furthermore, this authority to spend does not of itself carry authority actually to draw the money from the Consolidated Fund. This particular authority comes by virtue of resolutions passed in another committee of the whole, known as the committee of ways and means, whose function is two-fold: (1) to authorize issues from the Consolidated Fund, and (2) to consider proposals for raising money, whether by taxes or by loans. At an early stage of the session, the House begins to sit from time to time also as committee of ways and means; and by April 1, when the government must begin to draw upon the Exchequer for the expenses of the new fiscal year, this committee has reported to the House resolutions "granting ways and means" (including provisions for necessary temporary borrowing) which have been incorporated in a bill and passed as a Consolidated Fund (No. 1) Act. The "ways and means" thus granted always equal the total of the votes of supply thus far provisionally adopted, plus any supplementary votes that may have

[1] Unused portions of grants lapse on March 31 and are applied to reduction of the national debt.

become necessary for the expiring year and any excess votes for the previous year.

The Appropriations Completed. Accordingly, the government enters upon the fiscal year with (1) expenditures authorized in amounts adequate—barring the unexpected—to carry the services up to August, and (2) access to funds sufficient to last to approximately the same date. It remains to fill out the fiscal schedule, so to speak, and make it definitive for the entire year. And to this task the committee of supply, the committee of ways and means, and finally the House as such, devote themselves from time to time throughout the remainder of the session. In the case of estimates of expenditure, it is simply a matter of pursuing consideration of them as much farther as may be necessary in order to fix the final and exact amounts to be allowed. One or two more Consolidated Fund acts are likely to be passed, between April and August, giving the government further access to funds; and at the very end of the session, after ways and means for the year have been definitely determined, all such measures enacted up to that time are gathered into a general Consolidated Fund (Appropriation) Act, commonly known simply as the Appropriation Act, which (1) prescribes the appropriation of all sums carried by the votes in supply, and (2) authorizes the issue of a sum from the Exchequer equal to the total of these votes and gives the Treasury temporary borrowing powers up to the whole of the amount. Standing Order 15 requires that consideration of the estimates of supply be completed not later than August 5. As a rule, most of the limited time of the committee of supply is consumed on a few "votes," not necessarily the most important; many, indeed, are passed with only the most perfunctory scrutiny, and with no discussion whatever.

ESTIMATES OF REVENUE—THE BUDGET

Treasury Responsibility. All this, however, tells only a part of the story of how arrangements for a coming fiscal year are made. It is true that the first thing undertaken is to compile estimates of expenditure. But this work will not have been going on long before attention will be directed also to the matter of probable revenue; and even before the estimates of outlay reach the Treasury in their matured form, they are not unlikely to have been trimmed down because the word has been passed around that the funds in sight will not admit of such

charges as were originally contemplated. For the estimates of revenue, the Treasury is responsible, even more directly and completely than for estimates of expenditure; indeed, from first to last they are the handiwork of the Treasury itself. While the multifold and scattered spending offices are at work on their figures for the coming year, the revenue departments in the Treasury—chiefly customs and excise, inland revenue, and post office—are making the best guesses that they can as to the amount that each source, *e.g.*, land taxes, the income tax, stamp duties, "death duties" (inheritance taxes), the postal service, rents, dividends from investments, and what not, will yield, and the Chancellor of the Exchequer and his assistants are balancing off prospective outgo against prospective income and working out plans by which, if given parliamentary approval, ends can probably be made to meet.[1] If, by happy chance, the revenues promise to exceed what will be required, the Chancellor (in consultation with the cabinet) may decide to recommend a lowering of the income tax, or even the abolition of certain taxes altogether. But if, as has been the case recently and may be inevitable for many years to come, outgo promises to mount higher than income, even after all feasible economies have been provided for, it becomes necessary to decide what existing taxes shall be pushed upward, and how far, and what new imposts, if any, shall be laid. In reaching these decisions, the Chancellor may be actuated, of course, not alone by a desire to raise more money, but also by a purpose to shift the tax burden in this direction or that, in the interest of social or economic changes which the government has at heart. Indeed, the whole policy of a cabinet may be embodied in tax proposals brought to the House of Commons.

The Budget. Eventually comes one of the big occasions in the parliamentary history of the year, *i.e.*, "budget day." The House of Commons convenes as committee of the whole on ways and means; and, with a huge pile of carefully arranged typewritten documents before him—the benches being crowded with members and the galleries with spectators—the Chancellor of the Exchequer unfolds the government's proposals. He reviews the finances of the past year,

[1] Under the British system, taxes are imposed either in the annual Finance Act and therefore for a single year, or by acts authorizing them for a longer fixed period or simply until repealed or amended. The land tax, excise and stamp duties, and indeed by far the greater number of taxes, are imposed by so-called "permanent acts," and hence are independent of annual budgetary provisions. The income tax and excise taxes have commonly been the principal impost to be raised or lowered from year to year as a means of keeping a balanced budget.

tells what outlays are to be provided for and what revenue is to be expected, touches on the condition of the national debt, and then, to an audience growing in eagerness (it already knew, at least in a general way, about these things, but it often has hardly an inkling of what is now to come), he discloses the increases or decreases of old taxes and the nature and extent of the new taxes provided for in the government's fiscal program, at the same time moving resolutions for putting the proposals into effect. Small wonder that the "budget speech" is always interesting, sometimes surprising, and occasionally startling. Rarely in times past did the speech consume less than three hours; sometimes it ran to twice that length. "Spoke 5-9 without great exhaustion," recorded Gladstone in his diary following his budget speech of 1860, "aided by a large stock of egg and wine. Thank God! Home at 11. This was the most arduous operation I have ever had in Parliament." Inasmuch as the Grand Old Man was called upon to introduce, or "open," at one time or another, 13 different annual budgets, it was well for him, as for his hearers, that he had the knack, as some one once remarked, of "setting figures to music."

Revenue Proposals before the House of Commons. Nowadays, the budget speech is likely to be shorter, because it has come to be only a general announcement, or explanation, preliminary to placing the budget itself, in printed form, in the hands of the members. Filling, as a rule, only a few printed pages, the document known technically as the budget does not look very formidable.[1] It is buttressed, however, by masses of statistical and other matter that challenge the industry of any person who would really comprehend it. The essence of a budgetary system is, of course, the careful consideration, at one and the same time (or at least in their relations to each other), and by the same body of men, of both sides of the national account, first by those whose business it is to initiate fiscal proposals, and afterwards by the legislature that votes them; and in the House

[1] Historically and accurately, the term denotes only the Chancellor's exposition of the state of the finances and the measures rendered necessary thereby—in other words, the Chancellor's speech. In everyday parlance, however, it is often applied to the whole annual plan of finance. The word is derived from *bougette*, an old English term for a small bag or pouch (such as the linen one in which the Chancellor used to carry his papers, tied in a bundle, into the House), and seems to have come into use in its present sense in the early eighteenth century. A pamphlet of 1733 entitled *The Budget Opened* satirically pictures Robert Walpole, when explaining his financial program, as a quack doctor opening a bag filled with medicines and charms. "Opening the budget" is still a common phrase.

of Commons the proposals relevant to revenue (including loans, and embodied in resolutions with which the Chancellor concludes his budget speech) are dealt with, not only by the same general procedure as those for expenditures, but throughout the same general period of time. The proposals are debated serially in committee of the whole (*i.e.*, committee of ways and means) and, after adoption—as originally proposed, or as amended—in the form of resolutions, are reported to the House and passed as bills. Private members may not move new or increased taxation, although they may move to reduce taxes which the government has not planned to alter, or to repeal them altogether.[1] A further interesting feature of the system is that, formerly by mere custom but since 1913 by law, increased or otherwise altered income, customs, and excise taxes proposed in the budget speech, and tentatively approved in ways and means resolutions passed immediately, become operative on the morning following the delivery of the speech. If the proposals are not definitely adopted within a period of four months, the money collected has to be returned to those who paid it. Only very rarely, however, does this situation arise. The practice is a striking illustration of the strong presumption that whatever proposals (at least in the domain of finance) the government carries to the floor of the Commons will ultimately be enacted.

Appropriation Act and Finance Act. The results of the entire fiscal operation as described finally emerge in two great statutes, *i.e.*, the Appropriation Act, already mentioned, and the Finance Act. The first of these, as we have seen, gives final authority for payment out of the Consolidated Fund of all grants that have been made; and it is passed by the House on the basis of resolutions reported back to it partly from the committee of supply, and partly also from the committee of ways and means. The Finance Act, based upon resolutions reported from the committee of ways and means, reimposes the income tax (with surtaxes) at the rates newly agreed upon, specifies the new rates of indirect taxes if any changes have been made, remits taxation if it has been so decided, and provides such new or additional revenues as the necessities of the situation have been deemed to require.

[1] By its terms, the rule of 1713 restrains private members only in the matter of appropriations. On the basis of long-established practice, it, however, operates similarly with respect to revenue.

Money Bills Sent to the House of Lords. All finance proposals make their first appearance in the House of Commons. Those approved by that body, however, must invariably be submitted also to the House of Lords, which in former times must pass them, equally with the popular chamber, if they were to become law. Since 1911, the concurrence of the Lords has not been necessary in the case of any bill certified by the speaker of the House of Commons to be a money bill. If sent to the Lords at least one month before the close of the session, such a bill is submitted for and duly receives the royal assent, and thereby becomes law, whether or not consented to—or even considered—by the upper chamber. Finance bills not so certified (because of not fully meeting the definition of "money bill" contained in the Parliament Act) become law only with the assent of the second chamber. To this it is necessary, however, to add (1) that the House of Commons resolutely denies any right of the second chamber to amend a financial measure (certified or not), and (2) that not only has no such measure encountered defeat in that branch since 1909, but in some years the annual Finance Bill has not been debated there at all.

GENERAL ASPECTS OF THE BUDGETARY SYSTEM

American Financial Legislation Compared. The British system of handling financial legislation has long been held up as a model throughout the world, and has been widely imitated. It undoubtedly has many excellent features. Above all, it guarantees a financial program which has been prepared as a unit and for which full responsibility rests upon a single authority—the Treasury, and back of it the cabinet. Notwithstanding large advance in budgetary matters in the past quarter-century, the financial activities of the government of the United States still lack an equal degree of coherence and definiteness of responsibility. Under the Budget and Accounting Act of 1921, to be sure, the director of the budget at Washington receives all estimates of expenditure from the several departments, commissions, and other spending agencies, and works them into a coördinated fiscal plan, to be presented to Congress on the sole responsibility of the president. But after the two branches have come into possession of the plan, each in its turn may introduce any changes on its own part, increasing appropriations here, reducing them there, and even inserting items altogether new; so that by the time when the appropriation

bills finally emerge as enacted measures, they may at various points be far from what the executive intended, with responsibility for some of their features quite impossible to fix. To make matters worse, proposals for raising revenue—which regularly originate with the executive, but may also be introduced by any member of the House of Representatives on his own initiative—are still considered, in both branches, by committees entirely distinct from those having to do with appropriations, occasionally resulting in inconsistency of policy quite unknown to the British House of Commons, where revenue and appropriation proposals are considered by committees (of the whole) which are indeed distinct in name but absolutely identical in personnel. Still further, whereas in Britain the ministers whose financial program is being submitted to Parliament may follow it there and, as members, explain and defend it on the floor, in the United States the executive, after having once transmitted the annual budget, has no opportunity to give it support except by messages, conferences, appearances of the Secretary of the Treasury before committees, and other more or less indirect methods. There is considerable demand in America for a budgetary procedure that will come a good deal closer to the British—one that will enable the executive to have spokesmen present in the financial sittings of the houses, and that will prevent Congress from appropriating money not asked for by the executive, or, at all events, will give the president power to veto separate items inserted in appropriation bills contrary to executive judgment.[1]

Shortcomings of the British System. It would be a mistake, however, to infer that the British system is faultless, or that every Britisher is satisfied with it. On the contrary, much criticism is heard, along with discussion of possible improvements. The system may be said to have the defects of its merits. It is coherent, integrated, and expeditious; but it is so because Parliament, while maintaining satisfactory arrangements for auditing, and still giving reasonably adequate attention to questions of taxation, has largely abdicated, in

[1] The Legislative Reorganization Act of 1946 undertook to improve matters by providing that, after submission of the president's annual budget message, the House committees on ways and means and appropriations and the corresponding Senate committees (on finance and appropriations) should form themselves into a joint committee and, with the president's recommendations before them, work out a "legislative budget" fixing a top figure for appropriations to be made during the ensuing session. Experience with the device has thus far, however, not been impressive.

favor of the cabinet,[1] that control over expenditure and over larger matters of financial planning which the legislature, under popular forms of government, is supposed to exercise.

1. Incompleteness of Financial Information Given to Parliament. Analyzed somewhat more closely, the situation presents four main difficulties. The first is the restricted and inadequate nature of the financial information given to Parliament, voluminous though it is. The budget figures faithfully present a "cash account": what has come in; what is expected to come in during the succeeding year; what has been, and what is intended to be, paid out. They do not reveal the relations of these data to the fiscal operations of other years, in respect to such matters as arrearages and the payment of taxes in advance. Nor do they distinguish items of dead expense, *e.g.*, for war, from others that are in the nature of investments, *e.g.*, the purchase of land or of equipment for the state-owned telegraph and telephone systems. In short, they fail to put the general run of members in a position to take a long view of the country's financial condition, and thus to comprehend the government's fiscal plans in all of their ramifications and bearings.

2. Lack of Time. A second and more serious difficulty is the altogether inadequate amount of time available in the House of Commons for consideration of budgetary matters, especially on the side of expenditures. As we have seen, the time allotted to appropriation proposals is only 26 days,[2] scattered over a period of some six months. For a national outlay reaching the stupendous current total of £4,000,000,000 to £5,000,000,000 a year (including recent greatly expanded defense expenditures), this is palpably insufficient. Many "votes," carrying millions of pounds of appropriations, pass entirely undebated.

3. Unwieldiness of Committee of the Whole. Furthermore, the House of Commons, sitting as committee of the whole, is too large a body to consider the estimates satisfactorily. Its deliberations must perforce take the form of slow and rather general debate; it cannot focus attention for days on some particular proposal that has been challenged, call in witnesses and experts, and conduct a searching study of the matter such as would be possible for a more compact and leisurely committee.

[1] One might almost say, rather, the Treasury.
[2] This represents a recent extension by six days, but is still inadequate.

4. Political Implications of Budget Discussions. Most important of all, perhaps, is the fact that there is next to no discussion upon the merits of financial proposals as such. These proposals have come from the government, and the government's supporters feel obligated to accept and sustain them as necessary and proper; otherwise they will seem to be inviting embarrassment, and perhaps disaster, for the ministry and the party. On the other hand, the proposals are viewed by the opposition as furnishing just so many opportunities for ventilating grievances and bringing the political policy of the government under critical review. If, therefore, a vote is challenged or a reduction moved, the question tends to become one of "confidence," and the debate proceeds accordingly. What should be free and direct discussion simply of the desirability of approving or altering the government's estimated figure resolves itself into partisan debate upon government policy generally. Few economies, therefore, are introduced from the parliamentary side.[1] Members of the party in power will not embarrass the government by urging them, and, with rare exceptions, will feel duty bound to vote them down when advocated by the opposition. The latter will let most of the majority proposals go through without challenge, concentrating its fire on a few here and there which offer the most promising chances for publicly putting the ministers on the defensive. Of dispassionate, straightforward, constructive financial criticism, there is very little.

Power of the Purse Passes to the Cabinet. The result is that, save on rare occasions, parliamentary control is largely a matter of form. The House of Lords no longer has power even to hold up, much less to prevent, the adoption of money bills certified by the speaker; the House of Commons, shorn by self-denying ordinances of the right either itself to originate proposals for expenditure or to step up the proposals submitted to it by the crown, normally assumes that the government knows best what is needed and accepts whatever proposals are offered; and while the popular branch has the right to reduce the amounts called for, or even to refuse to make any grant at all, the conditions that have been described leave it poorly equipped to exercise this power with much intelligence and

[1] In 1918, a select committee reported that in the preceding 25 years no single estimate nad ever been reduced by direct action of the House of Commons taken on financial grounds.

impartiality. Responsibility for preventing extravagance, therefore, falls almost entirely upon the executive, rather than the legislature—primarily, of course, upon the officials of the Treasury, backed up by the checking powers over actual disbursements exercised by the Comptroller and Auditor-General. Fortunately, the controls exerted by these agencies are remarkably effective, and little extravagance results. The fact cannot be got around, however, that, to all intents and purposes, the power of the purse is no longer in Parliament, except in ultimate theory, but rather in authorities which, although responsible, are to a considerable extent separate and autonomous.[1]

Proposals for More Effective Parliamentary Control. Realization of this situation has long made members of the House of Commons uncomfortable, and upwards of half a century ago select committees began to be set up to study the problem. With World War I running the nation's expenditures to unprecedented heights and parliamentary control becoming even more of a fiction than before, one more committee in the series was put to work in 1917. Reporting a year later, this agency recommended (1) more rigorous financial supervision over the departments by the Treasury, (2) appointment at the beginning of each parliamentary session of two committees charged with examining the estimates with a view to suggesting economies, and (3) acceptance all around of the principle that a motion carried in committee of supply in pursuance of the recommendations of the estimates committees should not be taken to imply that the government of the day no longer enjoyed the confidence of the House.[2] The committee's proposals have borne less fruit than was hoped. In 1920, however, one select committee on estimates was set up, with authority to examine any estimates submitted to the House and "report economies consistent with the policy implied in those estimates"; and a committee of this nature has been employed somewhat irregularly ever since.[3] All estimates, it should be observed, continue to be passed upon by the House in committee of the whole.

[1] It may be added that, whereas down to 1914 money was borrowed only with express authorization of Parliament in every instance, Government War Obligations Acts passed during World War I gave the Treasury wide discretion in the matter—somewhat curtailed, to be sure, in after years, but revived in full vigor during World War II.

[2] *Parliament and the Taxpayer* (London, 1918), by E. H. Davenport, who participated in the work of the select committee, is a vigorous discussion of the matters dealt with in the report.

[3] The gaps in its history are 1915-20 and 1939-45.

The select committee (when functioning) merely supplements the hurried work of the committee of the whole by looking into the estimates for two or three departments a year and raising questions about possible savings, the regrouping of items, and similar matters. Even so, it has justified its existence.

Obstacles. The suggested agreement under which amendments offered by members, when the House is sitting in supply, should be regarded, not as expressions of want of confidence in the ministry, but merely as business proposals to be considered in a business-like rather than a partisan spirit, has much to commend it. Ministers, however, have no enthusiasm for it (just as they have no enthusiasm for any plan under which the estimates would be sent off regularly to standing committees, as they are in the United States); for, obviously, if the principle were once adopted, the executive's present dominant position in financial matters would come to an end, or at all events be seriously impaired. The greatest single factor in the ascendancy of the cabinet is the almost positive assurance which it has that the Treasury's financial program, year in and year out, will ride through at Westminster substantially unaffected by criticism and amendments. Ministers are not always unwilling to accept alterations suggested, by friend or foe, in committee of the whole; indeed, they habitually frame their proposals in accordance with what they understand to be the parliamentary and national temper. As a rule, they will not press an issue to the point of stirring up serious antagonism. But they would not relish a state of things under which their finance bills would be in danger of emerging from Parliament mutilated and unrecognizable, or such that their fellow-partisans at Westminster would feel equally free with the opposition to offer and urge plans different from those which the Treasury had stamped with its approval. Hence, the problem remains. Cabinet government is rightly supposed to be one of the crowning glories of the British constitution. Englishmen cannot, however, help wondering occasionally whether, in the domain of finance, it has not to some extent overreached itself.[1]

[1] Reasonably up-to-date accounts of procedure on money bills include G. F. M. Campion, *op. cit.*, Chap. viii; J. W. Hills and E. A. Fellowes, *British Government Finance*, Chaps. ii-iii; and W. I. Jennings, *Cabinet Government*, Chap. vii, and *Parliamentary Reform*, Chap. vii.

CHAPTER XIV



POLITICAL PARTIES—PAST AND PRESENT

In all democratic states, people are grouped in trade unions or similar workingmen's associations, employers' and professional organizations, churches, benevolent societies, universities, and other voluntary combinations having business, educational, philanthropic, or other objectives. Cutting across such groups are combinations of voters who, holding more or less similar views on public questions, seek by concerted action to gain control of the government as a means of ensuring that the policies in which they are interested will be carried into effect. Associations of this character are known as political parties. They are not, strictly, parts of the government; they may be entirely unknown to the constitution and laws. But they impart slant and emphasis to the work of government; and any realistic survey of a government in action must, as a recent writer has asserted of the British government, "begin and end with parties and discuss them at length in the middle." [1]

PARTIES AND CABINET GOVERNMENT

Parties Essential to Responsible Government. In few, if any, other lands indeed are political parties more pervasive and influential than in contemporary Britain. In hardly any of that country's electoral areas could a person be chosen to the House of Commons except under a party label; in national elections at least, people vote to a far greater extent for a party (or, perhaps better, for the party's principal leader as actual or potential prime minister and effective

[1] W. I. Jennings, *The British Constitution* (London, 1945), 31.

head of the government) than for a local candidate, whom indeed they commonly do not know; when a successful candidate takes his seat at Westminster, he does so as a party man and is expected to support every policy for which his party stands and to vote unfailingly for every measure which its leaders sponsor. The heart of the English governmental system is the responsibility of ministers to the House of Commons; but such responsibility could hardly operate without parties. For, in the absence of such alignments, not only would the ministry itself usually lack coherence, but in the House there would be no organized element interested in upholding a given ministry, as also none of different persuasion prepared to give similar support to a group of opposition leaders coming into power. There would be little point to a ministry resigning if no opposing party—or at all events party coalition—stood ready to provide a ministry pledged to different policies and to furnish the backing necessary for carrying these policies into effect. In the words of Ramsay Muir, "it is the leadership of a party that gives to the prime minister his enormous power; it is common membership of a party that gives unity of character and aims to a cabinet; it is the existence of an organized supporting party in the House of Commons that enables the cabinet to carry on its work, and (when the party has a majority) endows it with a complete dictatorship over the whole range of government; and this dictatorship is only limited or qualified by the fear of those who wield it lest any grave blunder may weaken the party in the country, and bring downfall at the next election." [1]

Britain Characteristically a Bi-Party Country. From what has been said, it would be deduced that the cabinet system in its native habitat not only presupposes parties, but presupposes two parties only. Arising, as we have seen,[2] wholly from historical circumstances, and in no wise from plan or design, the English two-party system has persisted through two centuries and a half. To be sure, there have often been minor third parties; and the rise of Labor to major party rank 30 years ago gave the country for a time, in effect, a tri-party system. To a degree, this situation persists. But all signs indicate that the once powerful Liberal party will in future exist, if indeed it exists at all, only as a die-hard remnant, with the Conservative and Labor parties dividing most of the nation between them on

[1] *How Britain Is Governed* (3rd ed.), 116.
[2] See pp. 20-21 above.

the traditional bi-party lines. Many factors have worked together to keep the two-party system going, notwithstanding the prevalence of multi-party systems in many other countries. Logic and tradition have had something to do with it. Economic interests, as they have aligned themselves in a small and relatively homogeneous country, have adapted themselves to it. With few exceptions, major leaders have striven to maintain it—by keeping their followings from splitting apart. As the experience of the declining Liberal party shows, the single-member, majority system of parliamentary elections operates against any third, or "middle," party. The voters have so long been accustomed to bi-party that they look upon an election as simply a contest between a "government" and an "opposition." Procedure in Parliament, too, is organized and operated on the theory that a party "government" proposes and a party "opposition" opposes—each operating as a more or less unified force. And finally there are such practical considerations as the difficulty and cost of launching a new party and the even greater difficulty of enlisting good candidates and keeping up interest and zeal in the rank and file when a party can offer little except forlorn hope.

Advantages of the Bi-Party System. Cabinet systems have existed in countries having many parties, *e.g.,* in France and Italy and (in modified form) in pre-Nazi Germany. In all such countries, however, they have operated under serious disadvantages, not the least of which was the instability and confusion arising from the necessity of government by coalition. Coalition government, shared in by several or all parties, is a defensible, and sometimes almost essential, device in time of war, when domestic differences can be submerged for the sake of a single objective, *i.e.,* victory; and Britain employed it usefully most of the time during both World War I and World War II. In days of peace—as Britain's experience in certain recent periods also demonstrates—it is not likely to give general satisfaction. It is the great advantage of the two-party system that it concentrates power and responsibility at any given time in a single, recognizable, unified group of leaders, and back of them a single party; also that, as compared with multi-party coalitions such as used to give way to one another in swift succession in the Third French Republic (and continue to do so in the Fourth), bi-party makes for continuity and stability, and usually likewise for promptness and decisiveness of action. Perhaps the main disadvantage (at all events, some people

consider it such) is that, with only two parties, not every voter will find either one offering a combination of principles and policies which he favors—even though both must necessarily be sufficiently broad and catholic to give scope for a wide variety of opinion.[1]

A PREWAR GENERATION OF PARTY HISTORY

Parties in the Nineteenth Century. British parties with which we are here concerned are those of today, and only a word about earlier developments can be ventured. The seventeenth-century beginnings, together with the relations between Whigs and Tories, the first true parties, after the Revolution of 1688-89, have been indicated in an earlier chapter.[2] For a century and a half thereafter, the two parties controlled the government by turns, each usually keeping the upper hand for a considerable period at a stretch. The Whigs were paramount under the early Georges; the Tories, gaining power in 1783, dominated throughout the time of the American and French Revolutions, and indeed until the Duke of Wellington's cabinet was swept from office in 1830. Except for two or three brief intervals, the Whigs were again on top from that date until 1874. At the outset, they were hardly less aristocratic than the Tories. After 1832, however, they were reënforced and appreciably liberalized by the infusion of newly enfranchised middle-class townspeople, and their first decade of restored power became a period of noteworthy and long-awaited reform. This was the time, too, at which the more familiar party names of later days came into use, the term "Whig" giving way to "Liberal" and "Tory" to "Conservative."

At the middle of the century, the question of tariff policy split both parties, although chiefly the Conservatives, and for a time party lines were shadowy. Under the leadership of Gladstone and Disraeli, respectively, however, Liberal and Conservative morale was reëstablished after 1860-65; and throughout the remaining decades down to World War I the see-saw continued, with the Liberals in power chiefly in 1868-76, 1880-86, 1892-95, and 1905-15, and the Con-

[1] The relations between parties and the cabinet system are discussed more fully in A. L. Lowell, *The Government of England*, I, Chap. xxiv. Cf. G. M. Trevelyan, *The Two-Party System in English Political History* (Oxford, 1926). Curiously, there is no convenient general history of English parties. However, a recent publication of the Hansard Society, edited by S. D. Bailey, entitled *The British Party System* (London, 1952), while not going into a detailed historical treatment, provides much useful information presented by various experts.

[2] See p. 21 above.

servatives in 1874-80, 1886-92, and 1895-1905. The Liberals now posed as the party of political reform, and many weighty achievements are to be set down to their credit. More inclined to keep things as they were at home and to place stress on foreign and imperial policy, the Conservatives, on their part, nevertheless lent a good deal of aid to such causes as suffrage extension and social, industrial, and local-government reform, and on many, if not most, matters the parties differed rather on the degree and speed of action than on whether there should be action at all. One issue on which there was genuine division was that of meeting Ireland's persistent demand for home rule; and out of this arose, in the closing decades of the century, a significant shift from Liberal to Conservative ranks. Unwilling to support or tolerate the Liberal home rule program, most elements of wealth and station in the party seceded, and, after drifting for a time as Liberal Unionists, gravitated into the Conservative camp—even giving the party a new name, Unionist, by which it was commonly known for a generation, although the term Conservative is again in our day in general use. But the migration was significant, because thenceforth the upper social and economic classes were consolidated under the Conservative banner as never before.

At the turn of the century, the Conservatives were in the saddle, with their rivals suffering from chronic factional strife following the removal of Gladstone's strong hand from the helm. Still interested primarily in international and imperial matters, the governing party led the country into a war in South Africa, which, although successful enough, was not particularly glorious; and the resulting high taxes, together with sharp dissension in Conservative ranks precipitated by Joseph Chamberlain's proposal for a system of protective tariffs, gave the Liberals incentive to pull themselves together and enabled them, in 1905, to capture control of the government. In a general election held early in 1906, the rehabilitated party obtained the most impressive parliamentary majority known to the annals of British parties down to that time.

A Great Liberal Decade (1905-15). The next decade was a notable period of Liberal rule. To be sure, the huge majority of 1906 melted away at the elections of 1910. Supported, however, by the Irish Nationalists and by the rising Labor party, Liberal ascendancy went on without interruption until after the outbreak of World War I in 1914. Few decades in modern English history have been more

productive of significant legislation or more provocative of constitutional discussion. Bent upon carrying out an ambitious program of economic, social, and political change, the Campbell-Bannerman and Asquith governments found their main obstacle in the massive Conservative majority in the House of Lords; and the outstanding development of the period became the curbing of the powers of that body as accomplished in the Parliament Act of 1911.

World War I and Seven Years of Coalition. When, in the summer of 1914, war with Germany became a certainty, leaders of all parties and groups joined in a truce designed to shelve controversial matters and stop partisan activities for as long as the conflict should last. With a party ministry in office, however, and with the war presently giving promise of being far more protracted than had been anticipated, dissatisfaction arose, and with it the idea that the ministry ought to be reconstructed so as to include, for the period of the emergency, the ablest men who could be brought together from all parties. The upshot was the adoption, in May, 1915, of a scheme of coalition, the Liberal prime minister, Asquith, remaining at the helm, but distributing the ministerial posts in approximately equal numbers between Liberals and Conservatives, with also some representation for Labor. No one would have supposed that seven long years would pass before Britain would again have a ministry made up on the traditional party basis. Yet so it proved.

The chief developments of the intervening years must be indicated briefly. To begin with, while the coalition (headed from 1916 by David Lloyd George) outlasted the war, the party truce did not. Almost at once, internal dissension broke the Liberal party asunder, with a vigorous minority wing going into opposition; early in 1918, Labor went into opposition also; and by the time of the armistice of November 11, 1918, party strife was almost as vigorous as before the war. Moreover, three days after hostilities were suspended, a parliamentary dissolution was announced; and in December the people went to the polls at the first general election that the country had known since 1910. The contest, too, was of novel character. Not only were women voting for the first time, but the ordinary two-way party battle was replaced by a trial of strength between a coalition government seeking a fresh lease on life and two opposition parties whose physiognomy would hardly have been recognized by one acquainted only with prewar politics—the Independent

Liberals, bent on reviving a united Liberal party, and Labor, now grown to the stature of a major party and prepared to wage the most vigorous campaign of all.

There was little room for doubt that the coalition would win, but in the outcome its margin of victory—478 seats in a new total of 707—exceeded all expectations; the Independent Liberals captured only 28 seats, Labor only 63. From a party viewpoint, the significant thing, however, was that Unionists (Conservatives) in the new House of Commons heavily outnumbered the adherents of all other parties. The country had "gone Unionist"; and while the coalition had won as a coalition, and as such had its desired mandate to proceed with extricating the nation from the war and preparing it for peace, the anomaly of a multi-party ministry under a Liberal premier confronting a substantial Unionist majority in the Commons could but suggest that the time for regular party government was not far off. The situation lasted longer than might have been expected. But, when, weakened by internal differences, the cabinet, in 1922, determined upon another general election, the Conservatives had no difficulty in deciding to go into the campaign as an independent party, or in winning another absolute majority of seats. Thereupon, of course, coalition ended and straight party government was revived.

Efforts to Rehabilitate the Liberal Party. As we now can see, the war-time schism in the ranks of Liberalism started a great historic party on a downward course from which there has been no turning back. To be sure, there were efforts to recapture the unity and strength of prewar times. But there also were insuperable obstacles. Between the two wings—now functioning as quite separate parties—and especially between their leaders, Asquith and Lloyd George, there was deep disagreement; in addition, moderate Liberals were gravitating into the Unionist, or Conservative, ranks and more radical ones into the fold of Labor. People were saying that the once powerful party had had its day, that its work was done; and not a few Liberals, or ex-Liberals, seemed themselves to be of that opinion. Nevertheless, the coalition once broken up and the Lloyd George following left without anchorage, the chances for a reunion of the party were considerably improved. The election of 1922 failed to bring it about; but when, in the following year, Stanley Baldwin—who in the meantime had succeeded Bonar Law as Conservative leader and prime minister—unexpectedly precipitated a general elec-

tion with a view to securing a national mandate in behalf of a program of protective tariffs, the opportunity to rally to the defense of the historic Liberal principle of free trade turned the trick, and seven dreary years of schism were brought (at all events outwardly) to an end. Asquith and Lloyd George became reconciled; the two Liberal parties merged into one. Against great odds—internal dissension which sometimes amounted to renewed schism, the powerful pull of Labor, and an electoral system which undoubtedly worked to Liberal disadvantage—able and ambitious younger Liberals labored for a decade to bring back the party to its old position, with a certain amount of success so far as popular support went, though with little or none when measured in terms of representation at Westminster. In 1931, the party again broke into fragments, which have never been reassembled.

Labor Becomes a Major Party. Contributing heavily to the Liberal débâcle had been another turn of the political wheel, *i.e.*, the emergence of Labor as a major party; and to this development a word must now be devoted. Speaking broadly, the Labor party is a product of two chief principles or forces playing upon the broadened electorate created by the reform acts of 1867 and 1884. One of these is trade-unionism; the other is socialism. The one has contributed, mainly, the funds and the votes; the other, the leadership, the energy, and the spirit. Trade unionism long existed, however, and organized socialism assumed considerable importance, before there was any attempt to weld British workingmen into a political party; indeed, the British Labor party is a full generation younger than most Continental socialist parties. Occasional workingman candidates were elected to the House of Commons in the later nineteenth century, but usually under the Liberal banner; and although a small Independent Labor party was formed in 1893, it won no seats before 1900. In the last-mentioned year, a new and less radical organization known as the Labor Representation Committee began working for a separate labor group at Westminster; and six years afterwards, heartened by the capture of 24 seats, it dropped its modest title and confidently assumed the name of "Labor party," with the "I. L. P." as a closely affiliated unit. From that day forth, there has always been a Labor party in the field. On the eve of World War I, however, the party was still hardly more than an appendage of Liberalism, concentrating its energies mainly upon helping the Liberals with

their program of social reform, and having usually not more than 40 or 45 seats in the House of Commons. As a third party, its outlook, in the face of the deeply entrenched bi-party system, did not appear particularly promising.

But war-time conditions changed the situation profoundly. Workingmen grew more class-conscious; the bi-party system gave way to coalition; party ties grew weaker; Labor leaders like Ramsay MacDonald and Sidney Webb rallied impressive support; and by 1918 the party, reconstructed under a new constitution, was ready to advance into a new and more impressive stage of its history. The new constitution, indeed, put the party on a far better basis for going ahead. Previously, there had been only a federation of trade unions, socialist societies, and similar organizations, and a person could become a member of the party only by virtue of belonging to one of these constituent groups. Dating from a time when the party was conceived of as for manual workers only, this narrow basis was now discarded and a membership clause adopted which opened a way for any man or woman to join the party simply by becoming identified with a local labor party in a constituency. Also, the new constitution made it clear that "workers by brain" were no less welcome than "workers by hand." In short, a party grounded upon occupational and class distinctions deliberately invested itself with a broadly national character; and while the trade unions continued—as they still do—to form the backbone of it, their dominance was to some extent curbed as people from "white collar" walks of life multiplied in the party ranks.[1]

The Situation after the Election of 1923. In 1918, the reoriented party polled six times as many popular votes as at the

[1] The antecedents and earlier growth of the Labor party are described in G. D. H. Cole, *Short History of the British Working Class Movement,* 3 vols. (New York, 1927), and M. Beer, *History of British Socialism,* 2 vols. (London, 1919-20). For a brief account, see F. A. Ogg, *English Government and Politics,* 545-557. In terms of electoral results, the growth of the party (to the schism of 1931) was as follows:

Year of General Election	Seats Contested by Labor Candidates	Popular Vote Polled	Seats Won
1906	50	323,195	29
1910 (Jan.)	78	505,690	40
1910 (Dec.)	56	370,802	42
1918	361	2,224,945	57
1922	414	4,236,733	142
1923	427	4,348,379	191
1924	514	5,487,620	151
1929	590	8,292,000	289

last previous election (1910), although winning only 15 more seats. In 1922, however, a popular vote only a million and a quarter short of that of the victorious Conservatives doubled Labor's parliamentary quota and gave the party for the first time undisputed possession of the Front Opposition Bench in the House of Commons. In the election of 1923, the Conservatives polled more popular votes than the year before, the reunited Liberal party more than the two Liberal parties together on the earlier occasion, and Labor also slightly more than before. Votes, however, were so differently distributed in the constituencies that while the Liberals came off with 45 more seats and Labor with 49 more (a total of 191), the Conservatives suffered a loss of 86. No party had a majority. The Conservatives had a decided plurality. But they had gone to the country with a program on which they had been beaten, and if party government meant anything at all, they were due to surrender the reins. There was talk of an attempt at Conservative government by minority; also of a return to coalition. But neither proposal stirred enthusiasm, and to the consternation of many shuddering men and women, the Laborites—having 32 more seats than the Liberals—were invited to take the helm.

The First Labor Government (1924). The position of the new MacDonald government was, however, from the outset weak. Lacking any majority of its own in the House of Commons, its only hope of remaining in office lay in a loose understanding with the Liberals, backed by apparent willingness of the nation, recovering from its initial nervousness, to give the new régime a fair chance, yet an understanding that might break down at any moment. So situated, and motivated by the new sense of responsibility commonly springing from holding office, the government quietly put aside radical party objectives such as "socialism in our time," devoting itself instead to measures which in the main might, under similar conditions, have been undertaken by either of the other parties; and a record of some achievement was attained, particularly in foreign relations. With tenure so precarious, however, any sudden gust of political wind might mean the end; and in 1924 the expected happened. Left in the lurch by the Liberals and badly beaten in the House of Commons on a matter relating to curbing Communist activities, the cabinet procured a dissolution and appealed to the country—only to see the party's popular vote increased by a million

but its parliamentary quota reduced by 40 seats. Polling almost a majority of the popular vote and winning a heavy majority of parliamentary seats, the Conservatives came back to power; and for five full years, that party, with Stanley Baldwin as prime minister, remained on top.

Nor when, in 1929 (with Parliament's five-year mandate expiring) a new general election was held, did many people expect a change of situation. Political forecasters, nevertheless—particularly those with Conservative sympathies—received a shock. In a contest in which three-cornered contests were the rule rather than the exception, and only seven candidates were unopposed, the Conservative parliamentary position was shattered; 400 seats were reduced to 269. Even the Liberals, polling a popular vote twice as heavy as in 1926, picked up a little parliamentary strength; while Labor, rising from the depths, achieved the greatest triumph that it had known—a popular vote (8,292,000) within a quarter-million of the Conservative vote and a parliamentary quota of 289 seats—not a majority, to be sure, but only 19 short of it. Clearly repudiated by an electorate which had voted two to one against it, the Baldwin government promptly resigned, and a second Labor ministry took the reins, with MacDonald again prime minister.

The Second Labor Government (1929-31). This time, a brief period in office culminated in what appeared irreparable disaster for the party. Handicapped by dependence upon Liberal support as in 1924, and by a widening breach between the older leaders, sobered by responsibility, and a majority left wing bent upon immediate socialization, the government again won some successes in foreign and imperial affairs. On the domestic side, however, there was little but trouble; the announced policy of "one small step at a time" resolved itself into not many steps, even small ones. Already in a bad way economically, the country saw conditions grow steadily worse, in spite of all that the government could do, and by 1931 was face to face with disaster. In the midst of crisis, experts recommended drastic financial procedures which MacDonald resolved to follow; and when most of the cabinet refused to go along, he brought his second Labor government abruptly to an end by handing in the ministry's resignation. A new government was, of course, made up, and with MacDonald at its head. Far from being a Labor government, however, it was a so-called "national" government, with a few Labor men who

had stood with MacDonald included, but composed mainly of Conservatives and Liberals; and once more the country found itself saddled, if not technically with coalition, at all events with something quite different from straight party government. From its peak of political strength reached in 1929, the Labor party again fell to the depths. MacDonald and every other leader who had supported him in the crisis were promptly expelled; and when the new "national" government sought popular endorsement in a general election, it won the stupendous total of 556 seats, leaving Labor (polling 1,750,000 fewer votes than in 1929) with but 52. Only a party of great potentialities could have recovered from such a blow.

A Decade of "National" Government. The approximate decade from 1931 to the outbreak of World War II was a curious and somewhat confused period in British political history. The first three and one-half years were particularly anomalous, because whereas MacDonald's combination ministry, backed by the largest majority in the House of Commons that any English ministry had ever known, remained in office, its parliamentary majority not only was predominantly Conservative but contained enough Conservatives to constitute, of themselves, a heavy majority of the entire House membership. Surrounded, too, by a cabinet predominantly Conservative, the former Labor leader became virtually a Conservative prisoner and ended not only by being overshadowed by the Conservative leader (still Stanley Baldwin), but by being obliged to throw his former political principles overboard wholesale. Under such circumstances, the prime ministership fell to the lowest level known in a hundred years, with little prospect of revival until, in the early summer of 1935, MacDonald, partly for reasons of health, stepped aside and allowed the situation to be at least partially regularized by the restoration of Baldwin to the premiership.

To a degree, however, irregularity continued, because the government which Baldwin inherited was still a "national," not a party, government; and such indeed it continued to be after another general election, in 1935, yielded a "national" parliamentary quota of 431 seats, of which 387 (again a clear independent majority) fell to Conservatives. In that contest, Labor, still suffering from schism, did rather better than expected; indeed it more than doubled its parliamentary strength (154 seats). The Liberals continued to slip, two conflicting wings of the party (one supporting the "national" govern-

ment and the other opposing it) gaining a total of only 54 seats. From first to last, the "national" government masqueraded as non-partisan. Every one knew, however, that—with a heavy Conservative majority in the cabinet—it was actually a Conservative government in disguise; and such it, of course, remained when, in 1937, the country-gentleman prime minister Stanley Baldwin was succeeded by the business man, Neville Chamberlain. In reality, though not in form, bi-party had been revived; Conservatives were aligned with a Conservative-dominated government; the bulk of Labor formed an actual and substantial opposition.

PARTIES DURING WORLD WAR II AND THE POSTWAR PERIOD

Wartime Coalition Again. Restoration of straight party government was, however, further delayed by World War II, which indeed, in its turn, gave the country five more years of formal coalition. When that conflict started, Prime Minister Chamberlain lost no time in forming a war cabinet of seven members; and Labor was invited to participate, with the opposition Liberals also offered non-cabinet posts. For the time being, both groups declined, alleging that they could render more effective service by "staying outside of the government." Labor, nevertheless joined with the Conservatives in an agreement under which, when by-elections must occasionally be held for filling vacant parliamentary seats, neither party would put up candidates against the other; and this "truce" was faithfully observed until near the end of the war. For several months, too, Labor and Liberals alike, although maintaining their otherwise independent position, gave the Chamberlain government full support in actions called for by the war.

The spring of 1940, however, brought a change of situation. Growing dissatisfaction with the government's conduct of the war was brought to a climax by humiliating failure of British operations against the German position in Norway, and the upshot was a drastic reorganization (May 11, just as Hitler was invading Holland and Belgium), not only replacing Chamberlain by Winston Churchill as prime minister (with a new war cabinet of five members set up), but with agreement of both Labor and opposition Liberals to go into coalition. With the electoral truce of course continuing, coalition, furthermore, lasted until after the German surrender in May, 1945. Each party naturally maintained its own internal organization, and

The Labor party continued to hold its annual party conference, and, according to the Conservatives, maintained its internal organization, while the latter declare that they completely suspended operations during this period.

Its Termination Envisaged. As the fortunes of war fluctuated, parliamentary and popular discouragement and criticism from time to time gave the government unhappy moments, from which, however, it commonly emerged in a stronger position than before; after all, there was no possible alternative to it. Nevertheless, by 1943 the end of the coalition began to be clearly foreshadowed. Victory over the totalitarian powers, if certainly not yet in sight, was reasonably assured; public interest was running ahead to times of peace, and peace problems were beginning to be discussed; politicians and people were looking to days when the overriding need for unity in war would be relaxed; party life and spirit were showing signs of revival, and there was even talk of terminating the truce. Immediate wartime end of coalition was out of the question. But official hints about continuing it after the war elicited little response. In a radio speech during March, the Prime Minister made a direct bid for a postwar all-party government to carry out a four-year program of social reconstruction; but the proposal fell flat. In its annual conference, indeed, Labor, while voting decisively for adherence to the truce, served notice that the party would not go into any postwar general election on a basis of coalition; and from that time on it was generally assumed (1) that, while the Conservatives and Liberals would probably be willing to see coalition continued, Labor would secede as soon as Germany was beaten and without waiting for the final blow to be administered to Japan; (2) that a general election on normal party lines—the first since 1935—would follow; (3) that this election would result in a substantial Conservative victory, with regular party government resumed; and (4) that the Prime Minister would have to fill in the interval between Labor's withdrawal and the election with an improvised and temporary government lacking popularity and unable to accomplish much.

Labor Gains Full Power—The Election of 1945. All of these expectations were fulfilled to the letter except one: Labor, not the Conservatives, won the election. Soon after the German surrender, Churchill made another bid for continuance of the coalition, at least until after Japan should have been brought to her knees. At the same

time, he served notice that in case of refusal he would have no alternative to asking the king for an early parliamentary dissolution. Much parleying ensued. Clement Attlee and other Labor leaders would have preferred to stand by the coalition until Japan was disposed of. But the Labor rank and file wanted to go to the country with the party's full socialistic program as speedily as possible; and in the end the Prime Minister's overtures were rejected, not only by the non-coalition Liberals, but, more important, by Labor as well. Consequently, after five years, the coalition broke up. Hastily putting together a "caretaker" government, composed chiefly of Conservatives, and restoring the cabinet to something like its normal size, Churchill announced that Parliament would be dissolved on June 15, with June 25 as nomination day and July 5 election day. At the date of dissolution, the Conservatives held, in a House of Commons dating from 1935, a total of 358 seats; Labor held 163; two Liberal groups held 44 between them; sundry smaller "parties," along with independents, had a total of 43; and seven seats were vacant. The election fell at a time when Prime Minister Churchill was obliged to be at the Potsdam Conference; and Mr. Attlee, Labor leader, was invited to go along, in order that if a Labor victory precipitated him into the premiership, he would be fully informed on the international situation and prepared to take over.

Before the polling, there were indications of a leftward swing; but few people foresaw anything approaching what happened. With 11,900,000 popular votes (nearly 4,000,000 more than in the last previous election, and more than any British party had ever before amassed), Labor captured 393 seats; with 8,900,000, the Conservatives obtained 198; with 2,200,000, the Liberals obtained 12.[1] To a degree, the reasons for so violent an overturn—the greatest that any British party had achieved in a hundred years except for the Liberal victory of 1906—left political analysts baffled. But some are quite apparent. For one thing, the Conservative party had dominated successive British governments for 24 out of the last 27 years, and a weary people, sorely tried by war hardships and scarcities, considered that almost any change might be for the better; many voted not so much pro-Labor as anti-Conservative. In the second place, Labor had the most positive and challenging program, presented also, on the

[1] For the first time since 1910, the Conservatives failed to poll more popular votes than any other single party.

whole, with greatest effectiveness. Throughout the war period, too, Labor had maintained superior party morale, and also, with the aid of the trade unions, had kept its constituency organizations more nearly intact. In addition, the old charge could no longer be voiced that Labor leaders were inexperienced in government; for not only had there been two earlier Labor administrations, but many of the top men (such as Attlee, Cripps, and Morrison) had held responsible and trying posts, carrying seats in the cabinet, throughout most of the war period. In the main, the country districts remained faithful to the Conservatives. But in the cities and towns, the working and lower middle classes, swollen in numbers by wartime dislocations, swung to Labor as never before. The servicemen's vote, too—constituting perhaps one-eighth of the total—went so heavily for Labor that Conservative candidates are believed to have received hardly more than one-quarter of it.[1]

The Election of 1950. Although there were predictions of a general election before the end of the statutory five-year period in 1950, Labor, with its handsome majority in the House of Commons and elaborate program of legislation, saw no reason to call for new elections until February 23, 1950. Pointing to its ambitious program of nationalization and welfare services, Labor asked the electorate to indicate its approval by returning the Labor candidates to the House of Commons. Still smarting under the defeat of 1945, Winston Churchill and his fellow Conservatives carried on a fairly vigorous campaign and, while not objecting to the major steps taken by the government during the years 1945-50, sharply criticized the techniques used, the wastage of public funds involved, and the weakness displayed by the Labor party. The turnout on election day—approximately 84 per cent—indicated widespread popular interest despite the lack of enthusiasm which some had observed in the campaigning. The 12 university seats, the double vote permitted certain business men, and the 12 double-member constituencies had been eliminated by the Representation of the People Act of 1948, and 625 single-member seats were at stake. Only 80 of the 625 constituencies remained the same as in 1945 as the result of the redrawing of boundary lines carried on under the Representation of the People Act of 1948.

[1] The 1945 election is treated in full detail in R. B. McCallum and A. Readman, *The British General Election of 1945* (London and New York, 1947).

Labor polled 13,265,610 votes, or some million and a half more than the record set in 1945, but its parliamentary representation sharply fell from 393 seats to 315. The Conservatives won 11,166,026 votes and increased their seats from 198 to 298. The Liberals, eager to stage a comeback, had put up over four hundred candidates who attracted 2,621,489 votes, but elected only nine members. The Communist vote fell from 102,780 to 91,815. The election was a disappointment to both major parties because it provided defeat rather than victory to the Conservatives and gave Labor such a narrow margin of votes in the House of Commons. The Conservatives maintained that the election indicated the lack of trust of the people in Labor. While denying such a charge, Labor apparently did consider the election results as evidence of doubt on the part of large numbers of people as to the wisdom of the nationalization program, and decided not to press for the nationalization of the cement and sugar beet industries and industrial insurance.[1]

The 1951 Election. With its narrow margin of seats in the House of Commons, Labor would have found its path difficult even if the Conservatives had not resorted to various techniques such as prayers in the House of Commons to delay action and increase the pressure. An early general election was widely predicted and actually came on October 25, 1951, less than two years after the 1950 election. The Conservatives promised to repeal the Iron and Steel Act, to return road transport to private ownership, to restore the university seats, and to give attention to the reform of the House of Lords and local government if returned to power, but otherwise did not oppose what Labor had put on the statute books. Labor pointed to its accomplishments since 1945, but did not stress an extension of nationalization. In general, the campaign was less vigorous than might have been expected. Constituencies remained the same as in 1950; popular participation fell from 84 per cent to 82.8 per cent. Labor attracted 13,911,582 votes (48.72 per cent), more than half a million in excess of its vote in 1950. The Conservatives polled 13,708,773 votes (48.05 per cent) which were less than their opponents received. The Liberals, who remembered the many forfeited deposits in 1950, put up only some 100 candidates and drew 723,550 votes. But Labor found itself with only 295 seats in the House of Commons, while the Conserva-

[1] The 1950 election is analyzed in H. G. Nicholas, *The British General Election of 1950* (London, 1951).

tives, though a minority party, could claim 321. The Liberals elected only six members. The Labor government consequently gave way to a Conservative government headed by Winston Churchill. There were various explanations of the Labor defeat despite the record established in attracting votes, the most common probably being the new system of fixing constituency boundaries and the small number of candidates put up by the Liberals. The slight margin of seats held by the Conservatives made their hold a precarious one.[1]

THE PARTY SITUATION SINCE 1945

The Party Situation Summarized: 1. A Bi-Party System Assured. As the political pattern has developed in recent years, one is warranted in assuming that for a good while to come Britain will remain essentially a two-party country, with Conservative and Labor governments alternating as Conservative and Liberal governments used to do, and with the regular rhythm interrupted only by coalition when forced by emergency.[2] To be sure, there still is a Liberal party; and its popular vote of 2,621,489 in 1950, although far under that of 15 years earlier, proved it a factor by no means to be ignored. Notwithstanding, however, that the party's leaders cling to the idea of maintaining and rebuilding it, the prospect is that it will continue to shrivel, becoming eventually a mere residue of "die-hards." The election of 1951 found the Liberals polling only 730,551 votes, or less than one-third of the number in 1950—accounted for in some measure, it is true, by the reduced number of candidates put up.

2. The New Basis of Party Conflict: (a) Traditional Conservative-Liberal Differences. A second feature of the current situation is the greatly altered basis of party conflict as compared with 30 or 40 years ago. Until after World War I, the historic Conservative and Liberal parties almost monopolized the scene. In general, the Conservative viewpoint was that of the man who has deep respect for tradition, believing it the necessary anchorage of a sound social order, so that changes ought usually to be made gradually and after the need has been thoroughly demonstrated—the point of view, too, of the man who accepts vested interests and rights as part of the natural order of

[1] For a general discussion of the 1951 election, see H. G. Nicholas, "The British General Election of 1951," *Amer. Polit. Sci. Rev.*, June, 1952; and D. E. Butler, *The British General Election of 1951* (New York and London, 1952).

[2] "England," said Disraeli, "does not love coalition." To this W. I. Jennings adds that "coalition ministers do not love each other." *Cabinet Government*, 205.

things and would go to any reasonable length to protect and preserve them. The Liberal party which was less wedded to tradition and less concerned about vested political rights, though including many of the largest landowners and great industrialists, favored a *laissez-faire* policy. Concretely, the Conservatives habitually championed the prerogatives of the crown, the independence of the House of Lords, the privileged position of the Anglican Church, the interests of the landholders, private property, national unity and strength, and the preservation of the Empire. To a greater extent, the Liberals concerned themselves about the needs of small-scale agriculture and business, the promotion of industry, the interests of the consumer, and larger rights for people within the Empire, including home rule for Ireland. To be sure, the two parties were separated by no hard and fast boundaries. Sometimes individual Conservatives, and even the party as a whole, showed more interest in social and industrial legislation (Disraeli affords an example) than did individual Liberals, or Liberals collectively; sometimes they evidenced a loftier conception of the social responsibilities of wealth. On many fronts, however, there were significant differences and contrasts.

Then came the rise of the Labor party, completely changing the picture. After all, the two older parties had a great deal in common. Both accepted the general framework of government within which they operated. Both accepted the capitalist system and the concept of free, individual, competitive enterprise. Both regarded suffrage, tariff policy, social legislation, and the like as matters on which they might differ, but only as being day-to-day questions on which settlements, often by compromise, could be reached by the peaceful routines of governmental processes. Each regarded the other as a respectable and legitimate segment of the body politic, capable of conducting the affairs of state without bringing down the house on the heads of its tenants. "The men who directed the destinies of both circles [*i.e.*, parties] came, broadly, from the same social environments; they spoke the same language; they moved in much the same circles; they depended on 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 (and many did so) without any alteration of fundamental doctrine." [1] The English writer quoted goes on to say, indeed, that "since 1689, we have had, for all effective purposes, a

[1] H. J. Laski, *Parliamentary Government in England* (New York, 1938), 73.

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." [1]

(b) Labor and the Change of Situation. The rise and growth of the Labor party brought a basically new situation for a number of reasons, but primarily because it raised up, over against the Conservative-Liberal forces which until now had monopolized government and politics, a new, expanding, presently formidable, and eventually dominant political force envisaging a markedly different social order and a correspondingly novel rôle for government in bringing about that order and maintaining it. The ideal and objective of Labor was the socialist state, to be achieved through the progressive curtailment of individual competitive enterprise and the substitution therefor of public ownership, operation, and control. In this lay a challenge to the entire economic and social system of the past, and obviously to the historic parties by which that system had been supported and maintained; and as a result, party politics became a battle no longer merely between two political elements agreeing on fundamentals and contending only over relatively superficial issues of degree and timing, but between two sharply opposed political philosophies struggling to hold, or to capture, the allegiance of the British people. In this situation, old party lines crumbled. The logical party to hold the fort against the new assault was, of course, the Conservatives. For Liberals, nothing was left except a middle-ground position, which soon proved untenable; and the bulk of their party wound up by gravitating into one or the other of the two major parties—Conservative and Labor—between which the issues of the future plainly lay. When the general elections of 1950 and 1951 came around, there were just two great contenders for popular favor and support—a Labor party bent on driving ahead with its welfare and nationalization programs and a Conservative party prepared more than might be expected to accept and perpetuate some things that a Labor government had already achieved, but certainly determined upon putting the brake on and restoring public policy to many of the older ideas and ways.

(c) Social and Geographical Distribution of Party Strength. From what has been said, one would deduce that there have been

[1] *Ibid.*, 72.

great changes in both the social and geographical distribution of party followings in the past 30 years. In the Conservative ranks are still to be found most of the people of wealth, title, and social position; many university graduates and members of the bar; a preponderance of leading merchants, manufacturers, and financiers; most larger landowners, with many lesser ones and a generous representation of agricultural laborers, together with millions of ordinary folks. In some of these categories, especially the professional and commercial, there have been important accessions from the disintegrating Liberal party. On the other hand, Labor has cut into the same categories; even the agricultural classes, once so solidly Conservative, have been invaded. It still suffices to say, however, that the great numerical strength of the Conservative party lies in the commercial centers, the wealthier residential sections of cities, and the rural areas. In its days of humble beginnings, the Labor party enlisted chiefly socialistically inclined intellectuals, trade union officials, and a scattering of urban manual laborers, although at that stage industrial workers, as also miners, were predominantly identified with the Liberal party. As the Labor party developed, it drew more and more heavily from these latter elements, contributing as it did so to the Liberal decline; and until rather recent years its numerical strength lay almost exclusively in the industrial and mining centers, with trade unionists heavily dominating its representation in Parliament and its policy-making activities. In later days, the party has acquired a far broader base. Manual workers remain with it prevailingly. But it has attracted agricultural workers and in particular has captured large sections of the "white collar" middle class. Nor is the party without adherents even in the upper strata of society—becoming, in fact, a cross-section of the British nation, with the trade unions considerably less dominant in its counsels than a generation, or even a decade, ago. Among Labor M.P.'s elected since 1945, the largest group has consisted of industrial workers and miners. But closely following in order of numbers have been teachers, business men, and journalists, with civil servants, military men, engineers, clergymen, shopkeepers, and farmers also well represented. The scene has shifted also geographically. Of the great Liberal areas of a generation ago—Scotland, Wales, and much of northern England and the Midlands, only Wales remains; and even there a good deal of ground has been lost. In the regions mentioned,

the shift has been mainly to the Conservative party, though in spots to the Labor party instead. Elsewhere, Labor—already dominant in industrial cities, large and small, and in mining areas—has cut deeply not only into former Liberal strongholds, but into Conservative ones as well.[1]

[1] For additional discussion of topics dealt with in this chapter, see R. A. Brady, *Crisis in Britain: Plans and Achievement of the Labour Government* (Berkeley, 1950); C. F. O. Clark, *Britain Today: A Review of British Political and Social Trends* (Cambridge, Mass., 1951); D. Munro [ed.], *Socialism: The British Way* (London, 1949); and the references at the end of Chap. xiv.

CHAPTER XV



PARTY ORGANIZATION AND TECHNIQUES

Despite significant differences at certain points, all political parties in Great Britain are organized in pretty much the same way; and in the case of each, the machinery falls into two main, though of course interrelated, parts, *i.e.*, that which is inside of Parliament and that which is outside. The parliamentary portion consists of three principal elements: (1) the group of party members in Parliament (more particularly in the House of Commons) considered as a whole, and commonly referred to as the "parliamentary party"; (2) the leaders within this group; and (3) the whips. The extra-parliamentary portion includes mainly (1) the local party organizations in the constituencies, and (2) the national organizations (including the highly important "central office") built up in times past by federating these local bodies.

ORGANIZATION IN PARLIAMENT

1. The Parliamentary Party. Notwithstanding an oft-observed tendency toward increased watchfulness of the people over their representatives at Westminster, the group of parliamentary members identified with any given party enjoys a large measure of independence of action almost amounting to autonomy. When a party is in power, policy-making is left very largely to the cabinet (which normally is itself, of course, a party group), yet the parliamentary party may be called into conference—as it is certain to be, at fairly frequent intervals, when the party is merely in opposition. And while the Commoners may individually, as candidates for election, have pledged

themselves before their constituents to stand for certain principles and to support certain policies, the parliamentary group is free at all times to determine its course of action, independently of any instructions either from constituents or from party organizations outside of Westminster. To be sure, decisions may often be reached by the leaders alone—in the case of the party in power, by the prime minister or cabinet—and meetings of the parliamentary party may be designed not so much for deliberation as merely to give the leaders a chance to instruct and spur their followers. But in any case, there will be no disposition to deny to the party members at Westminster full legal and moral right to be guided by decisions arrived at on the spot. The situation in the Labor party is on paper somewhat different, in that the party constitution requires the parliamentary representatives, singly and collectively, to "act in harmony with the constitution and standing orders of the party," and also enjoins that the national party executive and the parliamentary labor party shall jointly discuss matters of party policy at the opening of each parliamentary session, and at any other time when either body may desire such conference. This undoubtedly imposes some restraint. In practice, however, Labor's parliamentary group enjoys substantial autonomy: it selects the party leader and deputy leader, appoints whips, makes and enforces standing orders, and decides upon tactics with quite as much freedom as in the case of the other parties; only on the matter of principles is it bound.[1]

2. The Party Leaders. If the truth be told, it is not, in any party, the parliamentary group as a whole that takes front rank as a party agency, but rather the chiefs or leaders. In the case of the party in power at any given time, this means the cabinet.[2] For parties out of power, it means a somewhat less definite, yet perfectly recognizable, group of men who, if the party were to come to power, would assume most or all of the cabinet posts. At the head of the group, in either situation, stands *the* leader, designated as such, under practice of the Conservatives, for as long as he will serve and retains confidence, chosen for a year at a time in the case of the other parties. The Conservative leader is chosen by a committee composed of the party members in the House of Commons, the Conservative peers in the House of Lords, members of the Conservative National Union Execu-

[1] See J. M. Burns, "The Parliamentary Labor Party in Great Britain," *Amer. Polit. Sci. Rev.*, Dec., 1950.

[2] The subject is here discussed in terms of regular party government. Under coalition government, the government leaders are drawn from different parties.

tive Committee, and Conservative parliamentary candidates; the Labor leader is named by the Labor parliamentary party. His is the voice that is most influential in policy and tactics; his the power at times, particularly if he happens to be a famous prime minister, to commit the party singlehandedly by his assertions and promises and to define its course of action. Leaders may try to get along without convoking the parliamentary party except at times of crisis, but there is a continuous exchange of ideas between the leader and the party.

3. The Whips. Each group of leaders has, in each house, the assistance of a number of "whips." These are in all cases members of the house in which they function, although by custom they take no part in debate. The government whips in the House of Commons are usually four in number, *i.e.*, the chief whip, who holds the office of Parliamentary Secretary to the Treasury, and three Junior Lords of the Treasury.[1] They are, of course, ministers, and, as such, are paid out of public funds. The whips of the opposition parties, usually three for each, are private members, named by the party leader (by the parliamentary party caucus in the case of Labor), and unsalaried. The functions of the government whips consist, chiefly, in seeing that the ministry's supporters are at hand when a division on party lines is to be taken, keeping the ministers informed on the state of feeling among the party members in the house, bringing pressure to bear upon negligent or rebellious members, acting as intermediaries in making up slates for select committees, and serving as government tellers when a division is to be taken on party lines. "Stage managers," Ostrogorski calls these officials; "aides-de-camp, and intelligence department, of the leader of the house," they are termed by Lowell. The duties of the opposition whips are of similar nature, with allowance made for the differences arising from the fact that the leaders whom they serve are not in office but only hope to be.

ORGANIZATION OUTSIDE OF PARLIAMENT—THE LOCAL ASPECT

A Product of the Last Hundred Years. Outside of Parliament, party organization developed relatively late; local machinery in the constituencies made its appearance only after the Reform Act of 1832, and the first party organization to operate on a nation-wide scale was founded less than 85 years ago. The reasons are not

[1] Conservatives, Laborites, and Liberals have two whips each in the House of Lords.

difficult to discover. Prior to 1832, parliamentary seats were, in many boroughs, dispensed as patronage, or sold to the highest bidder; in most other constituencies, county and borough, there was only a handful of voters, with little of what we call group consciousness; only here and there—as in the borough of Westminster—was the electorate large enough to form any real basis for party groupings. The act of 1832, however, changed this situation considerably. Half a million persons were added to the electorate; the rule was introduced that no one might vote unless duly registered; and in practically all constituencies the choice of representatives was thrown into the hands of a considerable number of people. In numerous places where elections had previously been merely a matter of form, there were now to be genuine contests, with the difference between success and failure measured in terms of the number of qualified and registered voters who could be got to the polls. The lesson for party leaders and supporters, national and local, was obvious: agencies must be created which would see to it that the new voters were registered, instructed, canvassed, and, when necessary, stirred to action at election time.

Early Registration Societies. The device hit upon was the registration society, which thus became the earliest form of local party organization. Almost as soon as the Reform Act was on the statute book, societies of this nature, both Conservative and Liberal, appeared in certain constituencies, and by 1840 they were common throughout the country. At first, they confined their activities largely to getting inexperienced, and often apathetic, voters on the parliamentary register and keeping them there—those, at all events, who could be depended upon to vote right. But presently they added canvassing voters (new and old) in their homes, supplying them with information about the candidates and the issues, persuading the hesitant, and rounding up the faithful at the voting places. When another million was added to the electorate in 1867, the responsibilities of these societies were augmented; and of course they were further increased in 1884. For a time, the societies did not attempt, except in isolated instances, to nominate candidates. Men were left to announce themselves to the voters; or, at most, selections were made by a few influential leaders. Sooner or later, however, the local organization was bound to come to feel that this important function, too, lay within its province.

Rise and Spread of the Caucus. This development was fostered by the rise of the caucus. The term "caucus" has somewhat sinister associations in American politics; many movements on this side of the Atlantic, conceived and carried out in the interest of popular control in government, have had for their object the overthrow of some kind of a caucus. But whereas the American caucus has usually been a self-constituted clique or faction operating on oligarchical lines, the British caucus was from the first a means of achieving broader democracy. The initial appearance of the caucus in its British form was in the city of Birmingham, where, during the 1860's, the Liberals adopted the plan of assembling all of the party members in each ward in a caucus, each such meeting choosing a ward committee, which, as the machinery was perfected, began sending delegates to a central convention representing the entire city. The principal author of this plan was Joseph Chamberlain, then a Liberal, although destined to play his memorable rôle as a national statesman under the Conservative banner; and it is interesting to note that Chamberlain had visited America and had some acquaintance with conventions, caucuses, and other party devices on this side of the Atlantic. The new scheme was viewed dubiously by many Englishmen as likely to prove a first step toward the rule of rings and bosses then notoriously prevalent in American cities. But it was proceded with, and the general election of 1868 afforded convincing demonstration of its effectiveness. Birmingham, it is necessary to note, was one of a limited number of boroughs in which, with a view to assuring some representation for minorities, the Reform Act of 1867 required electors to vote for fewer candidates than the number of seats to be filled. Through its general committee, the Liberals' central association in the constituency both nominated the candidates of the party and guided the electors in distributing their votes in such a way that all three seats were captured, and not only these but also the city council and the school board.[1] The upshot was that the Birmingham plan of caucus and convention—of local party organization on the basis of the full party membership rather than simply of a small registration society, and with selection of candidates as well as promotion of their candidacy in the hands of the organization's central association in the

[1] For an account of this interesting episode, see M. Ostrogorski, *Democracy and the Organization of Political Parties*, I, Chap. iii. The outcome of the experiment gave the caucus as a party device a great impetus, but discouraged further adoption of "limited voting."

constituency—began spreading to all parts of the country, being taken up not only by the Liberals, but also by the Conservatives, who found it a valuable innovation.

Liberal Local Organization. Liberal organization on these lines naturally went forward faster in the towns than in the rural sections, because townspeople can be got together more easily and because the Liberal forces were predominantly urban. By the opening of the present century, however, there was a Liberal association in practically every constituency, rural and urban, in which the party was not in a hopeless minority; and this continues to be the case today. A National Liberal Federation which in 1877 brought the local associations into a common nation-wide organization, guided and advised in the formation and conduct of the local units; and this a Liberal Party Organization which superseded the Federation in 1936 still does. Aside, however, from requiring that their management shall be based upon popular representation, the National Organization lays down no positive regulations; and it is especially to be observed that the state seeks to regulate in no way whatsoever either these local associations or any other party organizations—except only as their activities may be affected by corrupt and illegal practices acts and by restrictions upon campaign expenditures. Naturally, there is a certain amount of variation. Yet, wherever local organization exists, every rural parish and small town has a primary association; every parliamentary division of a county has a council and an executive committee; every parliamentary borough is organized by wards and has officers and committees on the plan of the Birmingham caucus. Existing side by side with the general associations, which are open to both sexes, there are also separate women's Liberal associations.

Conservative Local Organization. In local organization, the Conservatives were hardly behind their rivals, and in the formation of a nation-wide league of local societies they led by a full decade. As a matter of fact, they eventually developed an even more elaborate network of local associations. As in the case of the Liberals, the authorities of the Conservative national federation recommend certain forms of organization, embracing mass meetings, committees, councils, and officials in such combinations as seem most likely to meet the needs of parishes, wards, county divisions, boroughs, and other political areas; and in the main these recommendations are carried out. In earlier times, both parties had considerably more success in organizing their

adherents in the boroughs than in the rural sections, but nowadays the difference is less pronounced.[1]

Labor Local Organization. Prior to 1918, local organizations of the Labor party took the form almost exclusively of trade unions and socialist societies, although there were a few constituency labor parties of more general scope. As explained elsewhere, the reconstruction of party machinery in that year involved mainly the reorganization of these local parties and the establishment of such parties in large numbers of constituencies previously without them; and nowadays the local party units consist chiefly of (1) trade unions, (2) socialist societies, and (3) constituency organizations composed of the local branches of trade unions and of socialist and coöperative societies, together with persons who have joined the party as unattached individuals. In many constituencies there are also women's sections, and in addition branches of the League of Youth, a special organization for persons under 25.[2] As pointed out by a national party leader, the constituency labor party is a microcosm of the whole organization, a self-contained unit governed by a representative management committee, and entitled to one delegate in the national party conference for every 5,000 members (or fraction thereof) on which it pays fees.[3]

Regional Organizations. The Conservatives have maintained regional organizations since 1886, and both parties have placed an increasing amount of emphasis during recent years on building up effective regional organizations. The Conservatives divide the country into 12 regions plus Scotland and North Ireland, each of which maintains an organization corresponding in a general way to the set-up at the national level. An annual council, made up primarily of representatives of the constituency organizations, is held in each region;

[1] Party organization prior to the rise of the caucus is treated in M. Ostrogorski, *Democracy and the Organization of Political Parties* (New York, 1902), I, 135-160, and the effects of the Reform Act of 1832 on party activities are described in C. Seymour, *Electoral Reform in England and Wales*, Chap. iv. The rise of the caucus is dealt with in Ostrogorski, "The Introduction of the Caucus into England," *Polit. Sci. Quar.*, June, 1893, but a much fuller account is given in the same author's book as cited, I, 161-240. The salient features are presented in A. L. Lowell, *op. cit.*, I, 469-478.

[2] As would be surmised, there is some duplication of membership. A person belonging as a trade-union member may belong also as a member of a socialist society and in other capacities as well; so that while the total party membership was reported in 1951, for example, as 5,920,172, the actual number of individuals was smaller. In 1951, there were 4,971,911 affiliated trade unionists, 908,161 individual members, and 40,100 affiliates from socialist and coöperative societies.

[3] C. R. Attlee, *The Labor Party in Perspective* (London, 1937), 89.

and regional executive committees of from 20 to 30 members are maintained to deal with interim business. An elected area chairman, assisted and advised by a Central Office agent, is in general charge of the party activities in the region. In order to coördinate the work of the region with that of the Central Office at London, it is provided that area agents of the latter shall serve as secretaries of the area councils. Regional officials will be found in charge of youth organizations, women's activities, educational programs, area treasuries, and the cultivation of labor unions and local government officials.[1]

ORGANIZATION OUTSIDE OF PARLIAMENT—THE NATIONAL ASPECT

National Party Organizations. It was to be expected that after local associations under the banner of a particular party had grown numerous, effort would be made to combine them into some sort of a league or federation; and this is precisely what happened. The Conservatives led the way by organizing a National Union of Conservative and Constitutional Associations in 1867, and their Liberal rivals countered ten years later with a National Liberal Federation. In due time, the Labor party was built up by federating trade-union, socialist, and other local organizations; and to this day it remains a characteristic of British parties, as contrasted with those of most other countries, that they are combinations not of individuals as such, but rather of local or regional societies or associations. Ordinarily, a person belongs to a given party by virtue of being a member of some local branch of it or some local group affiliated with it.

The Party Congress. The nation-wide organization of the three major parties is pretty much of a pattern. First of all, both older parties make provision for a national representative body, or party congress. The Conservatives call theirs the "Conference"; the Liberals call theirs the "Assembly" (formerly the "Council"); but it is practically the same thing in both instances, and serves substantially the same purposes. Meeting once a year in some important center, the congress consists in both cases of a thousand or more representatives (sometimes as many as four thousand in the case of the Conservatives) sent by the affiliated local organizations. In both parties, it seeks to formulate principles and policies, elects certain officials and

[1] Regional organizations have their own constitutions, rules, and standing orders, varying somewhat from region to region, depending upon local preferences, but in general resembling each other.

committees, and affords opportunity for speeches by the party leaders in Parliament and for general discussion calculated to whip up party interest and promote party morale. The main leader of the party is, as already noted, not chosen by the congress; nor are the party chairman, vice-chairmen, and treasurer, who are designated by the leader. An executive committee, made up largely of *ex officio* members and regional representatives, oversees the detailed operation of the party.

The Conservatives and Their Central Office. The Conservative National Union long ago came to the conclusion that its usefulness lay particularly in the direction of the voters and the regional and local organizations, though it renders important services to the lawmakers through its parliamentary and research divisions and participates through the National Union Executive in the selection of the party chief who, when the party is in power, will be prime minister. There are other important things that it can do—things that have to be done if the party's morale is to be kept up and its strength maintained, and things which the leaders at Westminster are glad enough to entrust to it. Finding its proper sphere, the Union set up at London a Central Office, which, under the direction of a "chairman of the party organization," [1] a general director, and various other salaried officials, assists in establishing new local associations where they are needed, aids and encourages associations which are beset with special difficulties, prepares suggestions and instructions for local party committees and workers, distributes literature, raises money, provides popular lectures, collects and broadcasts information having party significance, and in sundry other ways helps keep the machinery—both local and national—up to the level of efficiency required in a country where elections may come almost without warning. With the assistance of a standing advisory committee, and under the direction of a vice-chairman, the office also compiles lists of persons who would make acceptable candidates for parliamentary seats, and not only advises party leaders in the constituencies upon the selection of candidates living on the spot, but stands ready to provide any constituency with a candidate drawn from some other part of the country, and, if necessary, to see that such candidate is supported with speakers and funds. Democracy in party management, as embodied in the

[1] This official (selected by the party leader) is invariably a member of Parliament of cabinet rank, and therefore serves as a link (much as the chief whip at one time did) between the party organization inside Parliament and that outside.

annual conference and its substructure of local organizations, has yielded to the prime necessities of the political battlefield—strong leadership, unity, and dispatch. The Liberals, too, have had a similar experience.[1]

National Organization of the Labor Party: 1. The Conference. The national organization of the Labor party must be spoken of quite separately for the reason that, while bearing a good deal of external resemblance to that of the older parties, there are also some significant differences. To begin with, Labor alone among the three principal parties has a formal documentary constitution—an instrument dating from the reorganization of 1918, although later revised a number of times, notably in 1928 and 1937. In the second place, the party Conference is the supreme and final authority in a literal sense which in no wise holds for the other parties. Composed of the delegates of trade unions, socialist societies, divisional labor parties, and other affiliated organizations, voting in accordance with the number of members on whose behalf affiliation fees have been paid, the Conference meets every year (autumn recently) in a populous center selected by the National Executive Committee, with also an occasional special meeting; and, whereas the Conservative and Liberal congresses, while debating and voting on resolutions intended for the guidance of the party leaders, cannot expect their decisions to be acted upon by those leaders except in a purely discretionary manner, the Labor "parliament" not only has complete control over the party constitution (which it framed and adopted), but, according to the constitution itself, has full and effective power to decide from time to time, by a two-thirds vote, what proposals shall be included in the party program and to "direct and control" the party's general activities. Elected by the Conference, the National Executive Committee must submit full reports and financial statements to it and take orders from it. Consequently annual meetings of the Labor Conference are at least in theory true "conferences." To be sure, as in the other cases, proceedings are to a considerable extent dominated by the party executive, and the leaders dislike, almost as much as in the other parties, to have their hands tied by positive mandates imposed by the rank and file; and it would be a mistake to underestimate the influence

[1] The increased significance of the party Central Office in recent times is well brought out by J. K. Pollock in *Polit. Sci. Quar.*, June, 1930, pp. 163 ff. The constitution and rules of the National Union of Conservative and Unionist Associations will be found in R. K. Gooch, *Source Book*, 39-51.

of the three big trade unions in the decisions taken by the Conference. To be sure, too, electoral platforms and manifestoes are the handiwork, not of the Conference, but of the parliamentary labor party working in conjunction with the party executive. Nevertheless, the broad program to which electoral manifestoes must conform is laid down by the Conference; and neither the executive of the party nor the party members at Westminster can hope, even though so minded, to escape ultimate Conference control.[1]

2. The Party Executive. The party executive consists of a National Executive Committee, together with an auxiliary Central Office. Twelve representatives of trade unions are designated by the unions themselves; seven members representing constituency parties, by the parties; five women members, by the whole Conference; and the sole representative of socialist and coöperative societies, by the appropriate societies; and these 25 people, plus the party leader, the secretary, and the treasurer in an *ex officio* capacity now constitute the Committee. In contrast with the situation in earlier days, the trade-union contingent is at present in a slight minority.[2]

Meeting as a rule only once or twice a month (though often for two or three days at a time), the Committee does most of its work through sub-committees, of which some have to do with matters of finance and administration, others with questions of party policy, and still others, in the capacity of joint committees with the Trades Union Congress, with subjects in which there is a common interest. Other prominent party members having specialized information are often drawn in to assist. Speaking broadly, the tasks of the Committee include: (1) seeing to it that the party is represented by a properly formed organization in every constituency where practicable; (2) carrying out the decisions and orders of the Conference; (3) interpreting the party constitution and standing orders in cases of dispute, subject to a right of appeal to its superior, the Conference; (4) expel-

[1] "As one surveys Labor party conferences, . . . he cannot fail to admire their democratic quality, their genuine discussions, their representative flavor. They have frequently been involved in perplexities. They are occasionally quite bitter. But they have in the long run been representative of the party, and they have produced a series of party programs which would do credit to any party organization in the world." J. K. Pollock, "The British Party Conference," *Amer. Polit. Sci. Rev.*, June, 1938, p. 527.

[2] In theory at least, the labor movement as a whole is directed by a National Council of Labor of 15 members representing the Labor party and the parliamentary labor party as political agencies and the Trades Union Congress as labor's major organization on the economic side.

ling persons from membership and disaffiliating organizations which have violated the constitution or by-laws; and (5) supervising the multifarious work carried on at and through the party headquarters, *i.e.,* the Central Office at London.

The Central Office is under the immediate direction of the party secretary and the party treasurer (both chosen by the Conference), with whom are associated a national agent, an assistant national agent, and a chief woman organizer, each with a suitable staff. There are also special Central Office departments having to do with research and information, press and publicity, international relations, and legal advice.

Selection of Labor Candidates. Coming within the purview of the Executive Committee and the Central Office is not only the supervision of party organization in the constituencies, the promotion of party propaganda, the support of a party press, and the management of party funds, but the approval, and many times the selection, of parliamentary candidates. The local constituency organizations have, indeed, the right of initiative and choice. But the central organization must coöperate wherever desirable in finding the best candidates; it must see that every candidacy is strictly in accordance with the party constitution; and no candidate may finally be adopted until he or she has received the national executive's express endorsement. Only now and then does the central organization find it necessary actually to veto a local selection; but the right clearly exists. The main requirements made of aspirants are: (1) that they have adequate financial backing, (2) that they go before the electorate under no designation other than that of "Labor candidate," (3) that in any general election they include in their election address and emphasize in their campaign the issues which the national executive and parliamentary labor party have selected from the general party program to be stressed in that particular contest, and (4) that they agree, if elected, to act in harmony with the party constitution and standing orders. Most of the candidates selected by the constituencies nowadays are taken from a list endorsed in advance by the national executive. Once seated at Westminster, successful candidates pass largely out of the control of the national executive, and even of the Conference, becoming, of course, members of the parliamentary labor party and subject to its discipline. They continue, however, bound in honor by the conditions and stipulations under which they have been accepted as candidates, and ordinarily any tendency to insubordination will be curbed by the

thought that when another election comes around they will have no chance to be candidates again unless the national executive is willing to give them its stamp of approval.

SOME PARTY TECHNIQUES

Party Propaganda. Political parties have one paramount objective, namely, to win elections; and their chance of attaining it is conditioned not so much upon a few weeks of feverish activity during campaigns as upon persistent effort, year in and year out, to inspire and instruct their workers, to hold the rank and file in line, to educate the electorate on public issues, and to attract a never-ending stream of recruits. The devices employed by British parties for these purposes are many. Youth organizations (of the nature of the Young Conservative Organization, the National League of Young Liberals, and the Labor League of Youth) are important means of capturing the young and training them in the faith. The educational process, while presumed to be carried on on a non-partisan basis, lends itself in numerous ways to imparting political sympathies and aversions. The motion picture sometimes contributes, and the radio, although administered by a non-partisan British Broadcasting Corporation as a government monopoly, is available in slowly increasing degree for political, and on occasion party, discussion and instruction. Even churches cannot be left out of the picture; and general social and business intercourse has much, even if not easily measurable, importance.

High in the list of party propagandist activities must be placed research and publication—undertakings which have been developed to a loftier point in Great Britain than in the United States or perhaps any other country. During the twenties, a notable series of studies sponsored by the Liberal party and financed out of a political fund accumulated by David Lloyd George eventuated in publications such as *Coal and Power* (1924), *The Land and the Nation* (1925), *Towns and the Land* (1925), and *Britain's Industrial Future* (1928)—broadly-based studies of such significance as to prompt some one to remark of the Liberal party that in later days its function had come to be that of providing programs for non-Liberal governments! Activities of the Conservative party in this field have been more recent, but currently are quite vigorous. The Labor party has, however, promoted research more systematically than perhaps any other. A

research department created by the Fabian Society in 1912 was taken over by the party in 1918; and although ten years later it became a separate organization, as it is today, two additional agencies of the kind were later brought into being—one a Labor party research department established in 1926, and the other a new research department of the Fabian Society dating from 1931. Studies made through these channels have to do with land and agriculture, labor problems, education, public health, finance, justice, local government, and other matters, and reach the public through a steady stream of books, pamphlets, and magazine articles.[1] All of the parties, indeed, go in extensively for publication. To be sure, a good deal of what is issued consists of materials designed only for party organizations and workers: summaries of election laws; electoral statistics; handbooks on registration and election procedure; information concerning corrupt and illegal practices laws; directions for forming and conducting political clubs; study guides for local groups; "notes" for speakers; and what not. But a great deal is aimed also at the general public: monthly magazines like the Conservative *Tory Challenge*, the *Liberal Magazine*, and the *Labour Woman*; pamphlets and leaflets making every sort of argument and voicing every sort of appeal, often in the style of a staccato enumeration of "points" for or against some program or policy. Of course, there are newspapers also, ranging from frankly partisan sheets such as the *Daily Telegraph* (Conservative), the *News-Chronicle* (Liberal), the *Daily Herald* (Labor), and the *Daily Worker* (Communist) to renowned journals, of partisan sympathies to be sure, yet of cosmopolitan interest and appeal, such as the London *Times* and the *Manchester Guardian*.

Summer Schools, Political Clubs, and Other Ancillary Organizations. Still further agencies for promoting party interests, and in this case training party workers and leaders, are week-end and summer schools, conducted by all three of the parties.[2] Political clubs, too, are of considerable importance, both in the metropolis and in smaller communities throughout the country. Oldest of these in London is the Carlton Club, established in 1831 as a center of

[1] Successive Labor programs—such as *Labour and the New Social Order* (1918), *Labour and the Nation* (1929), and *For Socialism and Peace* (1934)—have been grounded on studies of the kind. Cf. W. Maddox, "Advance Policy Committees for Political Parties," *Polit. Sci. Quar.*, June, 1934.

[2] The Conservatives maintain Swinton College in Yorkshire, which carries on a program throughout the year. The Labor party ran 12 summer schools in 1948, but subsequently shifted to a single national summer school lasting four weeks.

Conservative life and activity; its building in Pall Mall was formerly the place where Conservative members of Parliament commonly gathered for consultation. Other Conservative clubs, *e.g.*, the Junior Carlton, Constitutional, and St. Stephens, will be found by any visitor to the Westminster district. The oldest Liberal organization of the kind, the Reform Club, ceased before the end of the nineteenth century to be a political club in the strict sense, but its place was taken by the National Liberal Club, which, along with other similar establishments in the capital, continues to serve the traditional purposes. Then there are ancillary leagues and societies. The most interesting of these is the Primrose League, founded in 1883 by Lord Randolph Churchill (father of Winston Churchill) and named after what was supposed to be Disraeli's favorite flower. Elaborately organized, liberally financed, and supported by a membership of from one to two millions, it was for over half a century a prime agency of Conservative influence, especially at election time. Today there are the Young Conservative Organization and the Association of Conservative Clubs. The Liberals have the National Reform Union, the National League of Young Liberals, the Eighty Club, and similar associations. Several of these organizations, both Conservative and Liberal, enroll members of both sexes and of all social classes. The Labor party is not without similar auxiliaries. The Fabian Society, the Socialist Medical Association, the Association of Socialist Lawyers, and other socialist organizations play rôles comparable with those which the Conservative and Liberal auxiliaries have made familiar to every observer of British political life.[1]

PARTY FINANCES

Although the various parties secure much unpaid service, especially in the constituencies, they cannot carry on their multifold activities without large outlays of money. To a degree, the sums needed are raised in the localities in which they are spent, by annual subscriptions, fêtes, bazaars, and similar devices. But the central machine requires large amounts, too—for salaries of officers and local employees, office rentals, clerk hire, printing, postage, travel, assistance to local committees, and various other purposes; and this entails money-raising on a nation-wide scale.

[1] For a set of instructions issued by Conservative party headquarters for organizing and running a local political club, see N. L. Hill and H. W. Stoke, *op. cit.*, 191-195.

Conservatives and Liberals. For their general funds, the older parties have regularly relied upon contributions of members and supporters, made voluntarily, although often extracted from the donors by the importunity of party officials or other workers. Until recently the Conservatives have not had any general system of assessment under which either individuals or local party organizations were required to contribute, or under which the party managers could know, other than very roughly, how much would be available for their use in any given year. Indeed the Conservative party was accustomed in former years to be financed by a relatively small number of large (sometimes very large) contributions. But a flexible quota system was adopted in 1949. Under this scheme constituencies electing a Conservative member of Parliament in the last general election are requested to pay from 3*d* to 6*d* per Conservative vote; constituencies in which the party was unsuccessful pay from ½*d* to 2½*d*.[1] Even in their palmier days, the Liberals had less to draw upon; the rank and file of the party contained fewer men of wealth, and the organization maintained throughout the country usually gave evidence of frugality, if not of downright parsimony. Two decades ago, the party profited from the Lloyd George political fund mentioned above, but nowadays it has only such money as it can raise by general subscription.

Labor. One will not be surprised to be told that the Labor party proceeded from the beginning on quite different lines. Lacking sources from which to draw large voluntary contributions, it derives its income almost entirely from affiliation fees—depending, as Clement Attlee once observed, "on pennies, not pounds." Trade unions, socialist societies, coöperative societies, and local labor parties pay into the central party treasury 6*d*. per member per year, with a minimum payment of £6. In the case of trade unions, the amount due is calculated, not on the total membership, but on the number of members contributing to the union's political fund—which means all members not "contracting out," *i.e.*, not definitely specifying that no

[1] As we have seen (pp. 205-206 above), Great Britain regulates and requires full publicity for campaign expenditures. Whereas, however, the United States first attacked the problem of money in politics by restricting the sources of campaign contributions and requiring publicity for such contributions, Great Britain has no regulations covering either matter. Both the Labor and Liberal parties, it is true, publish financial reports. But the Conservatives did not do this (even though some of their leaders occasionally made statements throwing light on the subject prior to 1950); and in general the information supplied is lacking in detail. For the attitudes of the parties as stated by their officers, see A. Greenwood, S. H. Pierssené, and P. Fothergill, "Political Party Funds," *Parliamentary Affairs*, Autumn, 1948.

part of their dues shall be used for political purposes. Trade-union membership, however, fluctuates, and funds from this source, although constituting a major source of the party income, have been less adequate in the past than Labor would like.[1]

[1] Income from this source amounted to £126,681 in 1950 out of a total of £689,615. The subject of British party finances is treated in J. K. Pollock, *Money and Politics Abroad* (New York, 1932), Chaps. ii-x. On the regulation of campaign expenditures, see pp. 205-206 above. For a more recent discussion, see S. D. Bailey [ed.], *The British Party System* (London, 1952), 134-139.

The first volume of M. Ostrogorski, *Democracy and the Organization of Political Parties*, treats the general subject of political parties historically; A. L. Lowell, in Chaps. xxv-xxxiii of his *Government of England*, describes arrangements as they existed a generation ago. A good deal can be gleaned from M. Farbman [ed.], *Political Britain; Parties, Politics, and Politicians* (London, 1920); C. S. Emden, *The People and the Constitution* (Oxford, 1933); P. G. Cambray, *The Game of Politics* (London, 1932); Quintin Hogg, *The Case for Conservatism* (London, 1947); M. Berry, *Party Choice* (London, 1948); E. R. Pike, *Political Parties and Policies* (rev. ed., London, 1950); H. Croft, *Party Organization* (London, 1946); N. Birch, *The Conservative Party* (London, 1949); R. J. White [ed.], *The Conservative Tradition* (London, 1950); C. R. Attlee, *The Labour Party in Perspective* (New York, 1949); G. D. H. Cole, *A History of the Labour Party from 1914* (London, 1948); W. G. Hall, *The Labour Party* (London, 1949); D. E. McHenry, *His Majesty's Opposition: Structure and Problems of the British Labour Party* (Berkeley, 1940); H. Tracy [ed.], *The Labour Party* (3 vols., London, 1948); L. H. Laing and others, *British Elections Studies* (Ann Arbor, Mich., 1951); R. Williamson [ed.], *Five Years of British Labour, 1945-1950* (Gainesville, Fla., 1950). Information concerning present-day party organization has to be pieced out chiefly from party publications, supplemented by items and articles in newspapers and magazines. The most convenient handbook is S. D. Bailey [ed.], *The British Party System* (London, 1952).

CHAPTER XVI



LAW AND JUSTICE

The English Concept of Law. From the time when King John was forced to agree in *Magna Carta* to uphold "the law of the land," Englishmen have placed great store by what they call "the rule of law." Moreover, they have developed a plain and simple conception of what constitutes law. To be sure, certain earlier writers (notably Thomas Hobbes in the seventeenth century and John Austin in the eighteenth) construed the term to embrace only the commands of a sovereign political authority; while others (including John Locke) were influenced by Continental notions of "natural law" as something standing back of man-made rules and derived by reason from the very nature of man and things. The view ultimately most widely accepted, however, came to be the very practical one that law is simply those principles and rules, of whatever origin or nature, which the courts, in handling cases that come before them, will recognize and enforce. Principles and precepts which the judges will not enforce may have considerable importance as custom, and perhaps as morality; but, for Englishmen at all events, they are not law.[1]

"LAW AND EQUITY"

Rise of the Common Law. In origin and content, the law as it stands today [2] consists of two main elements, common law and statute —to which must be added a third, on a somewhat different basis of classification, *i.e.*, equity. The rise and expansion of the common law forms one of the most interesting chapters in all legal history. The story goes back to the Saxon period, when, notwithstanding the

[1] See A. L. Lowell, *op. cit.*, Chaps. lxi-lxii.

[2] The law here meant, and dealt with in the present chapter, is, of course, that commonly termed "private," as distinguished from "public" (or "constitutional").

primitive aspect of the times (including the lack of national unity), certain legal usages and practices gained more or less general acceptance throughout large parts of the realm. Growing up in unwritten form, these customs were in part, from time to time, promulgated, or declared, as "dooms," or ordinances, by the king and his witan; although it was always characteristic of the common law, as it is today, that much of it was simply carried in men's minds without being written down, at any rate in any orderly manner. After the Conquest, the displacement of local and diverse legal usages by customs general to the entire country went on at an accelerated pace, especially in the reigns of Henry II (1154-89) and his immediate successors. These were days of strong royal rule, when the king's government was reaching out in all directions for greater power, and, in particular, was establishing centralized control over finance and justice. Feudal and other local courts gave way to king's courts, in charge of royal judges—often men of genuine learning—who went out from London to all parts of the realm and dispensed justice in the king's name. Drawing their authority from a single source, forming a homogeneous staff, and continuously interchanging information and ideas, these royal judges sought to discover and apply the usages having the widest vogue. The decisions of one became precedents to be followed by others, and thus, woven of reiterated and respected judgments after the principle known to lawyers as *stare decisis,*[1] the common law developed into the great fabric of legal usage which, even by the thirteenth century, had come to be one of the country's major claims to distinction. It was a body of rules formulated by judges—rules which, for the most part, had never been ordained by a king, or, of course, enacted by a legislature. Yet it had the royal authority behind it and was in every proper sense law, applied wherever the king's courts were held—which by the close of the Norman period meant every part of the land.

Contributions of the Commentators. Other factors, of course, entered into the making of the great system of common law as handed down to modern times. In addition to contributions from Roman law, canon (or church) law, and the law merchant, a good deal was added by jurists and commentators. Sooner or later, legal-minded

[1] That is, the principle that the decision of a court sets up a presumptive basis of action in all analogous cases subsequently arising, especially when the same decision has been repeatedly made or affirmed over a long period of time.

scholars were bound to find in the vast unassembled mass of principles and procedures a challenge to legal reporting and interpretation. As early as the twelfth century, Henry II's chief justiciar, Ranulf Glanvil, compiled a "Treatise on the Laws and Customs of the Kingdom of England" (*Tractatus de Legibus et Consuetudinibus Regni Angliae*); and in succeeding centuries a long line of other jurists—leading up to Blackstone, author of the famous *Commentaries on the Laws of England,* in the eighteenth—gathered up the significant rules of common law that had developed by the time that each, respectively, wrote, commented on them, cited cases on which they were based, and thus helped both to systematize the law and to shape the lines of its future development.

The Common Law beyond Seas. Meanwhile the law kept on expanding steadily—finding a new application here and building out in a new direction there—as, indeed, it continues to do in our own time. There was never a break in its history; changes of governmental organization and procedure only left it more firmly entrenched than before. Furthermore, when, in the seventeenth and eighteenth centuries, Englishmen began settling beyond seas, they carried the common law with them as perhaps their most priceless possession. To the colonists in America, it was an Englishman's heritage, a bulwark against tyranny, a guarantee of liberties and rights—so precious, indeed, that the sturdy patriots who composed the First Continental Congress solemnly asserted Americans to be "entitled to it by the immutable laws of nature." After the Revolution, it was no less prized than before, and, next only to language, it is no doubt today the most important common possession of the United States and the mother land. For Englishmen themselves, it has been the basic law of the realm from a day so remote that "the memory of man runneth not to the contrary." It still flows with pomp of waters unwithstood through all tribunals where the English language is the language of the people.

Statute Law and Its Relation to Common Law. During all of the time, however, while the common law was taking form, other law was coming into being by a different process, *i.e.,* by enactment. Common law merely grew up; statute law was *made.* For many centuries, the king promulgated laws with only the advice and assistance of his council. After the rise of Parliament, however, laws gradually took the form, instead, of statutes adopted by the two

chambers—even though to this day they describe themselves as enacted by the *"king,* Lords and, Commons in parliament assembled." It is now more than six hundred years since Parliament began making laws. Until a century or two ago, the product was of no great bulk; even now, Englishmen indulge in no orgies of law-making comparable to those which fatten the statute books in America. Changing social and economic conditions since the middle of the eighteenth century have, however, called for freer exercise of the legislative power, and for a long time now a substantial volume has been added every year to the Public General Acts (formerly known as the Statutes of the Realm), single laws not infrequently exceeding in bulk the entire legislative output of a mediaeval reign. Some of this statutory law deals with matters not covered at all by the common law. But a large share of it has to do with subjects that are so covered, at least in part; and hence the common law is constantly being not only supplemented by statute, but rounded out, clarified, codified, amended, or even repealed by it, as the case may be. For, treasured as the common law undoubtedly is, it enjoys no privilege or immunity as against Parliament; any of its principles or rules may at any time be turned by that body in a different direction or set aside altogether. Furthermore, when common law and statute conflict, statute always prevails; and no new development of common law can ever annul a statute.[1]

Common Law Still the More Fundamental. All this would, however, give a totally false impression unless one hastened to add that by far the greater part of the law (especially civil, as distinguished from criminal, law) which the courts are called upon to enforce, in England and America alike, is common law; and so far as one can see, this will always be true.[2] The common law is still the "tough legal fabric that envelops us all"; the statutes are hardly more than ornaments and trimmings. "The statutes," says an English writer, "assume the existence of the common law; they would have no meaning except by reference to the common law. If all the statutes

[1] Of general similarity to statutory law, frequently resting upon it, and to be bracketed with it in the present connection, are orders-in-council and even administrative rules and regulations.

[2] Rather less of the common law survives in our American states than in Great Britain, mainly because of the immoderate output of our legislatures. The situation is, of course, not the same in all states. Much pressure is constantly being brought to bear upon lawmakers to displace old and established rules of common law, which are alleged to be outworn, with legislation on different lines.

of the realm were repealed, we should still have a system of law, though, it may be, an unworkable one; if we could imagine the common law swept away and the statute law preserved, we should have only disjointed rules torn from their context, and no provision at all for many of the most important relations of life." [1]

Where the Common Law Is to Be Found. Statute law, of course, invariably takes written form, and the acts of Parliament are to be found in an imposing printed series, to which, as we have seen, a fresh volume is added every year. But where shall one look for the common law? It grew up in unwritten form, and to this day there is no single code in which it is assembled, no text setting it forth in a comprehensive and authoritative way.[2] This, however, does not mean that it cannot be taken down from a shelf and read, because in one way or another practically all parts of it have now found their way into writing or print. The main source of it has been, of course, the decisions of judges, and ever since the reign of Edward I these have been "reported," *i.e.*, recorded in writing—for two hundred years by lawyers who reported anonymously in the Year Books, and afterwards by others who reported under their own names in the Law Reports. Of almost equal importance, as has been indicated, are the works of learned jurists, commenting on the principles of the law and citing the cases from which they were derived or by which they were sustained. Of some importance, too, are the reported decisions of courts in other countries in which a system of law derived from the English is administered, such decisions naturally not having quite the weight of those handed down in England, but yet occasionally proving influential. In one way or another, the common law therefore turns out not to be unwritten law, except in the sense that it was never textually enacted as is a statute. Some significant branches of it have, indeed, been codified and given statutory form, among them the law of partnership, the law of sales, the law relating to bills of exchange, and part of the law of trusts.[3]

[1] W. M. Geldart, *Elements of English Law* (London, 1912), 9.

[2] When the Japanese adopted a legal system on the Western model, they would have preferred to base it on the English common law; but, unable to find it set forth in any clear form, they had to fall back on the *Code Napoléon*.

[3] A distinguishing feature of the law of France, Germany, Italy, and other Continental countries is the very large extent to which it is gathered into great systematic codes—civil codes, criminal codes, penal codes, codes of civil procedure, codes of criminal procedure, commercial codes, etc.—which at intervals are overhauled and extended with a view to bringing them to date. There are no general codes of this nature in England, not even codes of procedure, but only isolated codifica-

Equity: 1. Why Needed. A third great branch of English law is equity; for although the lawyers speak of law *and* equity, they do not mean to imply that equity is not law. What equity is, and how it is related to the other parts of the law, will become clear, at least in a general way, if we note how the system came into existence. The story begins far back in Angevin, if not indeed Norman, times, when people who thought that the rules of common law had failed to give them justice in cases in which they were concerned, or at all events that their interests were not properly protected by it, fell into the habit of petitioning the king, "for the love of God and in the way of charity," to find remedies suited to their particular situations. In days when the king was the maker of laws and in a very literal sense the fountain of justice, there was no reason why he should not take cases out of the hands of the regular courts and decide them himself—no reason except one, namely, that petitions mounted to such numbers that to attend to all of them would have proved an intolerable burden. A solution for this difficulty was, however, readily found in arrangement for a proxy. At the head of a form of royal secretariat was, by the twelfth century, a dignitary destined to become one of the great officers of state, *i.e.,* the chancellor; and to him it was easy enough to delegate the actual examination of petitions and in time the answering of them as well. Not only was it easy, it was also logical; for the chancellor was almost always a bishop or other ecclesiastic, who might be presumed to be an especially good judge of questions of justice, morality, *equity,* such as were usually involved in the requests that came in. "Keeper of the king's conscience," the chancellor came to be called, even before the fourteenth century. Like the king himself, however, the chancellor had other things to do, so that presently it grew necessary to appoint assistants, "masters in chancery," to aid him in the work. In the end, the natural thing happened—a regular court emerged known as the court of chancery.

2. How It Arose. The origin of the rules which form the present body of law known as equity can now be surmised. Precisely as the itinerant justices originally went out through the country deciding cases individually on their merits, but gradually developing rules of common law according to which cases of similar nature were regu-

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tions of scattered branches of civil law as mentioned above, together with numerous statutes which in effect codify, segment by segment, a very considerable part of existing criminal law.

larly decided in the same way, so those who dispensed justice in the chancery built up accepted rules of equity. Equity is case law, equally with the common law; indeed it is a species of common law—a sort of supplement or appendix to the common law, "filling up its defects, correcting abuses in the conduct of persons who resorted to it for fraudulent or oppressive purposes, and actually, though with caution, setting itself up as a rival to the common law courts by offering superior remedies, even in cases in which the common law professed to afford relief." [1] Beginning on relatively simple lines, it in time broadened into a vast system of principles, rules, precedents, and implications, so intricate that a lawyer had to devote much hard study to the subject if he wanted to practice in an equity tribunal. In fact, at one time (chiefly the sixteenth century), equity waxed so important as to threaten the supremacy, if not the very existence, of the common law. It is still a huge body of living law, the theme of ponderous textbooks, a subject for courses in law schools, the chosen domain of many a specialist in legal practice. It shows somewhat more influence of Roman legal principles than does the common law; it has a procedure largely its own; and although no longer administered in Britain in tribunals separate from the common law courts,[2] it is as distinct a body of law as it ever was.

3. Relation to Other Parts of the Law. If it be asked what the relation of equity now is to the rest of the law, the answer is: first, that it has no relation at all to the criminal law, being confined strictly to civil matters; second, that it is employed invariably in certain kinds of civil cases, *e.g.*, those arising out of the administration of property by a trustee; third, that the great bulk of other civil cases are dealt with normally under the rules of the regular common or statute law rather than under those of equity, the latter being appealed to, if at all, only with a view to correcting alleged omissions or injustices of the regular law courts; and fourth, that in several kinds of cases redress may be sought either at law or in equity as the plaintiff prefers.[3]

[1] E. Jenks, *The Book of English Law* (London, 1928), 41-42.

[2] See p. 344 below.

[3] The standard history of earlier English legal development is F. Pollock and F. W. Maitland, *History of English Law to the Time of Edward I*, 2 vols. (Cambridge, 1898). An equally notable work, covering practically the entire field chronologically, is W. S. Holdsworth, *History of English Law*, 12 vols. (2nd ed., London, 1922-38). The first volume of this great treatise contains a history of English courts from the Conquest to the present day; the other volumes deal exhaustively with the

THE JUDICIAL SYSTEM—GENERAL FEATURES

1. No Single System throughout the United Kingdom. Turning to the judicial machinery through which the law is administered, one discovers, first of all, that no single form of organization prevails throughout the United Kingdom, still less throughout the British Isles or the Empire at large. On the contrary, there is one scheme of courts in England and Wales, another in Scotland, and still another (although more like the English than is the Scottish) in Northern Ireland—not to mention still a different one in the region once belonging to the United Kingdom but now forming the fully independent jurisdiction known as Eire. Except as otherwise indicated, the system of courts described in the following pages is that of England and Wales alone.

2. Absence of Administrative Courts. In the second place, there is in Britain no separate set of administrative courts such as parallels the hierarchy of ordinary courts in France, Italy, and other Continental countries, though during recent years numerous quasi-judicial administrative tribunals have been established, usually though not always in connection with some ministry. There is, to be sure, administrative law; that is to say, there are accepted principles and usages which apply in fixing relationships and settling disputes between administrative officers (acting in their public capacity) on the one hand and private individuals or corporations on the other. But whereas Continental states have traditionally maintained numerous special courts for the handling of cases in which law of this type is applied, neither England nor any other English-speaking land has separate tribunals of the kind. In these countries, cases turning upon the validity of acts of government officials, if carried to courts at all, go almost invariably to the same courts as cases of other sorts, unless they go to the quasi-judicial administrative tribunals which frequently occupy positions in the regular judicial hierarchy to the extent that appeals may be taken from them to the appellate courts. An Englishman and

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development of legal doctrine and the general history of the law. Four excellent introductions to both the history and content of the law are E. Jenks, *The Book of English Law; At the End of the Year 1931* (3rd ed., London, 1932); W. M. Geldart, *Elements of the English Law* (London, 1912); H. Potter, *An Historical Introduction to English Law and Its Institutions* (3rd ed., London, 1949); and C. H. S. Fifoot, *English Law and Its Background* (London, 1932); and a scholarly and convenient brief survey is E. M. Sait, *Political Institutions; A Preface* (New York, 1938), Chaps. xi-xii.

a Frenchman are capable of debating from morn till eve the relative advantages of the two plans. The Frenchman will say that the dignity and authority of the government require that its officers shall not be haled into the ordinary courts—that whether it be a case of a prefect exceeding his powers by closing a factory because of insanitary conditions or that of a policeman injuring an innocent bystander while pursuing an offender, the resulting dispute should be heard and adjusted by a tribunal under the control of the administrative, rather than the judicial, arm of the government, and by a procedure differing in various respects from that employed in the regular courts. The Englishman will boast that it is a token of liberty for the citizen to be able to cause public officials—any public official, indeed, except the king himself—to be summoned before the ordinary courts, and will suggest that in a French administrative court, composed exclusively of persons connected with the administrative branch of the government, a plaintiff must surely find it difficult to get a sympathetic hearing of his grievance. Prior to the Crown Proceedings Act of 1947, it was necessary for a Britisher to bring suits against offending officials rather than the government and actual redress was not always possible. Under the act noted above the immunity of the crown in tort was abolished and the earlier cumbersome procedure was significantly modified. Each plan, of course, has its advantages; but the present point is that the student of judicial organization and procedure finds in Britain only a single pattern of courts calling for his attention.

3. Integration of the Courts in England and Wales. A third main feature is the unity now prevailing in the courts of England and Wales. Such a situation did not always exist. Two generations ago, the country was cluttered up with unrelated, overlapping, and sometimes relatively useless tribunals—civil courts and criminal courts, courts of equity and courts of common law, probate courts, divorce courts, ecclesiastical courts, and what not. All sorts of trouble resulted. Cases multiplied in which it was difficult to determine which court had jurisdiction; each type of tribunal had its peculiar forms of practice and procedure; even the trained lawyer threaded his way through the maze with difficulty. Reform proved difficult; but eventually—mainly between 1873 and 1876—it was accomplished. Practically all of the courts except those of the local magistrates, *i.e.*, the justices of the peace, were brought together in a single centralized

system. Tribunals which had been separate, and indeed rivals, became branches or subdivisions of a single Supreme Court of Judicature; law and equity jurisdictions were combined in the same courts; the lines of appeal, on both law and fact, were made more definite; the fitness of the House of Lords for its judicial duties was enhanced by the addition of specially appointed lords of appeal in ordinary; the work of justice in all of its phases and branches was toned up and reënforced. Under the administrative direction of the Lord Chancellor, the Supreme Court of Judicature—divided into (1) a Court of Appeal and (2) a High Court of Justice,[1] the latter organized in three divisions, (a) Chancery, (b) King's (or Queen's) Bench, and (c) Probate, Divorce, and Admiralty—was to perform combined appellate and trial functions (in both civil and criminal cases) which in other lands occupy a much larger number of tribunals.[2] Beneath this Supreme Court, a set of so-called county courts dating from 1846 was assigned the duty of taking care of civil actions, and similarly a series of "assize" courts (presided over by travelling judges sent out from the High Court at London) was given the task of hearing and deciding criminal cases. At the top, the House of Lords, after temporarily losing its judicial functions altogether, became again the court of last resort for appeals on questions of law from the highest tribunals of both civil and criminal jurisdiction. So effective did the new arrangements prove that few changes, and none of a really fundamental nature, have been found necessary in the last seventy years.

The Lord Chancellor. The drift of history has left England with no unified department of justice such as commonly exists in other countries. In the Lord Chancellor, however, she has a more important official than the head of any mere judicial department; and we may simply remind ourselves here that this imposing dignitary (1) recommends for appointment to higher judicial positions, and in fact, although not in form, appoints and removes the county court judges

[1] The Court of Appeal has at present nine judges and the High Court more than 30.

[2] The "Supreme Court of Judicature" is merely a covering name. For certain purposes, the judges identified with it, *i.e.*, those of the Court of Appeal and of the High Court of Justice, form collectively a Judicial Council, but they never sit as a "Supreme Court." The three divisions of the High Court operate quite separately, and even such a branch as the King's Bench is not an assemblage of judges, but only a list or panel of judges (24 in this instance) who try cases either singly or in groups. All of the tribunals named are housed in the Law Courts in the Strand, completed in 1886.

and most of the justices of the peace; (2) is chief judge in the Chancery division of the High Court of Justice and in the Court of Appeal; (3) is the principal legal member of the cabinet, even though that body's *official* legal advisers are the "law officers" of the crown;[1] and (4) presides in the House of Lords, being invariably made a peer (if not already one) at the time of his appointment. To the Lord Chancellor, indeed, are assigned more tasks than any man can well perform, so that there may have been some truth in the observation of a former incumbent that the work falls into three parts: "first, the business that is worth the labor done; second, that which does itself; and third, that which is not done at all."

THE COURTS AT WORK

Civil Actions. For practical purposes, all cases that come before the courts may be classed as either civil or criminal. A civil action is a proceeding brought by a private citizen, or by an official in his private capacity, usually to obtain redress from another person, official or private, for a "tort" or wrong—slander, trespass, fraud, breach of contract, infringement of patents, and the like—alleged to have been committed against the person bringing the action, or "plaintiff," by the person against whom the action is brought, or "defendant." In such a proceeding, the dispute is not between crown and subject (as it normally is in a criminal action), but between one of the crown's subjects and another; and the function of the court is merely to determine the merits of the controversy and render a decision accordingly. The parties may at any time agree to give up litigation and reach a settlement out of court, a thing which can never be done in criminal proceedings.

1. In the County Courts. The court in which a civil action will be brought depends mainly on the amount of the claim. If the sum is less than £200, the suit will probably be instituted in a county court. The so-called county courts of the present day, established by act of Parliament in 1846, are, however, in reality no part of the organization of either the "historic" or the "administrative" counties,[2] and the areas of their jurisdiction are districts which not only are smaller than counties but bear no relation to any such units. There are in England and Wales at present some 500 of these districts, each with

[1] The Attorney-General and his colleague and substitute, the Solicitor-General.
[2] See p. 362 below.

its own "court house"; and to each of 60 circuits into which the districts are grouped the Lord Chancellor assigns one judge, who holds court in each district of his circuit at least as often as once a month.[1] At first glance, the volume of work to be performed appears formidable indeed; in any single year, a half million or so proceedings are started. The matter at issue in the great majority of instances, however, is merely the payment of some small debt (commonly less than £20); and with a registrar and clerical staff (attached to each court) quietly achieving settlements in most of the cases by persuading plaintiffs to abandon their claims or working out acceptable compromises, less than 10 per cent are ordinarily heard by judges.

Procedure in a county court is simple, both plaintiff and defendant frequently conducting their cases themselves. Where the amount in dispute exceeds £5, either party may demand a jury (which for this purpose consists of eight persons); but this is rarely done. Where there is a jury, it finds a verdict on the facts proved, under the direction of the judge; where there is none, the judge decides on the facts and on the law; and in either case he gives a judgment for the plaintiff or the defendant, which is enforced by seizure of the property of the party who fails to obey it, or even by imprisonment. The object of civil proceedings is, however, compensation, not punishment as in the case of crime. On a point of law, an appeal can be taken to a divisional sitting of the High Court of Justice, although no farther without leave of the latter or of the Court of Appeal. On matters of fact, there is technically no appeal from the verdict of a jury. An application may be, and often is, made, however, to a divisional court to order a new trial on the ground that the judge instructed the jury wrongly, or that the jury's verdict was not supported by the evidence before it.[2]

2. In the Higher Courts. Where the plaintiff's claim exceeds the jurisdiction of the county court, he must, and, even if it does not, he may, bring his action first of all in the appropriate branch of the High Court of Justice—that is to say, in the Chancery division, the

[1] The 60 judges are chosen by the Lord Chancellor from barristers of at least seven years' standing and receive salaries of £2,800 a year.

[2] On the county courts, see R. Rosenbaum, "Studies in English Civil Procedure; The County Courts," in *Pa. Law Rev.*, Feb., Mar., Apr., 1916, and *Report of the Lord Chancellor's Committee on the County Courts,* Cmd. 431 (1919). In R. K. Gooch, *Source Book,* 366-381, will be found large portions of a County Courts Act of 1934 which in effect codified existing law relating to these tribunals.

King's Bench division, or the Probate, Divorce, and Admiralty division, whence appeal lies to the Court of Appeal. Technically, there is no such appeal on questions of fact; but here again an application may be made—to the Court of Appeal, of course—to order a new trial. Beyond the Court of Appeal, the dissatisfied litigant has still one more appeal on questions of law, *i.e.*, to the House of Lords, provided the Court assents and he can stand the delay and expense.

Criminal Actions. A criminal case is one in which a person alleged to have committed an offense, such as murder, theft, or forgery, is proceeded against in order that, if found guilty, he may be punished. As a rule, such a case arises out of a complaint by a private individual or an arrest by a police officer; and it may be conducted—that is to say, the accused may be "prosecuted"—either by a public prosecutor or by a private person.[1] In any event, the proceeding is carried on in the name of the crown and involves four distinct steps or processes. First, there must be a definite accusation by a person who professes to know of the commission of the offense. Then there must be proof of the facts. After that, there must be an authoritative statement of the rule which the offender is alleged to have broken. Finally, if the offense is proved, there must be condemnation and punishment. In primitive forms of justice, all of these steps are likely to be taken by the same person. The avenger is accuser, witness, judge, and executioner in one. In civilized justice, however, it is axiomatic that the several steps shall not only be separated in time, but taken by different persons.

1. Before the Justices of the Peace. When a person is accused of having committed an offense, he is formally summoned, or arrested and brought, first of all before one or more justices of the peace, or, in London and some larger boroughs, before a justice of special type, known, respectively, as "metropolitan" or "stipendiary" magistrate because, unlike an ordinary justice, he receives a salary. Dating from the reign of Edward III at the middle of the fourteenth century, the office of justice of the peace has played a very important rôle in the development both of local administration and of justice. "The whole Christian world," declared Coke, "hath not the like office, if truly executed." The traditional area of jurisdiction of the justices is the "historic" county, although nowadays some 200 boroughs also have a "commission of the peace"; and aside from a

[1] On the public prosecutors, see p. 348, note 2, below.

few persons who attain the office on an *ex officio* basis, the justices in any given county (or borough) are appointed "at the pleasure of the crown" by the Lord Chancellor, formerly on recommendation of the lord lieutenant of the county (who himself is chief of the justices and keeper of county records), but nowadays on recommendation of a local committee. In many counties, the list of justices contains 300 to 400 names; in Lancashire, it reaches beyond 800; and the number in the country as a whole (county and borough) is hardly short of 20,000. But almost half of the appointees never take the oath required to qualify them for actual magisterial service, and the work is performed in each local area by a comparatively small number of persons. As has been indicated, the justices (outside of larger cities) serve without pay; but the office carries a good deal of local prestige, and appointments are widely sought. Formerly, the justices were, in the main, country gentlemen; but men (and, since 1919, women also) are now appointed freely from all professions and social classes, with the result that the magistracy is far less aristocratic than even a generation ago. A legal education is not required, and few appointees have such. It might be thought that an unpaid and unlearned magistracy would prove seriously defective, and now and then it comes in for criticism. Nevertheless, it works, and on the whole works well.[1]

When the accused is brought before the "J.P.," that official can himself dispose of the case if the offense is a minor one, *e.g.,* neglecting to take out a license or riding a bicycle after dark without a light. But he cannot impose a higher penalty than a fine of 20 shillings or sentence to imprisonment for more than 14 days. If the offense is of a more serious nature, the justice's duty is, in the first place, merely to see whether there is a *prima facie* case against the accused. For this purpose, he hears the evidence, usually sworn testimony, of the prosecutor and his witnesses. There is no jury, and the accused need not make any statement or offer any defense unless he likes. If, after the hearing, the justice feels that no *prima facie* case has been made out, *i.e.,* that no jury would convict even if the prosecutor's evidence were unchallenged, he dismisses the charge, and the accused goes free. If, however, he thinks that a *prima facie* case has been established, he "commits the prisoner for trial," and decides

[1] C. A. Beard, "The Office of Justice of the Peace in England," *Columbia Univ. Studies in Hist., Econ., and Public Law,* No. 1 (New York, 1904).

whether to let him out on bail or to have him confined to await further proceedings.[1]

The court in which the trial will take place is determined mainly by the seriousness of the case. Numerous offenses, including petty assaults and thefts, small breaches of public order, and other minor misdemeanors—and even graver offenses if the accused wishes, or if he is under age, or if it is a first charge—are "punishable on summary conviction." The court of summary conviction is composed of at least two justices of the peace (usually resident in the immediate neighborhood), and is known as "petty sessions." The trial is public and without a jury, and the accused is given ample opportunity to be heard and to have the benefit of counsel. If the court finds him guilty, it imposes a fine (up to £50) or a period of imprisonment (up to six months). He may, however, appeal to "quarter sessions," which consists of all the justices in the county (meeting quarterly) who have taken the oath and who care to go to the trouble of attending—frequently a dozen or more. Here his case will be heard again from beginning to end.

2. In the Assize Courts. In graver cases, the accused is proceeded against by formal "indictment," or written statement charging him with a definite crime committed in a particular way; and he is entitled to a copy of this indictment before his trial.[2] An indictment case is tried either before quarter sessions or "at assizes," assize courts being held three or four times a year in most county towns and other important centers by one or two judges of the King's Bench division of the High Court of Justice, going out "on circuit" for the purpose and still received in every town by a procession of officials headed by halberdiers and trumpeters.[3] Wherever the trial takes place,

[1] One of the more picturesque duties which it may fall to a justice of the peace to discharge is to "read the Riot Act" calling upon any 12 or more persons unlawfully assembled and creating a disturbance of the peace to disperse to their homes or places of employment. The Riot Act is a statute dating from 1714.

[2] Formerly, indictments were commonly returned by grand juries, as is still the usual practice in the United States. In England, however, Parliament did away with grand jury procedure in 1933, and indictments are now prepared by prosecutors, who often are members of the local police specially designated for the purpose. There is in England no regular official corresponding to the district attorney in the United States, nor indeed any integrated system of public prosecutions under the direction and control of the central government. Since 1879, however, there has been a Director of Public Prosecutions who, under supervision of a high officer under the crown, the Attorney-General, institutes and carries on cases appearing to be of exceptional importance or difficulty—these run to some 500 annually.

[3] One of these assize courts, sitting in London and commonly known as the Old Bailey, is commonly regarded as the busiest criminal court in the world.

the accused is entitled to have his fate decided by a jury of 12 of his countrymen (commonly two women and 10 men), chosen at random by the sheriff from a list of householders compiled by the local authorities; and he has at present a limited privilege of "challenging," *i.e.*, objecting to, the jurors selected. It is the business of the judge (or judges) throughout the trial to see that the rules of procedure and evidence are followed; and after counsel for both sides have completed the examination of witnesses and have addressed the jury, the presiding judge sums up the case and gives the jurors any instructions concerning the law which he may deem necessary to enable them to arrive at a just verdict on the facts. If the jury finds the prisoner not guilty, he is forthwith discharged; and he can never again be tried on the same accusation. If, on the other hand, it finds him guilty, the judge pronounces sentence. If the jury cannot agree, there may be a new trial, with a different set of jurors.[1]

3. Criminal Appeals. Formerly there was no appeal on the facts from the verdict of a jury in a criminal trial, although appeal lay to the House of Lords on points of law. An act of 1907, however, set up a Court of Criminal Appeal consisting of not fewer than three judges of the King's Bench; and a convicted person may now, as a matter of right, appeal to this tribunal on any question of law, and (with the permission either of the trial judge or of the Court of Criminal Appeal itself) on any question of fact, in order to establish whether the verdict of the jury was justified by the evidence. If the appellate court thinks that there has been a serious miscarriage of justice, it can reduce the sentence, or even quash the conviction altogether. But it can also increase a sentence; and on that account the number of appeals, except against capital sentences, is not large. There can be no appeal beyond the Court of Criminal Appeal, except in rare instances to the House of Lords upon a point of law which the Attorney-General certifies to be of public importance; and under no circumstances can the prosecutor appeal.[2]

The House of Lords as a Court. A word is in order about the

[1] Standard accounts of English criminal justice include G. G. Alexander, *The Administration of Justice in Criminal Matters* (Cambridge, 1915), and P. Howard, *Criminal Justice in England* (New York, 1931). The latter is especially valuable for comparison of English and American methods.

[2] About two-thirds of all indictable cases are tried in quarter sessions, but none involving murder or manslaughter nor any in which the penalty may be life imprisonment.

House of Lords as a court. Since, in 1948, that body voted away the historic right of its members to be tried for treason and felony by a jury of peers of their own or higher rank,[1] it no longer exercises any original jurisdiction; and appeals from ecclesiastical courts and from colonial and Commonwealth courts are addressed to the crown and handled by the Judicial Committee of the Privy Council.[2] Within limits previously indicated, however, both civil and criminal cases may be appealed (on questions of law) to the House of Lords from the highest tribunals of England, Wales and Northern Ireland, and also civil cases from those of Scotland. So far as the formal rules go, one member of the chamber has as much right to participate in judicial business as another. A sitting of the judicial members is technically a sitting of the House;[3] the Lord Chancellor presides as in legislative sittings; the forms of procedure are mainly those of a legislature, rather than of a court; and all actions are entered in the journal as part of the chamber's proceedings. Custom now nearly a century old, however, although permitting visitors to look on from the galleries as during legislative sittings, decrees that no persons except the Lord Chancellor, the nine lords of appeal in ordinary,[4] and such other members as hold, or have held, high judicial office may participate in any judicial sitting. This group, or any three of them, may hear cases and pronounce judgments at any time, regardless of whether Parliament is in session; and from such judgments there is no appeal, although, of course, they may be (but rarely are) in effect set aside by later parliamentary legislation on lines different from those followed in given decisions.[5]

[1] There had been only two cases of the kind in almost a century. In one, a peer was acquitted of manslaughter and in the other a peer was sentenced to three months in jail for bigamy, but was promptly pardoned by the king.

[2] This agency, although closely related to the judicial system, is not technically a court and will be dealt with at a later point in connection with imperial organization and relations. See p. 396 below.

[3] When in 1938 certain members raised the question of whether, in order to enable the House to start its legislative business at an earlier hour, the chamber might not be emptied for the purpose by transferring sittings of the "law lords" to one of the committee rooms, the objection was raised and sustained that in law the House is a single body and cannot sit in two places, or perform two different functions, at the same time. The Lord Chancellor, however, is the only member who would suffer the embarrassment of being expected to be in two places simultaneously.

[4] See pp. 216-217 above.

[5] A good example of a House of Lords decision subsequently overridden in part by an act of Parliament is the Trade Unions and Trades Disputes Act of 1906 exempting trade unions from legal liabilities to which they were declared subject in the Taff Vale decision of 1901. Another is the Trade Union Act of 1913 legalizing (with certain qualifications) political uses of trade-union funds which

Judicial Review and Judge-made Law. From county court and assize court to House of Lords, no English tribunal wields the power of judicial review on lines with which we are familiar in the United States. To be sure, orders-in-council and orders and rules of administrative authorities may be scrutinized to ascertain whether they are *ultra vires,* and no court which finds them so will enforce them. But they are only a species of "subordinate" legislation which naturally can be valid only in so far as they harmonize with superior law. As for any act of Parliament, it is *ipso facto* law, to be accepted at face value and enforced as long as, and in so far as, it is not rescinded by later statute. British courts are therefore relieved of a burden of constitutional construction which rests heavily upon our higher tribunals in the United States. Of course they cannot escape the frequently difficult and delicate task of interpreting statutes in the sense of determining what they mean. Courts everywhere must do this; and in doing it, British courts, in common with American, French, and other courts, declare and in effect make law. What did Parliament intend by a given phrase or clause? How should a pertinent act be applied to a situation which Parliament obviously did not envisage or expect to arise? What (if there is no statutory provision at all upon which to fall back) is the common law relating to the matter? In all such instances, it is for the judges to say; and the way in which they make up their minds *what* to say goes far toward determining what the law on the given point is thenceforth going to be. Some English, as well as foreign, authorities shrink from the conclusion that judges actually make law. They prefer to speak of them as only "discovering" it. Dicey truly remarks, however, that while an English judge is primarily an interpreter, and not a maker, of law, he does, by interpretation, make law and it is immaterial whether we call such law "judge-made" or something else.[1] As pointed out earlier, the great body of English law took form, and has at all stages been developed and expanded, largely at the hands of the judiciary. From one end of the land to the other, judges are still refashioning the fabric just as truly as, even though by somewhat subtler methods than, Parliament itself.

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the House of Lords, in the Osborne Judgment of 1909, had held improper. Unlike the United States Supreme Court, which sometimes reverses itself, the House of Lords has held that it cannot overrule its own decisions. On the House of Lords as a court, see M. MacDonagh, *The Pageant of Parliament,* II, 78-86.

[1] *Law and Public Opinion in England,* 359, note 2.

REASONS FOR THE HIGH QUALITY OF BRITISH JUSTICE

The British system of justice, both civil and criminal, deservedly enjoys an enviable reputation, both at home and abroad, for fairness, sureness, stability, and dignity. Foreign—especially American—lawyers and judges who go to England to observe its workings at close range rarely fail to return filled with admiration for much that they have seen.[1] There are other and widely differing judicial systems for which much may be said. As systems developed by and for peoples with different backgrounds and ideas, they may be quite as praiseworthy as the British. But if other evidence were lacking, the inherent excellence of the British system would be demonstrated by the close study given it, and the large borrowings made from it, by peoples in many lands, the world over, who have found themselves confronted with the task of recasting and modernizing their inherited judicial institutions.

The explanation is to be found in three main phases or aspects of the system. The first has to do with certain broad principles in accordance with which all justice is administered; the second with the rules of procedure observed in the courts; and the third with the quality of bench and bar. A word must be said about each of these matters.

1. Fundamental Principles Followed. Of underlying principles, some relate to the administration of justice generally, others to criminal justice particularly, and still others especially to civil justice. As summarized by an eminent English legal authority,[2] the principles or practices most generally adhered to are: (1) Cases are tried, not behind closed doors, but in open court to which the public has free access. (2) Both parties to a proceeding have a right to be represented by counsel, and to have their respective sides heard by judge and jury. Under some other judicial systems, the accused, in criminal cases, is not necessarily entitled to be represented by skilled advisers. (3) The burden of proof rests, in almost every type of case, civil or criminal, on the accuser. (4) Guilt or innocence is established in accordance with an extensive body of accepted rules and maxims constituting "the law of evidence." (5) In all serious

[1] See, for example, G. W. Alger, "The Irritating Efficacy of English Criminal Justice," *Atlantic Mo.*, Aug., 1928.

[2] E. Jenks, *The Book of English Law*, Chap. vii.

criminal cases, the accused must be tried, not by a judge alone, but by a jury; and in civil cases involving an accusation against the moral character of either of the parties, that party may, if he desires, demand a jury verdict. (6) Judgment is rendered in open court, and (at least in the intermediate and higher courts) the judge or judges give the reasons for it. (7) In effect, if not in name, there is, in substantially all legal proceedings, at least one appeal to a higher tribunal from the decision of a court of first instance on a matter of law, and to a very large extent on matters of fact, so that the accused person, or, in civil cases, either party, has the right to submit his case to the judgment of at least two tribunals, acting independently of each other.

2. Rules of Procedure. Not only do English courts operate under salutary principles such as those enumerated, but they are favorably situated in the matter of rules of procedure. In the United States, the rules governing pleading, evidence, and all other aspects of court procedure emanate mainly—in many states almost entirely —from legislatures, not from the courts themselves. This means that they are made by men who rarely have had judicial experience, and in many instances are not even lawyers, at all events of large experience and ability. The results are often deplorable, and a movement is gaining momentum for a change to court-made rules. In Britain, procedure was originally governed solely by the custom of the individual tribunal, and for hundreds of years changes were made only as a result of practice or of court-made rules, with Parliament occasionally intervening to create new remedial rights or to cut off old procedural abuses. In the nineteenth century, public disapproval of various features of existing procedure found expression in a series of reform statutes, culminating in an act of 1881 vesting the rule-making power in a "rule committee" consisting of the Lord Chancellor, six other important judges, and four practicing lawyers—a decidedly expert body representing, it will be observed, both bench and bar. This arrangement has proved entirely satisfactory. To be sure, all new and revised rules must still be laid before Parliament, which, if it likes, may disallow them. But in point of fact the committee's work has been so well performed that not once has a parliamentary veto been interposed.

The outstanding characteristics of the procedure developed in this way are its speediness (especially in criminal cases), its indifference

to mere technicalities, its emphasis upon the maintenance of an unobstructed road to substantial justice. The rules repose solidly on the principle that every action should move promptly to a decision, and that the parties ought never to be turned out of court because of some error in practice or procedure which in no way involves the merits of the controversy. "The relation of rules of practice to the work of justice," says a well-known English judge, "is intended to be that of handmaid rather than mistress, and the court ought not to be so far bound and tied by rules, which are after all intended only as general rules of procedure, as to be compelled to do what will cause injustice in a particular case." Herein is to be found the reason why less than one-half of one per cent of all cases are decided upon appeal on questions of practice and procedure. In the American states, a great deal of trouble, with plenty of accompanying injustice, arises not only from the pettifogging tactics of lawyers, but from rigid and misdirected rules laid down by well-meaning but inexpert legislatures. There have been jurisdictions in which as high as fifty per cent of the cases reversed on appeal were decided upon questions of practice and procedure which had nothing to do with the merits of the controversy. In Britain, the judge is undisputed master of his court-room, and, supported by a body of rules designed to clear the path for effective justice, he refuses to permit business to be slowed up or diverted by bickering, quibbles, and technicalities. Foreign observers, accustomed to the bullying of witnesses and the vindictiveness of opposing counsel, are invariably struck by the orderliness, quiet efficiency, and general air of courtesy pervading English trials. It is, indeed, contrary to tradition for a prosecutor to exhort the jury to convict; when he has presented the evidence against the defendant, his duty is done.

3. Character of Bench and Bar. Needless to say, the superior adaptation of procedure to the ends in view is a main reason why justice is both surer and speedier in Britain than in most other countries. The calendars of the courts do not become clogged; a murder trial will often be carried through all of its stages while an American court would still be laboring over the impanelling of a jury. But there are other favorable circumstances, connected still more directly with the character of bench and bar. English judges are, in general, of a high order of ability, independence, and integrity, and are probably held in higher esteem than the judges of any other

country. One reason undoubtedly lies in the fact that the judiciary is entirely appointive; and not only the judges themselves, but court officers such as sheriffs and clerks. Not even the justices of the peace are elected. Nominated in the various counties by local officials or committees, the latter are appointed by the Lord Chancellor, in the name of the king; [1] and all members of the judiciary proper—of county courts, of High Court, of Court of Appeal—owe their positions to crown appointment (from among experienced lawyers) in pursuance of recommendations made, in the case of the county courts, by the same powerful official, and in that of the higher tribunals, by the prime minister. An elective judiciary did not work well in Revolutionary France and was soon given up; and it shows plenty of defects in some of our American states. Neither England nor any part of the British Empire has ever thought it wise to permit judges to be subjected to the political hazards and temptations that almost inevitably go along with an elective system.

Not only are judges appointive; their independence is further promoted by assurance of (to all intents and purposes) life tenure [2] and by protection against reduction of salary.[3] Removals, to be sure, can be made, but only on joint address of the two houses of Parliament; and it is an even more uncommon event for a judge to be ousted from his position than it is in the national judiciary of the United States, which, in contrast with the state judiciaries, is like the British in being appointive. Finally, judicial positions in England are made attractive by considerably higher salaries than are paid in continental Europe or in the United States.[4]

As for the bar, a useful feature is the division of labor arising from the distinction between (a) solicitors, or attorneys, who deal directly with clients and prepare cases, and (b) barristers, who are engaged by the solicitors to conduct cases for them before the courts. Each type of lawyer becomes expert in his special kind of work, and the results are manifest both in the thoroughness with which cases are prepared and in the skill with which they are handled in the court-

[1] The stipendiary magistrates, however, by the Home Secretary.

[2] The legal phrase is *quamdiu se bene gesserint, i.e.,* during good behavior.

[3] When, in 1931, a depression-time special act was passed to enable the salaries of all government officials to be reduced as an economy measure, the judges protested against their inclusion as involving an encroachment upon their independence.

[4] In general, from £2,000 a year up to the Lord Chancellor's £10,000. Dignity and distinction are imparted also by the practice of knighting judges when first appointed.

room. In the United States, it sometimes happens, to be sure, that certain members of a legal firm devote themselves primarily to work in the office and others mainly to appearance in court. But as a rule a lawyer tries to do both things, often—at all events in cases of a more difficult nature—to his client's disadvantage. The only objection to the English plan is that it tends to increase the expensiveness of litigation. This matter of cost to the litigant (trebled or quadrupled in the past 50 years) is, indeed, the principal ground on which the British system of justice is at present criticized. Under a Poor Prisoners' Defense Act of 1930 and the Legal Aid Scheme of 1950, some provision is made for free legal assistance to really poor people in need of it. But there still is a sting in the remark of a facetious judge: "Justice is open to all—like the Grill Room of the Ritz Hotel!" [1]

[1] C. Mullins, "The Law and Poor Persons," *Quar. Rev.*, Jan., 1945.

The best accounts of the development of the English courts are to be found in W. S. Holdsworth, *History of English Law*, I, and A. T. Carter, *History of English Legal Institutions* (4th ed., London, 1910); to which may be added the latter author's briefer *History of the English Courts* (London, 1927), and F. F. Russell, *Outline of Legal History* (New York, 1929), which is virtually a summary of Holdsworth. Further useful discussions of the courts as they now stand include H. G. Hanbury, *English Courts of Law* (London, 1944), in the Home University Library; R. M. Jackson, *The Machinery of Justice in England* (Cambridge, 1940); C. P. Patterson, *The Administration of Justice in Great Britain* (Austin, Tex., 1936); M. Fry, *Arms of the Law* (London, 1951); G. R. Y. Radcliffe and G. Cross, *The English Legal System* (rev. ed., London, 1946); H. Slesser, *The Administration of the Law* (New York, 1948); N. Tillett, *The Law and the People, An Outline of the Legal System of England and Wales* (London, 1950); R. S. W. Pollard [ed.], *Administrative Tribunals at Work* (London, 1950); and the works of Alexander and Howard mentioned on p. 349, note 1, above. An admirable brief survey, on the criminal side, is S. Amos, *British Justice; An Outline of the Administration of Criminal Justice in England and Wales* (London, 1940). On a single aspect, see L. Page, *Justice of the Peace* (rev. ed., London, 1947); J. A. F. Watson, *British Juvenile Courts* (New York, 1948); and F. T. Giles, *The Magistrates' Courts* (London, 1951).

London is not materially different from before. Three main elements call for comment: (1) the areas associated with England in the United Kingdom; (2) the non-self-governing empire; and (3) the great self-governing areas bracketed with the United Kingdom in the British Commonwealth of Nations.

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Wales. Historically, and to a considerable extent culturally, the region known as the principality of Wales is distinguishable from England; but for purpose of government the two are quite completely united. Edward I drew a portion of the rugged western country under English control in 1284, organized it in six counties on the English model, introduced the English judicial system, and—half with serious intent, half in jest—bestowed upon his son, in 1301, a title ever since borne by the eldest son of royalty while awaiting his heritage, *i.e.*, "Prince of Wales." [1] Henry VIII completed the task by setting up six more counties, giving both the counties and the leading towns the right to be represented in the House of Commons, and abolishing all local laws and customs at variance with the laws of England. Thenceforth, in so far as Wales had any separate history at all, it was cultural rather than constitutional. In 1747, indeed, it became a rule that in all acts of Parliament "England" should be construed to include Wales unless otherwise specified. The common law holds good in England and Wales alike; and while a certain amount of legislation is enacted for Wales separately, the great bulk of statutes applying to England apply equally, and without saying so, to the "principality." One interesting divergence, which has a certain amount of political significance, arose in 1920, when, after prolonged agitation on the subject, an act of Parliament disestablished and disendowed the Anglican Church in both Wales and the adjoining closely related English county of Monmouth. Proposals for devolution, in which Wales almost always figures as an area that might be fitted out with a regional parliament, has given some stimulus, too, to a movement for autonomy, fostered by a lively Nationalist party, and thus far to be observed chiefly in the north and west, where the population is most purely Welsh in speech and tradition and most aware of somewhat localized conditions and problems of labor, agri-

[1] It is hardly necessary to say that the title carries with it no powers of government.

culture, and education. So far as can be foreseen, however, Wales will remain constitutionally about where it now is.[1]

Scotland: 1. The Union of 1707. To the north of England lies Scotland, separated from the larger country by no important physical barriers, and seemingly destined by nature to form, in conjunction with it, one homogeneous state. Historical circumstances, however, made a political union between the two lands exceedingly difficult to bring about. Even yet there is not complete fusion; and when proposals for relieving the congestion of work in Parliament by devolving selected functions upon regional parliaments were being actively discussed a decade or two ago, it seemed not impossible that existing bonds might in future be relaxed rather than the reverse—although in the end nothing came of the devolution scheme.[2] Like Wales, Scotland long went its way largely unmolested, although by no means uninfluenced, by its more powerful neighbor. In 1603, James VI of Scotland became the first Stuart monarch of England as James I, and thenceforth for a century the two countries were united through the crown, but otherwise separate, each with its own parliament, its own established church, its own laws, courts, army, and system of finance. Finally, in 1707, the Scots, induced chiefly by the industrial and commercial advantages to be gained, grudgingly accepted an act of union under which the two countries were erected into a single kingdom (thenceforth known as Great Britain) and Scotland received, in lieu of the separate parliament given up, the right to be represented in both houses of the parliament at Westminster. Union, however, was not to mean complete absorption. Scottish law—civil and criminal—was to go on as before; likewise the country's judicial system, the established Presbyterian Church, and a scheme of publicly supported education such as England herself entirely lacked for another 200 years.

[1] E. L. Chappell, *The Government of Wales* (London, 1943). To stem a rising tide of Welsh nationalism, the British government unsuccessfully offered in 1948 to set up an advisory council of 27 Welshmen, mostly appointed by the British prime minister, to keep the London authorities informed on Welsh political and economic interests and trends. In 1951, a Minister for Welsh Affairs (but not a ministry) was created to coördinate activities of various government departments relating to Wales—actually the Home Secretary was given this post.

[2] A home-rule movement dating back half a century or more has made some headway, and since 1918 a Scottish Nationalist party has intermittently agitated the issue, although in national elections the issue seems to play a minor rôle. See R. H. Bruce Lockhart, "Home Rule for Scotland," *Foreign Affairs*, July, 1946.

2. Arrangements for Government. From Queen Anne's day to our own, Scotland's constitutional position has remained virtually unchanged. All general legislation for the country is enacted at Westminster—much of it in the form of measures applying to Scotland, England, and Wales indistinguishably, although in weightier matters it is customary to give Scotland the benefit of a separate statute with such minor variations as may seem desirable; and the country is further recognized as an entity for legislative purposes through the device of a standing committee in the House of Commons at Westminster containing all of the Scottish members, to which every public bill relating exclusively to the northern area is referred. If, however, Scotland is not expressly excepted from a statute drawn in general terms, it is—as in the case of Wales—to be regarded as included. Since 1926, the country has also been given special recognition on administrative lines through the presence in the cabinet of a secretary of state for Scotland, who heads an establishment containing undersecretaries, a lord-advocate, a solicitor-general, a registrar-general, a board of health, and numerous other officers and boards corresponding broadly to those functioning under the Home Secretary and the Ministers of Health and Education in England and Wales. Counties and boroughs serve as the principal areas of local administration and self-government, and, though still differing at some important points, tend steadily to grow more like those in England. The system of courts is still very different from the English, and the same is true of civil law and procedure; and although criminal law has become practically identical in the two countries, there are still important differences in criminal procedure. The separate established church persists; likewise a distinct and very superior system of public education.

The Different Case of Ireland. Far less amicable and stable have been the relations between England (Great Britain since 1707) and Ireland. After all, Scotland cast in her lot with England voluntarily, because she saw that it was to her interest, especially in a business way, to do so. Ireland, however, was repeatedly invaded and conquered, held for centuries in abhorred subjection, and finally forced into a legislative union by British decision backed up with clever political legerdemain. She may have derived some benefit from her English connections; in certain directions she undoubtedly did so. But she always regarded herself as a conquered and oppressed coun-

try, the prey of English landlords and tax-gatherers; and for hundreds of years her history was largely a story of efforts to confine British control within the narrowest limits possible, as the next best thing to eliminating it altogether. A generation ago, those efforts so far succeeded that a sixth of the island won long-coveted "home rule," while the remainder, for which this concession had ceased to be an acceptable solution, was erected into a "free state" (1922), later becoming, by steps culminating in 1949, an entirely independent "republic," even though, to 1948 at all events, reckoned as a "commonwealth" with a rather precarious membership in the British Commonwealth of Nations. For some time both before and after World War I, the status of Ireland furnished one of the most explosive and baffling constitutional questions with which harassed British statesmen were called upon to deal.

Northern Ireland Created. The tortuous story of the Irish controversy and settlement must be read in other books than this;[1] present purposes will be served by merely a word concerning the northern segment of the country which stood by its British connection. The break came because, whereas the center and south—largely agricultural and predominantly Catholic—fell under the sway of a Sinn Fein ("Ourselves Alone") movement aiming at independence, six northeastern counties—heavily industrial and largely Protestant, and with an area slightly larger than that of the state of Connecticut —wanted nothing beyond the partial autonomy of "home rule" for which the island as a whole long had contended. The split dates definitely from 1922, when, with the Free State (subsequently known as Eire) finally installed under a constitution grudgingly sanctioned at London, the north expressly voted itself out from under the arrangement; and from that day to this—with reconciliation and reunion often proposed, but never achieved[2]—the country's unequal parts have gone their separate ways.

[1] For example, E. R. Turner, *Ireland and England* (New York, 1919); W. A. Phillips, *The Revolution in Ireland, 1906-1923* (New York, 1923); and A. C. White, *The Irish Free State: Its Evolution and Possibilities* (London, 1923). For a briefer account, see F. A. Ogg, *English Government and Politics* (2nd ed.), Chap. xxix.

[2] Politicians and people in Eire refuse to recognize the partition as valid or final, charge that Catholics in the north are discriminated against, and argue that since the northern counties contain most of the country's industry, wealth, and tax-paying ability, their secession has left the poorer south excessively burdened. The north, on the other hand, denies anti-Catholic discrimination, professes fear of Catholic domination in case the sections were reunited, abhors Eire's program of national independence and deplores its abstention from the recent war, and insists, come what may, in maintaining its loyalty to the British crown.

Its Government. Still closely bound to Great Britain, yet endowed with home rule—and missing no opportunity to proclaim full satisfaction with the arrangement—Northern Ireland is governed under the Government of Ireland Act of 1920, as modified chiefly by a supplementary measure of 1922 passed in anticipation of the six counties' decision not to allow themselves to be absorbed into the Free State. In the matter of autonomy, the region stands somewhere between the position of Scotland and that of a dominion such as Canada. It has its own parliament, as Scotland does not; but powers of independent action fall considerably short of those that can be exercised at Ottawa or Canberra; for example, it has no separate status at all in the realm of international relations. Though under a home rule régime, representation at Westminster continues (13 seats). Originally elected under a system of proportional representation, the local House of Commons (52 members) has since 1929 been chosen in single-member constituencies,[1] under suffrage and other arrangements resembling those in Britain. A Senate consists of two *ex officio* members and 24 other persons elected for eight years by the lower house under a scheme of proportional representation. If the House passes a non-money bill which the Senate rejects, and repasses it in the succeeding session, the governor, as chief executive, may convoke the chambers in joint sitting, and thereupon the issue is decided by a majority vote, the Commoners, of course, having a decided numerical advantage. In the case of money bills, the second chamber may reject, but not amend. If, however, the House of Commons refuses to acquiesce, a joint sitting, which settles the fate of the measure, takes place in the same session. All executive power continues to be vested in the king, but is exercised by a governor, through a group of responsible ministers constituting a cabinet, on the plan familiar throughout the Commonwealth of Nations.[2]

THE NON-SELF-GOVERNING OVERSEAS EMPIRE

Meaning and Scope of "the Empire." Great Britain and Northern Ireland have a combined area of 94,300 square miles and

[1] Except that the four members representing Queen's University, Belfast, are still elected under the proportional plan.

[2] A. Quekett, *The Constitution of Northern Ireland:* Part i, *The Origin and Development of the Constitution* (Belfast, 1928); Part ii, *The Government of Ireland Act, 1920, and Subsequent Amendments* (Belfast, 1933); and N. Mansergh, *The Government of Northern Ireland; A Study in Devolution* (London, 1936).

a population of approximately 50,000,000. As in the case of France and the Netherlands, this home, or "metropolitan," territory comprises, however, only the core of a vast world-wide congeries of lands and peoples bound together under some form or degree of political control. The term commonly applied to the rambling structure is "British Empire"; and while manifestly the homeland is part and parcel of it, the Empire is defined in a parliamentary act of 1932 as embracing "His Majesty's dominions outside the United Kingdom"—not merely "dominions" in the former sense of Canada or Australia, but also colonies, protectorates, and former mandates now become "trusteeships." Until of late, the total area was no less than 14,000,000 square miles, and the total population some 500,-870,000. Since World War II, however, important changes have taken place. Not only have various areas remaining within the Empire acquired a new legal status (*e.g.*, the crown colony of Ceylon has become a Commonwealth country, the Empire of India is now split into two Commonwealth countries, and Tanganyika and other former mandates under the League of Nations have been transformed into trusteeships under the United Nations), but the mandated area of Palestine has been given up and early in 1948 the newly proclaimed Union of Burma declared its independence and became the first British colony to sever connections with the Empire since the American colonies won independence in the eighteenth century. The Empire of India, too, with an area of 1,800,000 square miles and a population of some 375,000,000 narrowly escaped being completely lost.[1] Proclaimed "independent" in 1947, the vast area fell, as a result of civil strife, into two separate political divisions—the larger, Hindustan (now continuing, however, to be known as India), the smaller Pakistan, embracing the Mohammedan portions of the country—and for a time both wavered between literal and complete separation and, on the other hand, retention of some nebulous British connection through the guise of Commonwealth status. As matters have worked out, the two areas are to be regarded as still comprehended within the Commonwealth of Nations. Of British control, however, there will be none, any more than in other Comonwealths. Before World War II, almost one-fourth of the world's total land area, and practically the

[1] The British Empire as a whole has always been an empire without an emperor. To be sure, until 1948, the sovereign bore the title of emperor, as well as that of king. But he was emperor of India only; and even that designation has now been given up.

same proportion of the world's population, had some sort of British connection. Even yet the sun "never sets on the Empire"; but the British-controlled lands on which it shines have been curtailed, and in some that remain the British label is not as apparent as formerly.[1]

Component Elements. Constitutionally, as well as racially, and indeed in nearly every other respect, the British Empire is currently extremely heterogeneous. Territories have been acquired and organized over a period of more than 300 years, with the status of each a product of more or less prolonged development; and the Englishman's characteristic indifference to logic and symmetry shows up in this as well as other fields. From the viewpoint of legal status, the British Empire's component parts (outside of the home country itself) fall, however, into four broad categories, as follows: (1) semi-autonomous colonies, (2) crown colonies, (3) protectorates, and (4) trusteeships. The countries comprising the Commonwealth of Nations will require most of our attention in this chapter. But a word may be said about each of the Empire groups noted above.

1. Semi-autonomous Areas. By all odds, the most important semi-autonomous dependency in the past was the populous subcontinent of India, which, however, as explained, has now been subdivided into two independent sovereign nations. If the great segments into which that country has fallen retain permanently any political connection with Britain at all, it will be only as Commonwealth members, bound by ties of mutual self-interest. Another and neighboring former semi-autonomous dependency, too—Ceylon—has recently been elevated to Commonwealth status. Not much indeed is left of the older group of semi-autonomous areas, chiefly Southern Rhodesia. Southern Rhodesia has progressed so far as to have its external relations managed through the Commonwealth Relations Office at London rather than the Colonial Office. But during recent years, such colonies as Malta, Nigeria, the Gold Coast, and Jamaica have moved rapidly in the direction of self-government, although they still remain under the Colonial Office. The tendency is clearly for dependencies deemed fitted for self-government, or at all events insisting upon having it, to be moved up into the semi-autonomous class.

[1] Excellent accounts of the Empire's lands and peoples in prewar times will be found in C. B. Fawcett, *A Political Geography of the British Empire* (Boston, 1933), and W. E. Simnet, *The British Colonial Empire* (New York, 1942); and a good overall description is S. Leacock, *The British Empire* (New York, 1940).

2. Crown Colonies. Next, there are the so-called crown colonies, though the term is less useful than it once was because of wide differences of political status that have grown up among the dependencies to which it is applied. Speaking broadly, these numerous colonies are alike in that they have comparatively few inhabitants of European descent and are not considered capable of self-government on approved British lines. But, in the case of such colonies as Bermuda, British Guiana, and the Bahamas, they may have an elective lower chamber and an appointive upper one; like Kenya, they may have a legislative council consisting of a single house, partly elective and partly appointive; like Hongkong and British Honduras, they may have a council which is wholly appointive; or, like Gibraltar (primarily a fortress and naval station rather than a colony) and St. Helena, they may have no legislative body at all. There is a tendency nowadays for many of the colonies to rise in the scale; but noticeable progress is somewhat slow, and military or naval considerations frequently play as important a part as anything else in determining the status assigned them.

3. Protectorates. Then there are the protectorates, which, although included in the Empire under recent official definition cited above, are not, in law, British territory, and are subject to British control only in their external relations and (at least so the theory goes) in their domestic affairs in so far as necessary to assure due regard for the rights of foreign states. Of protectorates, there formerly were more than at present. Various developing African territories have passed through this stage into something else; Egypt, indeed, after existing unwillingly as a protectorate from 1914 until after World War I, was in 1922 proclaimed "an independent sovereign state," even though independence is perhaps qualified by the recognition of special interests on the part of the British Empire and by the presence of a British military force at the Suez Canal. Other divisions of Africa, notably Northern Rhodesia,[1] Uganda, Nyasaland, Zanzibar and Pemba, and British Somaliland, still fall in the category of protectorates, as also do the Federated Malayan States in the Far East. The status of protectorates is often a preliminary to annexation; and in certain cases, British control over internal affairs is so extensive as

[1] Northern Rhodesia was joined with Southern Rhodesia and Nyasaland in a Central African Federation by action of Parliament in 1953.

to leave little distinction in practice from colonies—indeed several are classified as colonies and protectorates.[1]

4. Trusteeships. For the supervision of various areas in Asia and Africa considered too backward to manage their own affairs, a plan was launched after World War I under which such territories were assigned to various states, or governments, not as "possessions," but simply as areas to be managed and developed under responsibility to the League. Of such "mandated" territories, Great Britain received several—chiefly Palestine, Iraq,[2] Tanganyika, Togoland, and the British Cameroons, with former German South-West Africa mandated also to the Union of South Africa, former German New Guinea and other German islands south of the equator to Australia, and former German Samoa to New Zealand. At the close of World War II, the essence of the arrangement was retained under the United Nations, although with the term "mandate" replaced by "trusteeship" and certain other changes made; and, in general, former British mandates—at all events, Tanganyika, the British Cameroons, and Togoland—are now British trustee territories. Like protectorates, such territories are, of course, not integral parts of the British Empire, but only appendages. Under full responsibility to the United Nations, however, Britain supervises their political, economic, and social affairs.

Imperial Control. In differing degree, but to a large extent in all cases, the dependencies are governed from London, or at all events by authorities sent out from that center. Where there are local legislatures, there is, of course, a certain amount of locally enacted legislation, subject to veto by the governor or disallowance from London. Some legislation for the crown colonies comes, however, from the imperial capital. Part of it is enacted by Parliament, usually on subjects of broad importance throughout the Empire as a whole. Part of it, however, takes the form of orders-in-council, applying either generally or to particular colonies as designated.[3]

[1] The Federation of Malaya came into existence by order-in-council as recently as February 1, 1948. The Federation consists of eleven units, formerly of varying status as colonies, protectorates, and the like, but now bound together under arrangements giving the Malay peninsula political as well as geographical unity.

[2] In 1930-32, this mandated territory was permitted to become an independent state.

[3] The power of making law for the crown colonies is, it will be recalled, a surviving feature of the royal prerogative.

Executive and administrative authorities range from the king and cabinet through certain of the ministries or executive departments to the governor and his subordinates in the individual colony. It is hardly necessary to say that the sovereign, although considered an indispensable symbol of imperial unity, has personally no more to do with colonial affairs than with military matters or finance. The cabinet, naturally, has much to do with them, especially as to larger lines of policy. And of course one of the departments—the Colonial Office, gives them its full time and attention.[1] Judicial establishments are created and regulated by imperial law, judges being recruited almost entirely from the governing country. From the dependencies, appeals can be carried to the Judicial Committee of the Privy Council in London—an agency which, in the absence of any single system of law or of law courts throughout the Empire as a whole, nevertheless (through the advice which it gives to the crown on the handling of appealed cases) is able to preserve some common standards of jurisprudence.[2]

THE BRITISH COMMONWEALTH OF NATIONS

The Quest for Colonial Autonomy with Imperial Unity. Seventy-five years ago, many Englishmen believed not only that colonies were of doubtful value, but that such overseas dependencies as Canada and the Australian settlements would grow to nationhood and then fall away from the mother country. As the nineteenth century entered its closing decades, however, a different attitude developed. Various writers, notably Sir John Seeley, expounded the history of the Empire in a fashion to stir pride in the past and

[1] There formerly was a combined India Office and Burma Office also, but with Burma independent after 1948 and India later reorganized as two Commonwealths, this department has disappeared. As indicated elsewhere, matters relating to the fully self-governing areas, *i.e.*, the Commonwealths, fall within the province of a Commonwealth Relations Office which in 1947 superseded a former Dominions Office.

[2] The Judicial Committee as it now stands dates from 1833. It includes the Lord Chancellor and any former incumbents of his office, the several lords of appeal in ordinary, the Lord President of the Council, and other privy councillors who hold (or have held) high judicial office, among them varying numbers of judicial personages connected with overseas superior courts. Addressed formally to the crown, appeals are heard, and recommendations as to the disposition of them are made, by the Committee (usually in each instance by a panel of five members); and the judgment against which an appeal is brought is sustained or reversed by the crown in accordance with the recommendation made. Without being such in form (since it is not technically a court, but only an advisory body), the Judicial Committee serves as a supreme tribunal for British and British-controlled jurisdictions (except certain Commonwealths) for which that function is not performed by the House of Lords.

ambition for the future.[1] Simultaneously, the growth of nationalism and militarism in Continental Europe led the British government to put a new value on the colonies as sources of supplies and as potential allies. Already some of the areas were far advanced in self-government, and nothing was more certain than that as time went on there would be further development in that direction. This, however, from the new viewpoint, did not necessarily imply independence; it need involve nothing more than progressive readjustment of the relations between colonies and mother country, while all remained under a common flag and loyal to a common crown. Moved both by sentiment and by interest, the colonies reciprocated; and from about 1870 much effort was devoted, on both sides, to finding some formula that would harmonize reasonable autonomy for colonial governments with substantial unity in imperial affairs. The principal practical problems were as to (1) where to draw the line between matters to be regarded as colonial and those to be considered imperial, and (2) how to draw it, *i.e.*, whether in a hard and fast manner by constitutional specifications or loosely and flexibly on a basis of voluntary coöperation and agreement; and proposals ranged all the way from mere preferential trade agreements to the admission of the colonies to a direct share in some sort of super-government centering at London. As early as 1887, the subject was taken up at a colonial conference attended by prime ministers and other representatives of the British and colonial governments. Other such meetings were held in 1897, 1902, and 1907; and on the last of these occasions a permanent advisory and consultative organization was brought into existence, with a view to a conference (thenceforth to be known as an "imperial conference") every four years.

Contribution of Imperial Conferences. It is in successive imperial conferences, particularly the more recent ones, that the unique relationships of the United Kingdom and its co-equal associates in the Commonwealth of Nations have in the main been worked out. Some progress was achieved before World War I. But it was the free and generous assistance given the mother country by the colonies in that time of need that finally clinched their claims not only to a more direct voice in the conduct of Empire foreign affairs, but to

[1] See especially Seeley's *The Expansion of England* (London, 1883). Other writers who contributed to the revival of imperial interest were James A. Froude and Rudyard Kipling.

further freedom in the management of their own relations with foreign states, and to a clearer recognition of their domestic autonomy. The Conference of 1921 agreed that events during the war years had completely established the right of the self-governing colonies to be considered co-equals with the mother country in foreign affairs. That of 1923 took steps, in relation to treaty-making, to make this right effective. That of 1926 was signalized by the preparation of a memorable document, known as the Balfour Report, in which the self-governing areas under the British flag (including the United Kingdom itself) were described as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the crown, and freely associated as members of the British Commonwealth of Nations"; and the report went on to apply the formula by suggesting essential steps—some of them requiring the repeal or amendment of existing statutes—by which the declared equality might be reconciled with the bed-rock principle of imperial unity.

The Statute of Westminster (1931). Finally, an imperial conference of 1930, adopting recommendations made by a preliminary conference in the previous year, cleared the way for the enactment by Parliament in 1931 of a measure deserving to be ranked as one of the landmarks of British history, the Statute of Westminster, establishing as law many fundamental principles concerning the status of the dominions—in domestic, imperial, and foreign affairs—previously resting only on convention. In the nature of the case, the entire matter has been one of much complexity and difficulty, and even today not all problems have been cleared up. In the following pages, however, the situation as at present existing will be outlined as clearly as possible—largely, of course, in terms of the Westminster statute.[1]

[1] The developing relations of the self-governing colonies with the United Kingdom to the period of World War I are treated in H. D. Hall, *The British Commonwealth of Nations* (London, 1920), and the subject is carried farther in W. Y. Elliott, *The New British Empire* (New York, 1932), R. M. Dawson, *The Development of Dominion Status, 1900-1936* (London, 1937), and W. K. Hancock, *Survey of British Commonwealth Affairs* (London, 1937). The principal treatise on the Statute of Westminster is K. C. Wheare, *The Statute of Westminster and Dominion Status* (4th ed., London, 1949), and pertinent documents will be found in W. I. Jennings and C. M. Young [eds.], *Constitutional Laws of the British Empire* (London, 1938). The text of the Statute of Westminster appears also in R. K. Gooch, *Source Book*, 399-441.

The Commonwealth Countries. Among the areas associated with the United Kingdom in the Commonwealth, only two—Canada and New Zealand—were by historical designation "dominions." [1] Four others, however, were termed such in the Statute of Westminster, and accordingly the total was for a time considered to be six—two (Canada and Newfoundland) in North America; three (Australia, New Zealand, and South Africa) in the southern hemisphere; and one (the Irish Free State) at Britain's own door. Later events, however, considerably blurred the picture. (1) To start with, Newfoundland—long the oldest of British overseas dependencies—fell into financial difficulties and in 1933 voluntarily relinquished responsible government, passing instead under control of a commission appointed from London. The arrangement was presumed to be only for the duration of the crisis; and with substantial recovery achieved, the islanders voted in a referendum of June 3, 1948, on whether to ask for a revival of dominion status, seek union with Canada, or indeed go on under the existing commission system. The outcome of the first balloting was inconclusive; no one of the three proposals received a majority vote. The matter, however, was not dropped. On the contrary, a second referendum was taken seven weeks later, with the result of a slender majority for union; and, both Great Britain and Canada having declared themselves favorable in principle, legislation was passed by both providing for incorporation of the island as the tenth province of the Canadian federation as from April 1, 1949 [2] (2) In the second place, the former Irish Free State, as Eire, attained such a measure of freedom—at all events after a new constitution of 1937 proclaimed it "a sovereign, independent, democratic state"—that it never afterwards could be regarded as a dominion in other than name; and on Easter Monday, 1949, it ceased to be even that [3] (3) More recently, as we have seen, Ceylon has gained Commonwealth status (though hardly Commonwealth stature), together with the two self-governing states carved out of the old Indian Empire, India and Pakistan. At the

[1] The title "dominion" owes its origin to the Conference of 1907, which adopted it as a device for distinguishing from the dependent empire the areas enjoying responsible government.

[2] Consummation of the arrangement called for amending legislation both at Ottawa and at London. During agitation of the issue in Newfoundland, certain elements campaigned for political independence supplemented by economic union with the United States.

[3] At this date, the name "Eire" was officially discarded and in its place the name "Republic of Ireland" adopted.

present time, therefore—with Newfoundland and Eire definitely removed from the list—the Commonwealth countries are seven in number—Canada, Australia, New Zealand, South Africa, Ceylon, India, and Pakistan.

Commonwealth Governments. It is of the essence of Commonwealth status to have self-government; and while it is too early to speak with assurance of the internal constitutional arrangements of the newest additions to the list, the older, English-speaking members lend themselves to a word of generalization. To be sure, even among these the student of comparative politics can find plenty of interesting and significant differences; yet, for purposes of a bird's-eye view, all are pretty much of a pattern. In every case, there is a written constitution, drawn up and adopted locally, although originally effective only by virtue of having been enacted by the British Parliament in the form of a statute. The youngest member of the group—South Africa—is, under terms of the Statute of Westminster, free to amend its constitution independently; in the case of Canada, certain amendments, and in that of Australia every one altering the relations between the states and the federal government, must be enacted in the form of a statute at London—normally, in pursuance of request made by the government of the country concerned.[1] In every Commonwealth country, the crown is represented by a governor or governor-general, who since the Imperial Conference of 1926 bears precisely the same legal relations to the Commonwealth government that the king himself sustains with the British government. In every case, the cabinet system exists and operates substantially as it does in London. In every case, too, except for New Zealand, there is a bicameral parliament. The second chamber is made up variously—by appointment (Canada), by popular election (Australia), by election by provincial legislatures (South Africa)—but the lower house is in all instances chosen in substantially the fashion that a person familiar with English political usage would expect. One rather fundamental difference of form appears. Some of the Commonwealth countries have unitary governments, some federal. New Zealand shows no trace of federalism; South Africa, although created by uniting separate political areas, has a government that does not quite qualify as federal;

[1] These two countries have federal systems of government, and the ultimate check from London upon amendments is designed for the protection of the provinces or states

Canada and Australia, likewise built up from separate colonial areas or units, are definitely federal. Students of the workings and problems of federal institutions find the last-mentioned countries almost as fruitful fields of observation as is the United States.[1]

COMMONWEALTH AUTONOMY

1. Legislation. How far the Commonwealth countries have moved on the road toward complete autonomy will be apparent if we observe their present position with respect to (1) lawmaking, (2) executive authority, (3) judicial appeals, and (4) international relations. As the self-governing colonies developed, the amount of legislation enacted locally naturally increased, while the British Parliament, although legally competent to make any and all laws for any and all parts of the Empire, gradually fell back, so far as the dominions were concerned, upon a policy of legislating only on matters on which the latter were not themselves competent to legislate (because, for example, extending beyond their boundaries) or matters of Empire importance, *e.g.*, nationality, extradition, and merchant shipping, which by their nature called for regulation on uniform lines. There still are a good many laws, made at Westminster, which, in whole or in part, apply in the Commonwealth of Nations. But the circumstances under which such legislation will in future be enacted have of late been profoundly altered. For some time it had been an accepted convention, not only that laws made at Westminster should in no case be regarded as applying to the Commonwealth countries unless their texts so stipulated, but also that legislation affecting these nations ought to be passed only after consultation with the various Commonwealth governments. Under terms of the Statute of Westminster, no act of the British Parliament passed after the taking effect of that measure is to be construed as extending to any Common-

[1] The monumental work on Commonwealth governments is A. B. Keith, *Responsible Government in the Dominions*, 2 vols. (2nd ed., Oxford, 1928), but later treatises, and more easily used, are the same author's *Constitutional Law of the British Dominions* (London, 1933), Chaps. v-xx, and *The Dominions as Sovereign States; Their Constitutions and Governments* (London, 1938). A still briefer account by the same author will be found in his *The Governments of the British Empire*, Chap. iv, and the federal aspects of Canadian and Australian government are treated fully in K. C. Wheare, *Federal Government* (New York and London, 1947). All of the pertinent constitutional texts will be found in [British] Foreign Office, *The Constitutions of All Countries*, I (London, 1938). Great Britain may herself be without a systematic written constitution, but the written constitutions in force in various parts of the Empire fill the whole of the volume cited (678 pages).

wealth country unless the act itself expressly declares that the given country "has requested and consented to" the enactment thereof.[1] Furthermore, by the same statute, all Commonwealth parliaments are empowered to repeal or amend any British act (or any rule, order, or regulation made under such act) in so far as it has been part of its law. And the Westminster statute itself declared certain existing laws, or parts of laws, thenceforth inapplicable in the Commonwealth countries generally.

The other side of the matter relates to legislation which the Commonwealth countries enact; and here the changes under the Statute of Westminster are at last equally significant. Formerly, every bill passed in any of them required the assent of the crown, given normally through the local governor or governor-general, under responsibility to the British "government," *i.e.*, the cabinet at London; and measures might be (although not often were) vetoed by that official, acting on his own judgment or under instructions. Bills sometimes, however, were "reserved," *i.e.*, sent to London for final decision—except in the case of the Irish Free State after 1923. And any acts—except again in the case of the Free State—might be disallowed from that quarter. To be sure, the wishes of the Commonwealth parliaments were, in later times, rarely frustrated in any of these ways. But the power was always there. Nowadays, however, the situation is different in two important respects. In the first place, although in his capacity as representative of the king (no longer of the British "government") the governor-general still formally assents to all Commonwealth legislation, he would no more think of interposing a veto than would his counterpart in Buckingham Palace, and the device of reservation has virtually disappeared. In the second place, whereas at one time inconsistency of a dominion statute with British common or statutory law was the usual ground for veto or disallowance, under the Statute of Westminster no law or provision of any law made by a Commonwealth parliament (after the statute took effect) may be held void or inoperative on the ground that it is "repugnant to the law of England, or to the provisions of any existing or future act of the Parliament of the United Kingdom, or to any order, rule, or regulation made under any such act"; and this practically puts an end to

[1] South Africa has, indeed, gone farther by enacting in 1934 that no measure passed at Westminster after December 11, 1931, shall be deemed to extend to the Union unless so extended by an act of the Union parliament.

the theory, to say nothing of the actual practice, of disallowance. So far as making their own laws is concerned, the Commonwealth countries are now, therefore, absolutely free. If laws made at Westminster after 1931 are to apply to any one of them, the country must have "requested" that they do so; and even at that, it is at all times at liberty to repeal or amend such laws (except only the Statute of Westminster itself) in so far as applicable within its own boundaries. Under these arrangements, considerable diversity of law is likely to arise, entailing problems with which the future will have to deal.[1]

2. Executive Functions. On the executive side, one finds strikingly reflected that dualism resulting in Britain itself from the rise of a responsible cabinet alongside a previously powerful king. Until 1926, the governor-general, while regarded as the personal representative of the sovereign, was an appointee of the British "government," *i.e.,* the cabinet, and chief administrative agent of that authority in the dominion. By a decision of the Imperial Conference of the year mentioned, however, this official was relegated to nominal headship, corresponding in every respect to that of the king in the British system; and nowadays he is appointed and removed by the king directly —on the advice of his ministers, but the ministers of the Commonwealth, not the British ministers. This development left the British cabinet without the customary agent in the Commonwealth country through whom to deal. But already it was not unusual for correspondence to pass directly between the British prime minister and the corresponding Commonwealth official, and nowadays this is the procedure—except that on all but the most important matters the channel of communication is rather between the Secretary of State for Commonwealth Relations at Whitehall and the appropriate Commonwealth minister for external affairs. In addition, the Commonwealth countries are generally represented by high commissioners in London,[2] and since 1928 British high commissioners have been stationed in all of the Commonwealth capitals. The formal, nominal line of control runs, therefore, from Buckingham Palace by way of the governor-general's mansion in the Commonwealth capital to the Commonwealth cabinet room; the line of actual coöperation—for that is

[1] On the general subject of imperial control over legislation, see A. B. Keith, *The Constitutional Law of the British Dominions,* Chap. ii.

[2] Recently demand has arisen from the Commonwealth countries that their high commissioners be converted into ambassadors, chiefly, it would appear, to give them a more favored position on ceremonial occasions.

all it really is—runs, however, from Downing Street straight to the same terminus.[1]

3. Judicial Appeals. Turning to the domain of justice, one finds the Commonwealth countries equipped with courts and procedures which, although strongly reflecting English precedent, are either entirely independent or substantially so; Commonwealth judges, too, are almost invariably men who have grown up locally. The only external check upon the courts is the Judicial Committee of the Privy Council, to which, under varying conditions, appeals may be carried from the highest court of certain Commonwealth countries but not others. It is not surprising that Commonwealth sentiment developed in favor of curtailing such appeals or eliminating them entirely. The highest Commonwealth courts, it was likely to be argued, were fully competent to be entrusted with final jurisdiction; appeals to London had the effect of placing the final disposition of cases in the hands of persons unfamiliar with local conditions;[2] and the expense of such appeals put poorer litigants at a disadvantage. As early as 1888, Canada sought to cut off appeals in criminal cases, but without being permitted to do so. The draft constitution first presented for approval by Australia in 1900 left the subject untouched, but a provision opening the way for appeals was required to be inserted. South Africa's constitution of 1909 started off by forbidding appeals from decisions of the dominion supreme court, but ended by permitting them from that tribunal's appellate division. In later days, three main things have happened. In the first place, in the instance of Eire, appeals were so frequently rendered meaningless by nullifying legislation (passed either in anticipation or in consequence of a judgment), or by sheer disregard of their results by the Dublin authorities, that even before the Irish Parliament, in 1933, unilaterally terminated the right of appeal, the Judicial Committee adopted the policy of refusing to stultify itself by hearing appeals from that area at all. Second, in Canada, not only were appeals in criminal cases cut off by local statute in 1933, but a decision of the Canadian supreme court holding valid a bill abolishing all overseas appeals was, in 1947, sustained

[1] H. V. Evatt, *The King and His Dominion Governors* (Oxford, 1936), contains a full treatment of the status and powers of the governors.

[2] The Commonwealths can be, and in fact are, represented in the membership of the Judicial Committee (until 1928, by a maximum of seven; nowadays without limit, although as a rule only about 10 persons are eligible). Few such representatives, however, are in London at any given time, and no salaries are provided for service there.

by the Judicial Committee itself. Third, the 1950 constitution of India forbade all appeals from that area. Finally, in 1950, South Africa and Pakistan cut off all appeals, whether civil or criminal, to the Judicial Committee. The upshot therefore is that it remains possible for appeals to be carried to London from some of the Commonwealth courts but not others; and in the case of one or two Commonwealth countries appeals continue fairly numerous.[1] The situation had become such in 1952 that proposals endorsed by high-ranking officials in London were being made to supplant the Judicial Committee by a new court.[2]

4. International Relations. Up to a point, the Empire, including the Commonwealth countries, is a single state, in both municipal and international law. That point, however, is soon reached, and beyond it the self-governing areas are substantially free and independent nations. The official name for the group is now, as we have seen, the Commonwealth of *Nations*. From this general fact arise several notable features of the Commonwealth countries' position internationally—a position, be it observed, which is practically the same for all members of the group. In foreign affairs as in defense, said the Imperial Conference of 1926, "the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain." Even then it was recognized, however, that all of the dominions were engaged to some extent—some to a considerable extent—in the conduct of foreign relations; and in later years their rôle in this respect was significantly extended.

(a) Sending and Receiving Ministers. To begin with, as matters now stand, all are free to accredit their own ministers to foreign governments (also to send consuls), and to receive ministers accredited to them in turn by such governments. The Irish Free State set the pace in 1924 by accrediting an envoy extraordinary and minister plenipotentiary to the United States, receiving on its part a minister from this country; and today every Commonwealth country—including the newer ones like India—have chosen to be represented in this

[1] Appeals from crown colonies—at all events those in Africa—are increasing. Nevertheless, it is clear that in future the Judicial Committee will be confronted with a good deal less business than in the past.

[2] A. B. Keith, *Constitutional Law of the British Dominions*, 265-281; and for fuller treatment, N. Bentwich, *The Practice of the Privy Council in Judicial Matters* (3rd ed., London, 1937), and H. Hughes, *National Sovereignty and Judicial Autonomy in the British Commonwealth of Nations* (London, 1933). Cf. M. M. Johnson, "The Judicial Committee of the Privy Council," *Boston Univ. Law Rev.*, Nov., 1943.

way and have accredited ambassadors to those countries with which their relations are most extensive. In all cases, the envoy from the Commonwealth country, accredited by the governor-general, is the ordinary channel of communication on affairs relating solely to his own country, while matters of general imperial concern, or affecting countries not represented at the capital concerned continue to be handled by the minister or ambassador of the United Kingdom.

(b) Making Treaties. In the next place, the Commonwealth countries are empowered to conclude treaties—under certain limitations. Treaties are ordinarily supposed to be made only by sovereign and independent states. As early as 1923, however, Canada not only set up a claim to separate treaty-making authority, but actually concluded a halibut-fisheries treaty with the United States, which, as being of concern only to the two American neighbors, was signed only by a Canadian, and not a British, representative.[1] With this precedent established, the Imperial Conference of 1923 laid down the general principle that treaties, whether commercial or political, might be negotiated, signed, and ratified separately by any Commonwealth government,[2] provided that no other part of the Empire was affected and that any other government in the Empire likely to be interested was consulted; and this remains the rule today. In 1926, the important additional principle was agreed to that no Commonwealth country may be bound by any treaty not signed by delegates empowered to act for it.[3]

(c) Participating in or Abstaining from War. The fact that, in general, a community of English-speaking subjects is not likely to be at peace with a foreign country with which Great Britain is at war, or at war with a country with which Great Britain is at peace, suggests a considerable degree of surviving unity in international affairs. Even here, however, limits are soon reached, because since 1926 it has been expressly conceded that there is both an "active" and a "passive" belligerency. And more recently it is indicated that each Commonwealth country is the sole judge of the nature and extent of its own

[1] One recalls also in this connection the Great Lakes-St. Lawrence Deep Waterway Treaty signed at Washington on July 18, 1932 (although never as yet ratified by the United States).

[2] Always, however, in the name of "His Britannic Majesty."

[3] R. B. Stewart, "Treaty-Making Procedure in the British Dominions," *Amer. Jour. of Internat. Law*, July, 1938.

coöperation—that is, of whether it will be an active belligerent. It still remains true that when Great Britain is at war all Commonwealth countries become vitally concerned. But in the actual conduct of war one can easily imagine circumstances under which Commonwealth countries such as India would not feel it obligatory to participate or indeed proclaim belligerent status. In a war of large proportions, however, there could hardly fail to be resentment toward any bona fide member of the Commonwealth undertaking to remain aloof.[1]

(d) Membership in the United Nations. When the League of Nations was formed in 1919, all of the then existing dominions except Newfoundland became original members; and the newly formed Irish Free State was admitted in 1923. Similarly, when the United Nations took form in 1945, all of the then existing Commonwealth countries participated in the preliminary discussions and in the San Francisco Conference, and all became full-fledged members, with the same rights as independent states to representation in the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, and other principal organs. Committed to the task of renewing the attempt to organize collective security through international coöperation, and thus united by community of purpose, United Kingdom and Commonwealth countries entered UN, not as one, but as several legal entities, not unitary but multiple in policies and decisions, but still a Commonwealth.[2]

THE FUTURE

The Prospect for Survival. Three-quarters of a century ago, as observed above, there was a good deal of doubt among Englishmen as to whether the Empire as it then stood would endure. The loss of the American colonies suggested that as other possessions waxed

[1] Eire alone among the areas then reckoned as British dominions maintained neutrality throughout the whole of World War II. That country's Commonwealth status was, however, so nebulous that little if anything more was expected; and the burden that the country's defenseless condition would otherwise have imposed upon Britain justifies the commonly accepted view that the Allied cause was helped rather than hurt by the decision for abstention.

[2] In addition to references already cited on the international status, the following are useful: A. B. Keith, *Constitutional Law of the British Dominions,* Chaps. iii-iv, xvi, and *The Governments of the British Empire,* Chaps. iii-iv; A. J. Toynbee, *The Conduct of British Empire Foreign Relations Since the Peace Settlement* (London, 1928); and P. J. N. Baker, *The Present Juridical Status of the British Dominions in International Law* (London, 1929).

stronger they too would mature and, like ripe fruits, fall from the imperial tree. And to a certain extent, this is actually happening. Already the Commonwealth is to all intent and purposes a league of independent states; Eire, at best only a shadowy dominion, is gone; since World War II, Palestine and Burma have been lost; India has been saved for the time being, but it is difficult to predict its future relationship.

After all, however, there still stands at the center a United Kingdom, with acute economic problems, but with many elements of strength; also in far-away places an empire of associated and dependent peoples, most of whom would think twice before accepting full legal independence if it were offered them. There are still Little Englanders, just as there are still men who, although devoted to the imperial ideal, can see no escape from the Empire's eventual dissolution. But one will search in vain through the official pronouncements of all the important political parties for proposals or promises looking to the setting adrift of crown colonies or other possessions. The Labor party—certainly the least "imperialistic" of the number—favored "the closest coöperation between Great Britain and the dominions" and the preparation of "indigenous peoples for full self-government at the earliest practicable date." But it has at no time suggested dismantling the Empire (although Winston Churchill sturdily charged it with in effect doing so, when, in 1948, it agreed to independence for Burma); even in the case of India, it would have gone no further than to confer dominion status upon a united country, had circumstances not forced a decision at least opening the way for something more. In all parties, and in all sober discussion, the emphasis is upon ways and means of adjusting the internal and external relations of the Empire, broadly conceived as including the Commonwealth, in better accordance with the new world conditions of the twentieth century, and particularly of the postwar period. As for the Commonwealth countries, the Statute of Westminster is regarded as fixing a framework or pattern within which the no doubt somewhat altered but still sturdy Commonwealth of the future can be evolved. There is still a deep sentimental attachment to the royal house, and it does not seem to be diminishing. For a long time to come, none of the Commonwealth countries is likely to rank among the great powers and the prestige of all will be higher as parts of a Commonwealth of

Nations than in any other situation. For some twenty years, too, though frequently limited by exchange shortages, they have enjoyed a preference in the British market which all would be loath to give up.

Methods of Constitutional Growth. The fact has been noted that there is no written constitution either for the Empire as a whole or for the Commonwealth. It is doubtful whether there ever will be one. But this does not mean that there is not a great and growing body of imperial constitutional law—to say nothing of imperial conventions or customs as well. How such law and custom develop must be evident from the foregoing pages. Take, for example, the matter of Commonwealth participation in the management of foreign relations. No longer ago than 1911, Prime Minister Asquith was heard stoutly maintaining that the responsibility of the British government in such weighty matters as formulating foreign policy, making treaties, declaring war, concluding peace, and, indeed, in dealings of every form with foreign powers, could not be shared. The experiences of World War I led, however, to the adoption of a different attitude. The Imperial War Conference of 1917 pronounced all of these activities of common concern to the Empire, and therefore matters in which action should be coöperative. The resolution of the Conference to this effect was accepted by the British government as a working principle; whereupon the Imperial Conferences of 1923 and 1926 took the next logical step by working out rules and methods for giving effect to the plan, the government again accepting them and giving them validity. Within the space of a decade, the entire scheme of imperial foreign relations was revolutionized—not by formal act of Parliament, nor yet by unilateral action of the Foreign Office, cabinet, or other authority at London, but by conference, resolution, and informal assent.

In similar fashion have come most other changes in inter-imperial relationships, and from the same process must be expected to flow all of the greater understandings and readjustments by which the Empire will continue to preserve the harmony, and also build the machinery, necessary to its survival. Thus the Empire feels its way along the tortuous path of its existence, developing its rules of action as it goes. Its scheme of life at any given moment contains much that is illogical, and even incongruous. But readers of earlier chapters of this book will recognize in the procedure the same practical-minded meeting of problems as they arise which made the living, expanding British con-

stitution what it is today, and will understand that logic and symmetry are—in the Britisher's world, at all events—not essential to utility and permanence.[1]

[1] The character and outlook of the Empire (although from prewar viewpoints) are dealt with in A. Zimmern, *The Third British Empire* (London, 1934); W. P. Hall, *Empire to Commonwealth* (New York, 1928); L. H. Guest, *The New British Empire* (London, 1929); W. Y. Elliott, *The New British Empire* (New York, 1932); and E. Barker, *Ideas and Ideals of the British Empire* (New York, 1941); Royal Institute of International Affairs, *The British Empire: A Report on Its Structure and Problems* (New York, 1938); H. Bolitho, *The British Empire* (London, 1948); G. E. Elton, *Imperial Commonwealth* (New York, 1946); H. V. Hodson, *Twentieth-Century Empire* (London, 1948); and E. A. Walker, *The British Empire: Its Structure and Spirit* (London, 1943). Valuable discussions of the Commonwealth of Nations and its members will be found in F. G. Marcham, *The British Commonwealth; An Experiment in National Self-Government and International Coöperation* (Ithaca, N. Y., 1944; W. K. Hancock, *Survey of British Commonwealth Affairs,* 2 vols. in 3 (New York, 1937-42); I. Jennings, *The British Commonwealth of Nations* (London, 1948); S. D. Bailey [ed.], *Parliamentary Government in the Dominions* (London, 1951); A. Brady, *Democracy in the Dominions* (rev. ed., Toronto, 1952); N. Mansergh, *The Commonwealth and the Nations* (London, 1948); F. H. Soward, *The Changing Commonwealth* (New York, 1950); *The British Commonwealth: The Development of the Laws and Constitutions,* a series of extensive studies which began to be published in London in 1952; J. Coatman, *British Family of Nations* (London, 1950); R. Frost [ed.], *British Commonwealth and World Society* (New York, 1947); E. Grigg, *The British Commonwealth: Its Place in the Service of the World* (New York, 1944); J. Simmons [ed.], *From Empire to Commonwealth* (London, 1949). *The Round Table,* a quarterly review published at London, is indispensable for students of Commonwealth politics.

CHAPTER XIX



THE GOVERNMENT OF A COMMONWEALTH COUNTRY—CANADA

Canada should be of special interest to students in the United States because of its proximity, and because of the cordial relations which long have existed between the two countries, evidenced by an international boundary line some 3,000 miles in length yet totally devoid of fortifications.[1] More citizens of the United States visit Canada than journey to any other foreign country—indeed, the number is several times that reported for most other lands. The fact that the economic structures of the two countries are closely geared together and that both base their monetary systems on the dollar is not without significance politically. But even more important is the similarity of the political aims and goals of Canada and the United States. The political institutions of Canada embody cardinal features of the government of England, especially the cabinet set-up, and at the same time federalism, which is so distinctive in the governmental scheme of the United States. Students of political science should find such an admixture of distinct interest.[2]

[1] Despite proximity and intimate economic relations, there has been comparatively little familiarity on the part of either Americans or Canadians with the political institutions of the other country. Indeed a committee made up of representatives of both countries reported in 1947 that it was difficult to understand the common disregard of the institutions of Canada in textbooks and in courses of study in schools and universities in the United States. Reciprocally, the situation in Canada is much the same. The committee recommended more attention and understanding on both sides.

[2] Valuable studies of Canadian political institutions published during recent years include R. M. Dawson, *Government of Canada* (Toronto, 1948), and *Democratic Government in Canada* (Minneapolis, 1950); H. McD. Clokie, *Canadian Government and Politics* (rev. ed., Toronto, 1950); A. Brady, *Democracy in the Dominions* (rev. ed., London, 1952); G. W. Brown, *Canadian Democracy in Action* (Toronto, 1946); and A. B. Keith, *The Dominions as Sovereign States; Their Constitutions and Governments* (London, 1938).

General Political Status. Though for many years Canada was considered a territory or dependency of Great Britain, since World War I there have been significant developments which have made Canada an independent sovereign state—indeed, in 1952 the appellation "dominion" was dropped. Canadians now conceive of their country, even though a constituent part of the Commonwealth of Nations, as politically independent, though bound by important cultural ties to Britain, and acknowledging allegiance to the king who occupies a position as formal head and symbol of government in the mother country.[1] Canada now maintains her own legations and embassies in foreign lands, handles her own defense, and holds her own membership in the United Nations. Provision has recently been made for separate Canadian citizenship.

CONSTITUTIONAL DEVELOPMENT

Prior to 1867. Although Canadian history goes back to the seventeenth century, constitutional development was most noteworthy during the period since 1867, when the British North America Act became effective.[2] The United Provinces had their own responsible government, however, as early as 1849. Efforts were made to join the Maritime Provinces and Newfoundland to the United Provinces from time to time, but there was a considerable amount of misunderstanding between upper and lower Canada, and for a long period no agreement could be arrived at on any of the proposals made. In 1861, the government of the United Provinces was overthrown as a result of the election in that year, and during the ensuing three years conditions became very confused. There were three different governments in as many years, and finally, in 1864, the situation approached a deadlock. Out of this finally grew an agreement signed by the constituent elements of a coalition government to the effect that the government should seek a confederation of the British North American provinces, and that if this could not be achieved, a federal govern-

[1] For an illuminating statement by a Canadian political scientist on the relationship between Canada and the king, see Stephen Leacock, "Canada and the Monarchy," *Atlantic Monthly*, June, 1939.

[2] For detailed studies of Canadian history, see C. Wittke, *History of Canada* (2nd ed., New York, 1933); G. W. Brown, *Building the Canadian Nation* (London, 1945); A. L. Burt, *A Short History of Canada for Americans* (Minneapolis, 1944); G. S. Graham, *Canada: A Short History* (New York, 1950); and E. McInnis, *Canada; A Political and Social History* (New York, 1947).

ment should be set up in the United Provinces alone until such time as the Maritime Provinces would join.

The Quebec Conference. Negotiations between representatives of the United Provinces, the Maritime Provinces, and Newfoundland led to a meeting in Quebec in the fall of the year mentioned. Like its prototype at Philadelphia some 80 years earlier, the assembly met behind closed doors; and after debating for more than two weeks, it arrived at the conclusion that a federal union rather than a unitary government was desirable for Canada. Seventy-four drafted resolutions were in turn adopted by the legislatures of the United Provinces, Nova Scotia, and New Brunswick, though rejected by Newfoundland; and, submitted to the British Parliament, all were incorporated into a British North America Act placed on the statute-book in 1867.

The British North America Act. The British North America Act occupies the position in Canada of a formal constitution. Its authority is dual, inasmuch as its contents were first of all drafted by a convention of provinces and adopted by the regular provincial legislatures and finally given legal form by the Parliament at Westminster. It has been amended from time to time by acts passed by the British Parliament and supplemented and elaborated by tradition, by judicial decisions, and by laws enacted in Canada. Consisting of 145 sections and five schedules, it is fairly detailed, although no provision is made for a supreme court—a deficiency later remedied by a statute.[1]

Amendments. As embodied in the original British North America Act, the constitution was subject to amendment by ordinary act of Parliament at Westminster, but now amendments are initiated in Canada, though in some instances still acted upon in London. Apart from the regular process of amendment, it has been possible to accomplish changes tantamount to constitutional amendments through agreement earlier with the Colonial Office, later the Dominions Office, and still more recently the Commonwealth Relations Office, and also through decisions of the Judicial Committee of the Privy Council. Thus, in one way or another, in 1870 Canada gained authority to regulate her coastwise shipping; in 1882 she added to her powers that of vetoing nominations for the office of governor-general; and in 1897 she received representation on the Judicial Committee of the Privy Coun-

[1] See W. P. M. Kennedy, *The Constitution of Canada, 1534-1937* (2nd ed., London, 1938).

cil. As early as 1872, she achieved the right to decide whether the dominion would be a party to treaties entered into by Great Britain; in 1904, she acquired authority to regulate immigration; and in 1907, she won the right to name her own representatives for the negotiation of commercial treaties. Since World War I, she has further modified the working constitution by taking over responsibility for her general foreign relations through the establishment of separate legations.[1] In 1931, the British Parliament passed the Statute of Westminster, defining relations between the mother country and the dominions and formally establishing the general equality of the dominions and the mother country.[2] In 1935, the Privy Council upheld the right of the dominion to prohibit appeals in criminal cases from the Canadian courts to the Judicial Committee [3] and in 1947, it upheld the authority of the Canadian Parliament to make the Canadian Supreme Court rather than the Judicial Committee the final appeals tribunal.

The Current Amendment Situation. During recent years Canada has examined the possibility of altering the amendment process to conform more closely to its position as a sovereign state. Various conferences have been held between central government and provincial representatives to canvass the situation, but they have not been able to find a solution to the provision of the original compact stipulating that amendments involving the balance of central-provincial powers could be accomplished only by unanimous consent on the part of the provinces.[4] Aside from this, it is probable that the full responsibility for making amendments would have been shifted formally to Ottawa. As it is, under a 1949 amendment to the British North America Act the Canadian Parliament is authorized to amend that part of the constitution which has to do with the central government. But it is specifically excluded from making amendments relating to provincial powers and rights, individual rights in respect to schools,

[1] For a discussion of the steps taken, see H. G. Skilling, *Canadian Representation Abroad: From Agency to Embassy* (Toronto, 1946); and also F. H. Soward, *Canada in World Affairs* (New York, 1951).

[2] See K. C. Wheare, *The Statute of Westminster and Dominion Status* (4th ed., London, 1949).

[3] See the case of British Coal Corporation *v.* The King, passed upon by the Privy Council in 1935.

[4] It was expected that a royal commission appointed to give attention to constitutional problems would try again to work out a solution to this problem in 1953, though after conferences between the attorney general of the central government and the attorney generals of the provinces had failed in 1952 it was not easy to see what could be done.

use of the French and English languages, and the requirements that Parliament shall meet at least once each year and that no House of Commons shall continue in excess of five years except by specific vote in time of war.[1]

THE DIVISION OF POWERS

The British North America Act provided for a federal government in Canada,[2] but it permitted the central government greater authority than the central government of the United States seemed to enjoy when the Canadian constitution was made. Canadians were struck by the lack of power of the central government as demonstrated by events leading up to the Civil War in the United States and were determined to protect themselves against a similar weakness.[3]

Powers Conferred on the Central Government. Under the constitution of the United States, only those powers expressly given to the central government are to be exercised by that government, while other powers are reserved to the states unless specifically prohibited. In contrast, the Canadian constitution turns the cart and the horse around and makes the central government the residuary of all authority not expressly given to the provinces. The central government has exclusive authority over matters of defense, the postal service, navigation and shipping, the census, fisheries, ferries between provinces or of an international character, currency, banking, patents and copyrights, bankruptcy, marriage and divorce, criminal law, naturalization, and Indians.[4] It also has unlimited power to levy taxes and to borrow money.

Powers Conferred on the Provinces. In contrast to 29 fields given exclusively to the central government, the provincial governments have 16 specific powers which they can exercise exclusively,

[1] For recent discussions of certain of the constitutional problems confronting Canada, the reader is referred to P. Gérin-Lajoie, *Constitutional Amendment in Canada* (Toronto, 1950); A. Brady, "The Critical Problems of Canadian Federalism," *Amer. Polit. Sci. Rev.*, Oct., 1938; R. M. Dawson [ed.], *Constitutional Issues in Canada, 1900-1931* (London, 1933); and F. R. Scott, "Constitution and the Post-War World," in A. Brady [ed.], *Canada After the War* (Toronto, 1943).

[2] For an excellent study of federalism as embodied in Canadian government, see K. C. Wheare, *Federal Government* (New York, 1947).

[3] For illuminating studies dealing with the influence of the United States and its institutions upon Canada, see W. B. Munro, *American Influences on Canadian Government* (Toronto, 1929), and G. M. Wrong, *The United States and Canada; A Political Study* (New York, 1921).

[4] The powers of the central government are discussed in A. B. Keith, *The Governments of the British Empire* (London, 1935), 418 ff.

including the right to amend the constitution of the province (except as affecting the lieutenant-governor), taxation and borrowing within the province, appointment of provincial officials, control of public land belonging to the province, maintenance of penal and charitable institutions of a local character, regulation of municipal government, sumptuary licenses, local public works, incorporation of local companies, local administration of justice, control over local property and civil rights, and other matters of a local character.

POLITICAL PARTIES

General Character. Canada has traditionally followed the bi-party system, although additional parties have from time to time become fairly influential for varying periods.[1] The familiar English model of a Liberal and a Conservative party has prevailed, and has indeed been more tenaciously adhered to than in the case of Britain herself. Despite the development of a strong Labor party and the disintegration of the Liberal party in Britain, Canada has continued to maintain the Liberal and Conservative parties as outstanding party groups;[2] more than that, in the 1935, 1940, 1945, and 1949 elections it gave the Liberal party a mandate to run the government.[3] A labor party, going under the label of Coöperative Commonwealth Federation, includes in its membership many elements similar to those affiliated with the Labor party in Britain, notably Fabian socialists and labor unions; but, despite success in Saskatchewan, it has never played a major national rôle.[4] Another party in Canada differs from anything to be found in either the United States or Britain, *i.e.*, the Social Credit party. Holding somewhat unconventional views on money and credit, it has never been able to make its influence felt very strongly in the central government [5]—although it has won notable

[1] In the election of 1945, for example, the Coöperative Commonwealth party won 28 seats in the House of Commons and the Social Credit party 13, out of a total of 245.

[2] The Conservative party now uses the title "Progressive Conservative."

[3] In 1949, the Liberals won 193 seats in the House of Commons, in contrast to 42 for the Progressive Conservatives.

[4] In 1949, the party secured 12 parliamentary seats. In 1952, it held first place in the province of Saskatchewan. For a detailed study of this party, see D. E. McHenry, *The Third Force in Canada: The Coöperative Commonwealth Federation, 1932-1948* (Berkeley, Calif., 1950). For its rôle in Saskatchewan, see S. M. Lipset, *Agrarian Socialism: The Coöperative Commonwealth Federation in Saskatchewan* (Berkeley, Calif., 1950).

[5] This party held 10 seats in the House of Commons elected on June 27, 1949. For an analysis of its record in Alberta, see W. L. Morton, *The Progressive Party in Canada* (Toronto, 1950).

successes in the province of Alberta and more limited victory in British Columbia.

Integration of Parties with the Legislative Branch. Following the tradition of cabinet responsibility which has been such a striking feature of the English government, Canada has integrated her party system with the government to a high degree.[1] The party which elects a majority, or at any rate the largest number of members, of the lower house of the Parliament is charged with forming a cabinet, which then formulates a program for the government and provides leadership for the legislative branch. When a party cabinet can no longer control the lower house of Parliament, it must resign and give way to another that can achieve such support.

Party Leadership. Canadian parties follow the English practice of designating specific persons to serve as leaders. The leader of the party in power assumes the position of prime minister, while the leaders of the other parties act as opposition leaders in Parliament.[2] In general, Canada has been fortunate in its party leaders, although not all have been as able and aggressive as W. L. Mackenzie King, R. Bennett, Sir Wilfred Laurier, and Sir John Macdonald.

Party Organization. Political parties are not recognized by law in Canada, and consequently they have been free to determine their own organization and procedures. In general, organization is less elaborate than in the United States. Political machines are less common, while outstanding political bosses are almost unknown. Official ballots omit party designations and emblems, but in parliamentary and provincial elections party affiliations play an important rôle—though in municipal elections party lines are frequently not significant.

ELECTIONS

Nominations. The nominating process is at least in theory very simple. Any 25 voters may place in nomination a candidate for the House of Commons by signing and presenting to the proper official nomination papers, together with a deposit of $200; the deposit is returned to successful candidates and also to any who poll half as many votes as are received by the person elected. Actually, the proc-

[1] See F. R. Scott, *Canada Today* (New York, 1938).

[2] The leader of the Liberal party, which controlled the government after the elections of 1935, 1940, and 1945, was W. L. Mackenzie King. On account of advancing age, he, however, yielded the position in 1948 to Louis St. Laurent.

ess is more complicated than appears on the surface, inasmuch as only those chosen by the major parties have any reasonable chance of winning election. Each party holds conventions in the various constituencies for the purpose of choosing official candidates; and in preparation for these the various aspirants cultivate the members and leaders of the party, make speeches setting forth their views, and go through much the same motions as are to be observed in the United Kingdom.[1]

Campaigns. Inasmuch as the Canadian system provides for elections when the House of Commons is dissolved rather than at stated intervals—although elections must be held at least every five years—there is perhaps less preliminary campaigning than is the case in the United States, even though it is ordinarily known some time before the official manifesto is issued that an election is in the offing. Public rallies are staged, printed literature is circulated, posters are displayed in public places, the radio is used, and personal solicitation is employed. There may not be as much excitement as accompanies a presidential election in the United States, but public interest frequently reaches a high pitch. Large sums of money are raised and spent, with the matter of finance a serious problem in the case of candidates who do not have adequate backing.[2]

Voting. Parliamentary and local elections are held at different times, with the result that the voter finds his task more simple than in the United States. With the prime minister selected by the dominant party, the members of the upper house of Parliament appointed, and no judges or executive officials elected, the voter in a parliamentary election usually has to decide on only a single person for whom he wishes to cast a vote, although a very limited number of constituencies elect two members. Ballots are official, list the names, addresses, and occupations of the candidates without party label, and are about the size of a postcard. Voting is secret. Ballots are counted at the polling places by the election officials in the presence of the candidates or their agents; and with only one position to be filled, the results are usually known by midnight of election day or even before,

[1] For additional discussion of the operation of the democratic process in Canada, see A. Brady, "Parliamentary Democracy," in A. Brady [ed.], *Canada After the War* (Toronto, 1943); and H. McD. Clokie, *Canadian Government and Politics* (rev. ed., Toronto, 1950).

[2] On Canadian campaigns and elections, see R. M. Dawson, *Government of Canada* (Toronto, 1948), Chaps. xxi-xxiii; and W. H. Chamberlin, *Canada, Today and Tomorrow* (Boston, 1942), Chap. viii.

although the official returns are not made until the writ of election is despatched to Ottawa.[1] Qualified women are now voters in all of the provinces; Quebec, however, got around to enfranchising them only quite recently. The voting age for both sexes is twenty-one; Canadian citizenship is required; and the voter must have lived one year in Canada and two months in the constituency.

THE GOVERNOR-GENERAL

Status. The governor-general occupies a place in Canada somewhat corresponding to that held by the king in Great Britain, although his tenure has no such quality of permanence and his importance as a symbol is distinctly less.[2] Nominally, he is chosen by the king, but the actual choice is now made by the Canadian prime minister after consultation with the cabinet. The ordinary term is five or six years, but removals are possible before that time if there is friction. There has been some sentiment in favor of having a local man chosen to the position, on the ground that most of the governors-general have lacked the familiarity with local problems enabling the king to exert a considerable personal influence in English affairs. The first appointment of a Canadian to the position was made in 1952. The Imperial Conference once specified that the governor-general should be kept informed concerning all measures taken by the cabinet. Unless, however, the relations between governor-general and cabinet happen to be personally intimate, the rule is rarely followed. Formal negotiations between Canada and the mother country have in the past been carried on through the office of the governor-general; but Canada now negotiates with the mother country directly. Dissolutions of the House of Commons are formally declared by the governor-general, and as recently as 1926 an incumbent, Lord Byng, refused a request of a prime minister to dissolve and call new elections. Much ill-feeling resulted, and after the House of Commons had refused to support a new ministry appointed by the governor-general, and the voters had defeated it in an ensuing election, the issue was carried to an Imperial Conference, whose decision was that the authority of the governor-general in connection with dissolution was only such as the king himself enjoyed in Britain—which meant that the action of Lord Byng

[1] For a discussion of voting in Canada, see R. M. Dawson, *op. cit.*, 376-386.

[2] On the office of governor-general, see G. Neuendorff, *Studies in the Evolution of Canada: The Governor-Generalship* (London, 1942).

had been improper. Recent appointees to the governor-generalship have usually been men of quite personable and tactful characteristics, and consequently there has been less dissatisfaction than before 1930. Lord Tweedsmuir (the well-known novelist John Buchan) seemed quite popular during his period of service—indeed a national park was named for him; and the appointment of Lord Alexander, the well-known military leader, following World War II, also was well received.

THE CABINET

General Status. It is not surprising that there is a close resemblance between the Canadian cabinet and the cabinet of the United Kingdom.[1] However, since most ministers have seats in the Canadian cabinet, there is little distinction between cabinet and ministry, and there also is less difference than in Great Britain between the cabinet and the Privy Council. Nominally, the Privy Council is composed of the members of a current cabinet, together with all former members of cabinets; but actually only the members of the governing cabinet participate in its meetings, and consequently it is virtually identical with the cabinet. In certain Commonwealth countries, the governor-general sits in such a body, but in Canada this is not the case. The cabinet exercises executive authority and also provides legislative leadership in the Parliament.

The Forming of a Cabinet. When the cabinet in office can no longer command support in the House of Commons, the prime minister, who is its head, requests the governor-general to order a new election. Since 1926, the request has been the equivalent of an order, for, as pointed out, the episode of that year demonstrated that the governor-general enjoys no discretion in the matter. If the cabinet is not upheld by the voters and the new House of Commons is unwilling to follow its lead, the ministers must resign and the governor-general must call upon some one to form a new cabinet. Although theoretically the governor-general may exercise some choice in the matter, he has long since lost his right to do more than name the leader of the party which has come into control of the House of Commons. This leader proceeds to negotiate with the members of his party who carry

[1] There is no up-to-date book dealing exclusively with the Canadian cabinet. But R. M. Dawson, *Government of Canada* (Toronto, 1947), Chaps. ix-xi, devotes generous space to the subject and should be consulted for additional information.

weight, and ultimately a new cabinet is announced, although the governor-general makes the formal appointments to the various seats.

The Cabinet's Composition. The dominion cabinet approximates the size of the English cabinet. There are ministers of trade and commerce, finance, agriculture, justice and attorney-general, defense, defense production, citizenship and immigration, reconstruction, resources and development, mineral resources, post office, labor, transport, public works, veterans' affairs, fisheries, national revenue, and national health and welfare, together with a secretary of state for External Affairs and a solicitor-general. Recently there has also been at least one minister without portfolio. Ministers either are members of Parliament before they are called to assume cabinet posts or seek seats shortly thereafter.

Functioning of the Cabinet. The cabinet functions as a unit and maintains collective responsibility to the House of Commons; when the prime minister resigns, all of the other members retire automatically. The prime minister is, of course, more prominent than any of his colleagues, but he nevertheless may still be regarded as a leader rather than a master. Cabinet deliberations are secret and in general informal, with the prime minister deciding what to bring before his colleagues for discussion. Ordinarily, the cabinet decides on general executive policies, prepares a legislative program for the House of Commons, guides this program through the House, and attempts to cultivate the support of the voters.[1]

THE HOUSE OF COMMONS

Composition. The lower house of the Canadian Parliament is known as the House of Commons. Its size is not arbitrarily fixed, but fluctuates with the population of the country. The original British North America Act specified that Quebec [2] should have 65 seats and that the other provinces should have representation in the same ratio as that of their population to the population of Quebec.[3] An amendment added in 1946 provided a new formula based primarily on population, though each province must be given at least as many seats as

[1] For a good discussion of the functions of the cabinet, see M. Ollivier, *Le Canada; Pays Souverain* (Montreal, 1933), Chap. v.

[2] A recent study dealing with the special rôle of Quebec may be profitably consulted. See E. C. Hughes, *French Canada in Transition* (London, 1946).

[3] For a detailed discussion of this problem, see N. Ward, *The Canadian House of Commons—Representation* (Toronto, 1950); also R. M. Dawson, *op. cit.*, 365-367.

it has senators whether its population justifies it or not. With the newer provinces growing much more rapidly in population than the older ones, there has been a serious problem of how to apportion without reducing the seats of Nova Scotia, New Brunswick, and Prince Edward Island; and actually these provinces have lost seats. Apportionment is made after each decennial census, and the last one (in 1947) gave Ontario 83 seats, Quebec 73, Nova Scotia 13, New Brunswick 10, Prince Edward Island 4, Manitoba 16, Saskatchewan 20, Alberta 17, British Columbia 18, Newfoundland 6, and the Yukon and Mackenzie 1, or a total of 261 seats.

Election of Members. The law requires that members of the House of Commons shall be elected at least once every five years. Actually, elections depend upon the relations between the cabinet and the House of Commons and the decisions of the cabinet ministers—although the party system is sufficiently stable to make the terms almost coincide with the five-year legal maximum. With very few exceptions, members are elected from single-member constituencies, each of which, on the average, has somewhat more than 30,000 inhabitants. Unfortunately, reapportionments and the laying out of districts have been handled very much as in the United States, with some districts having many more people than others. Rural areas are generally favored as against urban areas; one rural district has only approximately 10,000 inhabitants; yet it has had the same representation that one urban district with more than 100,000 people enjoys.

Members must be citizens of Canada but they do not have to reside in their constituencies and may have come to Canada but recently. The majority, however, actually have long Canadian residence, if indeed they are not natives, and also reside in the constituencies which elect them. Nevertheless, as a rule slightly more than 10 per cent are not residents of the constituencies which they represent; and this enables a party to take care of members of the cabinet who may have difficulty getting seats, and of other prominent party members who perhaps live in Ottawa, Montreal, or some other large place not having many seats in proportion to the number of party leaders residing there. Members receive an annual salary of $4,000 plus an allowance of $2,000.[1]

Sessions and Organization. There is no fixed time for holding sessions of the House of Commons, but, with the new fiscal year

[1] This allowance was authorized in 1945.

beginning the first of April, sessions regularly are called for November and last until April or May.[1] The office of speaker affords an interesting illustration of the counter-influences of London and Washington, for the incumbent is less politically neutral than his London counterpart but at the same time less partisan than the speaker in Washington. He presides in the House with a large measure of impartiality; yet he retains active membership in his party, makes political speeches in his constituency, and distributes political patronage. Occasionally he is elevated to a seat in the cabinet. Under the custom of alternating between English-speaking and French-speaking Canada, every House has a new speaker; and a deputy speaker, who relieves the speaker, is invariably of the opposite language group from the speaker. The committee system is perhaps more like that of Washington than that of Westminster, although it represents a compromise. The number of standing committees approximates a dozen, and their membership exceeds the usual figure in the larger American House of Representatives. Unlike those of the British House of Commons, all committees specialize on various types of bills.[2]

Procedure. The rules of the Canadian House of Commons are based on those of the British House of Commons, and naturally bear more resemblance to them than to the rules of the Congress of the United States, even though the latter also were originally derived largely from English sources. The quorum is 20; there is no calling of the roll; journals are not read; party whips are employed; the form of debate is like that at Westminster; and the rôle of the ministers is similar to that in the British House of Commons. There is a question period, too, resembling that in the British House of Commons; and bills are classified as government bills, private member bills, and private bills, with government bills enjoying the right of way. On the other hand, the caucus system is more like that in the lower house of the American Congress, and proceedings differ from those both at London and at Washington in that both English and French are official languages.[3]

[1] The excitement of hostilities in 1939 caused that year's session to be delayed, and the call finally specified an opening date in January, 1940.

[2] Further information on the Canadian House of Commons will be found in R. M. Dawson, *op. cit.*, Chaps. xvi-xix.

[3] For further discussion of the House of Commons, see F. R. Scott, *op. cit.*, Chap. iv; and cf. A. Beauchesne, *Rules and Forms of the House of Commons of Canada* (3rd ed., Toronto, 1943).

THE SENATE

Composition. The Senate of Canada is approximately the size of the Senate of the United States (currently 102).[1] But it is a very different sort of body. Its members are appointed for life by the governor-general on recommendation of the central government, which means that actually they are almost invariably chosen by the prime minister and his associates in the cabinet. They must be at least 30 years of age and must own land worth at least $4,000. Representation is on the basis of geographical area rather than population, as in the case of the Senate of the United States. But the provinces are by no means represented equally. Ontario and Quebec have 24 members each; Nova Scotia and New Brunswick have 10 each (more than the larger newer provinces, to compensate them, perhaps, for their dwindling influence in the House of Commons); the western provinces and Newfoundland have six each; and Prince Edward Island has four. In case of a deadlock, the crown has the right—which it has never exercised—to name as many as eight additional members. Senators from Quebec supposedly represent divisions of that province, while those from the other provinces represent their provinces at large.

Relations between the Senate and the Cabinet. Relations between the Canadian Senate and the cabinet are even less close than in the case of the House of Lords and the cabinet in Britain. Rarely are there more than one or two members of the Senate in the cabinet, and at times there have not been any. Nor are there undersecretaries who represent the administrative departments in the upper chamber, although there is a leader who speaks for the government, answers questions, and guides the government program.

Senate Proceedings. As might be surmised, procedure in the Senate is considerably more formal than in the House; originally patterned after that of the British House of Lords, it still resembles the procedure of that body quite closely. The Senate has no authority to initiate money bills, and as a matter of practice it confines itself to formal confirmation of those coming from the House. Other bills may be initiated, although the Senate is far less active in this respect than the House, and over a period of years has originated but slightly more than one-fifth as many bills as the latter body. The great ma-

[1] The legal provision fixes a maximum membership at 110.

jority of measures so initiated are divorce bills, which by tradition originate in the Senate. The chief function of the Senate is negative, *i.e.*, to impose checks upon the House, either by amending legislative proposals or by refusing to pass them in any form. Approximately 20 per cent of the bills passed by the House over a period of years have been amended by the Senate and about two per cent have been rejected entirely. The position of senator is one of considerable distinction, although the majority of persons who have served in the past have not been well known, and plenty of second-rate politicians appear among the number. The public, indeed, pays little attention to the Senate, and the newspapers seldom report its proceedings. Years ago, Professor Wrong, a leading authority on Canadian politics, ventured the opinion that the man in the street would find it difficult to name as many as half a dozen senators; and doubtless this would be equally true today.[1] Altogether, the Canadian Senate is not a virile agency of government.

PUBLIC ADMINISTRATION

Administrative Agencies. Public administration is centered in approximately a score of departments which are usually represented by their heads in the cabinet. Some of the departments are very active, maintaining large staffs of employees and carrying on extensive activities, while others have relatively little to do. The post office is a sizable department, although with no particular political significance. The ministry of finance is impressive in both size and responsibilities; yet it scarcely has the relative importance of the Treasury in England. On the other hand, with the railroads to a large extent under government operation, transport assumes greater significance than in some other countries. The department of foreign or external affairs, until recently small, has expanded rapidly as foreign relations have become more pressing. The establishment of Canadian embassies and legations in foreign countries and of foreign missions in Ottawa has naturally heightened the importance of this department. The defense ministry is interesting because it has responsibility for land, sea, and air forces, although for a time a separate ministry for air defense was maintained.[2] Among independent agencies, only one need be men-

[1] See G. M. Wrong, "Second Chambers in Canada," *New Statesman*, Feb. 7, 1914.

[2] The war which began in 1939 brought this department into the limelight. The rôle of Canada in aërial warfare was especially emphasized, and an elaborate program looking toward the training of pilots was instituted.

tioned, *i.e.*, the Wheat Board, which, because of Canada's large rôle as a wheat producer, is naturally important.[1]

The Civil Service. Canada has stood somewhere between Great Britain and less progressive countries so far as its civil service standards are concerned. It has lower standards and less permanent tenure than Britain, but has made a somewhat better showing than the rank and file of public agencies in many countries.[2] During recent years, the patronage system, which once had a pretty firm hold in many departments, has been weakened and the merit system more firmly established; and the creation of a Civil Service Commission a few years ago has given impetus to improved standards.

Standards of Honesty in the Public Service. Canada has not been afflicted with notorious rings and machines such as have preyed so ruthlessly on many governments in the United States. Nevertheless, it has not wholly escaped the seamier side of government and politics; in particular, the dependence of parties upon a spoils system has encouraged corruption and graft. The central government, to be sure, has been reasonably free from this sort of thing on any large scale, although there have been scandals in connection with the railroads, steel plants, land grants, mineral rights, the tariff, and various public works. But the provinces have not fared so well and probably have not differed appreciably from the general run of states in the United States. The situation in Quebec has been at times notorious during recent years, while other serious scandals have arisen in Manitoba, New Brunswick, and British Columbia, in connection with public works, public land, railroads, and the like. Municipal scandals, too, have assumed serious proportions, although on a smaller scale than in the United States, perhaps to some extent because of the comparatively few large cities.

THE JUDICIAL SYSTEM

The Supreme Court. The Supreme Court of Canada was not provided for in the British North America Act, and consequently it rests

[1] On this and other boards, see J. Willis [ed.], *Canadian Boards at Work* (Toronto, 1941).

[2] See T. Cole, *The Canadian Bureaucracy: A Study of Canadian Civil Servants and Other Public Employees* (Durham, N. C., 1949). Older but still useful treatises are L. D. White *et al.*, *Civil Service Abroad: Great Britain, Canada, France, and Germany* (New York, 1935); and C. H. Bland, "The Federal Public Service of Canada," *Jour. of Pub. Admin.*, Dec., 1938.

entirely on parliamentary statute. There is a bench of nine judges, appointed by the cabinet, enjoying life tenure, and generally immune from politics; and over it presides a chief justice, analogous to the chief justice of the United States.[1] At an earlier period, the tribunal enjoyed nothing like the prestige attached to the Supreme Court at Washington, but, with the jurisdiction of the Judicial Committee of the Privy Council coming to an end, the Court has expanded in size, taken on new authority, and some of its decisions in recent years have received wide attention.[2] Canada recognizes the doctrine of judicial review, but the Supreme Court has been charged recently with exceeding its routine authority as an instrument of the parliamentary branches and, like the high courts in England, has probably let the conservative personal views of its members color its decisions, especially when social and economic matters have been involved. The judges' knowledge of precedent, however, is impressive, and their general impartiality noteworthy.

Provincial Courts. Each of the provinces has a supreme court or court of appeals, with jurisdiction over all cases within the province, subject to appeal to the Supreme Court in Ottawa. Although the tribunals are organized on a provincial basis and hold court in buildings provided by the provinces, their judges are appointed (for life) by the central government. The judges are usually men who have had experience in the lower courts as well as in the actual practice of law—although political considerations may sometimes enter into their selection. The supreme courts of several of the provinces—notably that of Ontario—have an especially good reputation.[3] Below the foregoing courts are single-judge county courts which handle both civil and criminal cases and which are very similar to county courts in Britain. Important cases of either civil or criminal character usually begin in these courts; less important ones are brought up on appeal from justice courts below. Finally, there are local justice courts which

[1] The cornerstone of a new Court building was laid by tne king and queen on their visit to Canada in the summer of 1939.

[2] In interpreting the powers of the central government, the Court has veered back and forth. There have been some four periods, two representing a trend in the direction of provincial autonomy. Of late, the tribunal has tended to uphold central authority.

[3] See C. Martin, *Empire and Commonwealth: Self-Government in Canada* (Oxford, 1929).

handle large numbers of small civil and petty criminal cases, with a jurisdiction quite limited.[1]

LOCAL GOVERNMENT

The Provinces. Canada is divided into provinces and territories corresponding to the states and territories of the United States. Some are large in both area and population; others have vast territory but few people; and still others, such as Prince Edward Island, are small in both area and population. The general importance of Ontario and Quebec is such that the other provinces are definitely overshadowed. The maritime provinces of New Brunswick and Nova Scotia can look back upon a long history, but they are faced with ever smaller representation in the House of Commons as western provinces grow in population. Manitoba, Alberta, Saskatchewan, and British Columbia, with their rich agricultural lands, forests, oil wells, and mines, are comparatively young, but they make up for that with their abounding energy. The Yukon is thus far very sparsely settled, and is sufficiently remote to make its relations with the remainder of the country not very intimate. There is the vast Northwest Territories, with so small a population that formal government institutions are still unorganized. And finally there is Newfoundland which in 1949 became a part of Canada.[2]

Lieutenant-Governors. The English crown is represented in the various provinces by a lieutenant-governor, chosen, however, by the Canadian government and serving as a connecting link between Ottawa and the province. Lieutenant-governors are appointed for an indefinite period, but cannot be removed within a period of five years from the time of their initial appointment unless cause is specified; and for the most part, such appointments are given to men who have actively served the political party in power and consequently are deserving of reward at its hands—even though, after office is assumed, appointees must eschew political activity. Lieutenant-governors reside at "government house" in the capital of the province to which they are appointed, receive fairly attractive salaries and allowances, and are much in the public eye in connection with

[1] For discussion of the court system, see R. M. Dawson, *op cit.*, Chap. xx.
[2] See pp. 391, 405 above.

formal occasions. However, they have very little actual authority, and it has been suggested that the office be abolished and its duties assigned to the chief justice of the supreme court in the province.[1]

Provincial Legislatures. Unlike the states in the United States, most of the Canadian provinces have seen fit to set up unicameral legislatures, although not without some experiment in the past with the bicameral type. Only Quebec now retains the bicameral system.[2] Members of the legislatures are elected by the voters at separate elections from those at which members of the federal House of Commons are chosen; and the term may not exceed four years, although, as in the case of the central legislature, it is indefinite within that period. The size of the legislative body of each province is fixed by the provincial constitution, either directly or indirectly, and in general is less than in the case of state legislatures in the United States, ranging from 30 to just over 100.

Provincial Cabinets. Each province has a cabinet headed by a premier, and this body has substantially the same status in the provincial government that the cabinet at Ottawa has in the central government. The premier is the leader of the party which dominates the provincial legislature, and together with his ministerial colleagues he furnishes leadership for the legislative branch. When a cabinet can no longer control the legislature, it either asks the lieutenant-governor to dissolve the body and call a new election or resigns at once in favor of the party which has gained the upper hand. Some of the premiers have been well known and able men.[3] About half as large in size as the national cabinet at Ottawa, a provincial cabinet is likely to include a minister of finance or provincial treasurer, a provincial secretary, an attorney-general, a minister of agriculture, a minister of education, a minister of public works, and a minister of lands, forests, and mines.

Political Parties in the Provinces. National party lines carry down through the provinces, although, as in the United States, a party which controls the central government may not at any given time be

[1] See F. R. Scott, *op. cit.*

[2] On the unicameral legislature of Ontario, see R. C. Spencer, "The Unicameral Legislature of Ontario," *Amer. Pol. Sci. Rev.*, Feb., 1938.

[3] The premier of Quebec was much in the limelight in 1939 because of his feud with the Ottawa government and also because he opposed Canada's entry into the war.

in power in all of the provinces. Minor parties have fared better in the provinces than in the country as a whole; as an example, one may point to the recent prominence of the Social Credit party in Alberta and the Coöperative Commonwealth Federation in Saskatchewan. Political partisanship in the provincial governments frequently runs high, and is accompanied by the spoils system prevalent in many state governments in the United States.

Grants-in-Aid. The various provinces have found it difficult to raise sums of money adequate to provide for the numerous demands made upon them, and hence for many years have depended to a greater or lesser extent upon grants-in-aid from the central treasury. Older grants were provided for in imperial acts and commonly protected the provinces from too greate dependence upon the central government. More recently, however, a system rather similar to that in the United States has grown up, under which provinces receive funds for roads, old-age pensions, unemployment relief, and vocational education if they meet certain conditions laid down by the central authorities.[1] The Commonwealth also makes general financial grants, fixed at a definite level over a period of years under an agreement whereby the provinces (except for Quebec and Ontario) surrender the income tax field to the central government.

The Power of Disallowance. The central government has the right in certain cases to disallow legislative acts of the provincial governments. Canadian traditions, however, are in the direction of local home rule, and any very free use of the power of disallowance is frowned upon. As agent of the crown, the lieutenant-governor is theoretically able to refuse assent to provincial measures, and as recently as 1946 in the case of Prince Edward Island an outright refusal of assent may be noted. Through the years, a fairly important check on provincial action has been that of judicial process, whether as exercised by the Canadian Supreme Court or by the Judicial Committee of the Privy Council.[2]

Countries, Cities, Towns, and Villages. All provinces have their own codes providing for the organization and conduct of county,

[1] For discussion of this system, see L. Gettys, *The Administration of Canadian National Grants* (Chicago, 1938), and J. A. Maxwell, *Federal Subsidies to the Provincial Governments* (Cambridge, Mass., 1937).

[2] See, for example, a case involving Manitoba in which the Privy Council declared an initiative and referendum act invalid: *In re,* Initiative and Referendum Act, A. C. 935 (1919).

city, township, and village government—although the systems in general are fairly similar. In all cases, the English model is followed, but with numerous modifications; more elective officers exist, for example, than in Great Britain, and municipal councils are somewhat differently constituted.

PART TWO



THE GOVERNMENTS OF WESTERN AND CENTRAL CONTINENTAL EUROPE

1. *FRANCE*

CHAPTER XX

CONSTITUTIONAL GOVERNMENT IN EVOLUTION, 1789-1875

Why the Government of France Is to Be Studied Next. To the present point, our attention has been fixed chiefly upon the parent system in a galaxy of governments operating in the widely dispersed English-speaking areas of the earth. As the next government to be studied—among three still to be dealt with at some length—choice has fallen upon the French, and for two main reasons. (1) Over the past century and a half, France not only has been a major European state and the seat of a rich and influential culture, but a principal source from which political ideas and procedures have been drawn by all Western and Central Continental Europe. To be sure, the preëminence of French ideas on civil liberties, representative democracy, and responsible government, and of the French pattern of law, judicial organization, and local institutions, was rudely shattered by Nazi and Fascist rule and the turmoil of war. But already French political institutions have been redeemed at home from wartime chaos and collapse, and, except as Soviet subversion threatens from the east, Western Europe is again becoming a potential field for political development showing French influence as in generations past. (2) In the second place, French and English governments have enough in common to enable either to be studied most effectively with the other prominently in mind: comparisons across the Channel are peculiarly alluring and instructive, while contrasts, too, are significant and sometimes startling. And this is true whether

the French government under consideration be that of the prewar Third Republic, which (although now in part superseded) will be reviewed briefly here, or that of the newly-risen Fourth Republic, with which France has made one more of the many fresh starts characterizing her modern political history.

OLD RÉGIME AND REVOLUTION

The Old Régime. Politically, if not otherwise, modern times, in the French view, start with 1789, when the great Revolution began. Back of that lay the "Old Régime," from which France extricated herself during the last decade of the century by one of the most titanic efforts of the kind on record. Characteristic of the Old Régime was absolute monarchy, a total lack of national parliamentary institutions, and a political and social system shot through with privilege and injustice. "We hold our crown from God alone," read an edict of Louis XV in 1770; "the right to make laws by which our subjects must be conducted and governed belongs to us alone, independently and unshared." In actual practice, power was largely in the hands of a bureaucracy of royal officials, directed from Paris by leading members of a royal council. But the theory of the king's supremacy was perfectly clear; and in any event those who ruled recognized no responsibility to the people for what they ordered and did. Back in the century when the English Parliament arose, there appeared in France an Estates General which, under different circumstances, might also have developed into a genuine national parliament. It, however, never outgrew its original aspect of a typically mediaeval assemblage of estates (nobility, clergy, and *tiers état,* third estate, or middle class), sitting separately, with the first two always able to outvote the third. It never gained much power to deliberate independently. And, at best convoked only irregularly, it never met again after 1614 until financial troubles forced Louis XVI to turn to it in desperation in 1789. On every hand were evidences of inequality and privilege. The clergy as a class had bought exemption from taxation; the nobles paid only such nominal imposts as they agreed upon with the collectors; public burdens rested almost exclusively on the middle and lower classes. Clergy and nobles, too, monopolized offices and honors, and comfortably shared the feudal, customary right of exploiting the peasantry. Personal freedom was protected by no guarantees, even theoretical; under a *lettre de cachet,* or "sealed

letter," any one might be arrested summarily and held in prison until the authorities found it convenient to inquire into the merits of his case.

The Revolution. The government of the Bourbon kings was thus autocratic, corrupt, wasteful, and burdensome; and in 1789 a tide of protest swept over the head of the luckless Louis XVI and engulfed the entire political and social structure on which the monarchy rested. In no small degree, the public mind was prepared for action by the writings of a remarkable group of *philosophes,* or philosophers: the aristocratic Voltaire, willing to put up with royal absolutism provided social and economic reforms were proceeded with on a rational basis; Montesquieu, disapproving of absolutism yet considering France too large to be a republic, but especially insistent upon separation of powers as the secret of a moderate and balanced government; the more plebeian and radical Rousseau, believing government to have originated in contract, sovereignty to be inherent in the body politic, law to be properly an expression of the public will, and the best substitute for the ideally preferable direct democracy to be a system of representation, not of classes or interests, but of people as individuals on a strictly equalitarian basis. Through these and other clever and persuasive critics of the existing régime was added influence also from England; indeed, all of the writers named drew heavily upon the great currents of English liberal thought, especially as flowing together in John Locke's majestic defense of the seventeenth-century English Revolution, *Two Treatises of Government,* published in 1690. The upshot was an ever-swelling stream which beat upon the retaining walls of tradition, privilege, and absolutism until at length they could no longer withstand the pressure. They might have held out further had not the country fallen into a financial situation which drove the king to convoke the Estates General, after it had gone 175 years without a meeting. As it was, the assembling of that body loosed the forces of discontent, and events moved straight, by nobody's planning, toward the goal of revolution. Within a few short months, the Old Régime was a thing of the past and a new order had risen—not, of course, new in every respect, but sufficiently different from the previous state of things to mark the beginning of a new age.

Some Political Contributions: 1. General Principles of Liberty. It will further clarify the background of French government in

later days if we look briefly into some of the Revolution's contributions to the national stock of political ideas and experiences. The first was a body of general principles, drawn largely from Rousseau, and set forth with remarkable lucidity in the first part of the "Declaration of the Rights of Man and of the Citizen," adopted by the National Assembly (superseding the Estates General) in 1789. Men, it was solemnly affirmed, are born free and remain free and equal in rights; the aim of all political association is the preservation of the natural and imprescriptible rights of man, namely, liberty, property, security, and resistance to oppression; sovereignty resides in the nation, and no organization or individual may properly wield any authority that does not proceed directly from the nation; liberty consists in freedom to do whatever injures no one else; law is an expression of the public will, and every person has a right to participate, personally or through a representative, in making it; law must be the same for all, whether it protects or punishes.[1]

2. A Bill of Rights. A second, and closely related, contribution was a comprehensive restatement—mainly in the same Declaration of Rights—of what were conceived to be the "natural and inalienable" rights of each and every citizen—freedom from arrest or imprisonment except according to forms prescribed by law; freedom of religious belief; freedom of speech; freedom of writing and of the press; participation (personally or through a representative) in the voting of all taxes; and immunity of property from confiscation except under legally ascertained public necessity, and after suitable compensation.

3. Written Constitutions. A third contribution was the device of a written constitution. Until late in the eighteenth century, fundamental, or as we should now say constitutional, law commonly rested almost entirely—as ordinary law also very largely did—upon custom, and hence was rarely given formal documentary expression. True, the parliamentarians who defeated Charles I in arms and

[1] This Declaration, framed in response to popular demand as voiced in the *cahiers* (statements of grievances drawn up by local bodies when electing members of the Assembly), was eventually incorporated in the constitution of 1791. The text, in English translation, is printed in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907* (2nd ed., Minneapolis, 1908), 59-61. See J. H. Robinson, "The French Declaration of the Rights of Man," *Polit. Sci. Quar.*, Dec., 1899, and G. Jellinek, *Die Erklärung der Menschen- und Bürgerrechte* (2nd ed., Leipzig, 1904), trans. by M. Farrand under the title of *The Declaration of the Rights of Man and of the Citizen* (New York, 1901).

temporarily suppressed monarchy in England hit upon the idea of a written constitution; and two such instruments were actually put into operation, one in 1653 and the other in 1657.[1] This experiment, however, was short-lived; and, as we have seen, the historic English constitution has never to this day, as a whole, been reduced to written form. Nevertheless, outside of England, liberal-minded eighteenth-century political thinkers and leaders became convinced of the practical advantages of a written fundamental law setting forth explicitly the principles, forms, and restrictions under which a particular government was to be carried on. The idea commended itself to the French reformers particularly, partly because a written constitution, adopted by the sovereign nation, seemed in the nature of a renewal of the social contract (then widely regarded as the source of all government), and partly because such an instrument was a very obvious and practical means of informing the people what their rights under government were to be. In addition, there was the example of America, where, within the space of hardly more than a decade, two national constitutions and more than a dozen state constitutions had been put into operation by direct or indirect authority of the people.

In accordance with demands voiced in many of the *cahiers*, the National Assembly of 1789 early turned its attention to preparing a constitution. The resulting document (prefaced by the Declaration of Rights of 1789) was not completed until 1791. From that time forth, however, France—notwithstanding her numerous political shifts and turns—always lived under some written fundamental law. Not only so, but she became—so far as Continental Europe was concerned—the mother of written constitutions.

4. Republicanism. A fourth important contribution of the Revolution was the conception of republicanism as a practicable form of government for France, and hence, by implication, for other large and venerable European states. The relative merits of republican and monarchical political systems had been a subject of discussion from Plato and Aristotle onwards, and notable experiments with republican government had been made by the early Greek cities, by pre-imperial Rome, by the Italian city states of the Middle Ages, by the Dutch provinces, by Switzerland, by England at the middle of the seventeenth century, and, more recently, by the United States

[1] See p. 14 above.

of America. As a group, the eighteenth-century philosophers favored monarchy. Montesquieu conceded that no single form of government is best under all conditions, but held that a republic presupposes not only a small territory but a high level of public virtue and an absence of luxury and large fortunes. Rousseau believed democracy workable only in small and poor states. Voltaire, too, thought of republicanism only in terms of Greek city states and Swiss cantons, and said that the regeneration of France must come from enlightened and benevolent kingship.

The establishment of the American republic aroused considerable interest in France, but did not turn the current of political reform into republican channels. The *cahiers* of 1789 voiced no demand for a republic. The National Assembly was solidly monarchist, and the constitution which it promulgated in 1791 provided for a continuance of monarchy, even though tempered and liberalized. The trend of events, however, presently started a good many people thinking about a republic. By the end of 1790, there was somewhat of a republican party; by midsummer of 1791, the radical elements were turning rapidly to the new doctrine; and although the Legislative Assembly, which served to all intents and purposes as the government of the country during the brief life of the constitution of 1791, remained predominantly monarchist, the attempted flight of the king, the efforts of the court to secure military aid abroad, and the conduct of the *émigrés* made the abandonment of kingship inevitable, and, by the same token, the rise of a republic a certainty. In September, 1792, the newly chosen Convention, convinced that no other course was feasible, unanimously decreed the abolition of monarchy and the establishment of a democratic, unitary republic. During the next few years, the republican gospel was carried by French armies and reformers into all surrounding lands, and new or reconstructed republics sprang up on every side; and although these new régimes mostly perished, and the parent republic itself gave way before the imperial aspirations of Napoleon, republicanism as a creed and a program took a place in European political life which it had never held before.[1]

[1] H. A. L. Fisher, *The Republican Tradition in Europe* (New York, 1911), Chap. iv. The fullest and best account of the growth of republicanism during the French Revolution will be found in F. A. Aulard, *Histoire politique de la révolution française* (Paris, 1901), trans. by B. Miall under the title of *The French Revolution; A Political History* (London, 1910), II, Chaps. ii-iv.

5. The Doctrine of Popular Sovereignty. Another thing that the Revolution did was to bring the idea of popular sovereignty into more general and practical acceptance than in the past. The concept, to be sure, can be found in Aristotle; as a theory, it underlay not only the Roman Republic, but the Empire as well; it was expounded in the fourteenth and fifteenth centuries by writers like Marsiglio of Padua and Nicholas of Cusa; and shortly before the Revolution it received classic formulation in the works of Rousseau. But after 1789 it found more literal and fruitful application in France than anywhere else in Europe up to that time. The old representation of orders in the Estates General was replaced by representation of the nation as such, and as a whole. The entire population became an integrated body politic; and the deputy sent up to Paris, once having been elected by his constituents, was conceived of no longer as a mere agent and spokesman of a class or interest, but as a representative of a sovereign nation, composed of people who were not only separate political entities, but also political equals. Representative government was for the first time placed upon something approaching its present-day basis.[1]

6. The Theory of Separation of Powers. Finally, the Revolution gave new meaning and scope to another time-honored theory, *i.e.*, the separation of powers. More or less separation of the kind had, of course, existed in various earlier European governmental systems; and in America, both a national government and a dozen state governments had been organized with careful regard—too careful, we now strongly suspect—for this principle. Now for the first time in Europe, however, there was a deliberate attempt to build up governments resting upon separation, and upon the twin principle of checks and balances which likewise Montesquieu had expounded and endorsed. Legislative, executive, and judicial functions were looked upon as complementary, to be sure, yet inherently dissimilar, and liberty as likely to be best preserved if the three were entrusted to different hands. Even the monarchist constitution of 1791 showed the influence of this idea; and every later fundamental law, whether French or merely affected by French models, was framed more or less consistently in accordance with it.

[1] See C. A. Beard, *The Economic Basis of Politics* (New York, 1923), Chap. iii.

POLITICAL SYSTEMS IN SUCCESSION, 1789-1875

Having severed many of her most basic ties with the past, France in 1789 entered upon what proved an extraordinarily prolonged period of political readjustment and experiment. More than three-quarters of a century was required to bring the ship of state out of the tempestuous waters of the Napoleonic, Restoration, Orleanist, and Second Empire régimes into the haven of the Third Republic; and not only did this haven prove none too secure during the first two decades, but World War II saw the Third Republic, in its turn, collapse, with afterwards the rise of yet another régime—the Fourth Republic—to be described in a later chapter. Between 1789 and 1875, one form of government after another was tried, but always with unsatisfactory results; of six different written constitutions put into operation, not one lasted more than some 18 years.[1] To be sure, political arrangements in the local areas throughout the country were not uprooted every time there was a change of constitutions at Paris. On the contrary, the new governmental and administrative institutions which departments and communes received at the hands of the Revolutionary assemblies, and of Napoleon, underwent a steady and orderly development throughout the entire period. But the history of national government in these decades is a remarkable story of stops and starts, of swings backward and lurches forward, which gave the Englishman—forgetting how long France had lived under the Bourbon monarchy of the old days, and how unstable his own political situation had been in the seventeenth century—a chance to wag his head and remark dolefully (or was it sometimes boastfully?) upon the Frenchman's lack of capacity in political matters.

"Nearly all of the forms of government which have succeeded each other in France," remarks a French writer, "have left behind them, as it were, certain fertile alluvial deposits";[2] and while it is not feasible to describe the successive systems in detail, a running outline of them will help us to see how the present restored democratic régime fits into the general picture.

[1] The texts of all French constitutions (with other fundamental laws) from 1789 to 1875 are brought together conveniently in L. Duguit and H. Monnier, *Les constitutions et les principales lois politiques de la France depuis 1789* (5th ed. continued by R. Bonnard, Paris, 1931). English translations are presented in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France, 1789-1907* (2nd ed., Minneapolis, 1908).

[2] J. Barthélemy, *The Government of France*, trans. by J. B. Morris (New York, 1925), 15.

Four Constitutions in a Decade. Of three successive constitutions of the Revolutionary period, it is not necessary to speak in detail. The first (1791) provided for a limited monarchy, with an elective unicameral parliament; the second (1793) provided for a very democratic republic; the third (dating from 1795, before its predecessor had ever actually been put into operation) reflected a conservative reaction, with the republic surviving but its democratic features considerably curtailed. This "constitution of the Year III" had merit and might have survived but for the rise of Napoleon; as it was, four short years saw it replaced by another—the constitution of 1799—drafted under direction of the young Corsican dictator and naturally embodying his ideas.

Napoleon's Contributions to French Government. One of these ideas was that if there was to be a written constitution, it should be brief and general, leaving plenty of elbow-room for the public authorities; and hence the constitution of 1799, besides being less than a quarter as long as that of 1795, was conveniently vague, or even silent, on many vital topics. Another thought was that the powers of the legislature should be reduced sharply and those of the executive correspondingly increased; and the new plan, if not deliberately framed with a view to single-handed rule, took such form as certainly to make that sort of rule easily possible. All executive power was entrusted to three consuls, elected by the Senate for ten years; the First Consul was given the real power, his colleagues having only a "consultative voice"; and Napoleon saw to it that he was himself named in the instrument as First Consul. As for the bicameral parliament set up in 1795, its functions were thenceforth divided among four different bodies—a Council of State to prepare measures, a Tribunate to give them preliminary consideration, a Legislative Body to vote on them, and a Senate to pass on their constitutionality. This seemed a beautiful balancing of functions. But it worked out—as it was intended to do—so as not to interfere with an almost unrestricted control of public affairs by the First Consul. To all intents and purposes, France had again become a monarchy. The veil was partially withdrawn in 1802 when Napoleon was made First Consul for life; it was torn away completely two years later when he assumed the title of emperor. The fact that this last move was submitted to a popular vote, and cheerfully endorsed, shows not

only that the Corsican was master of the situation, but that the French people were not as yet truly converted to republicanism.

The foundation of French institutions today, writes a French scholar quoted above, is provided by the social, legal, judicial, and administrative system of the Napoleonic Empire. Gathering more and more power into his own hands, first as consul and later as emperor, Napoleon used it not only in carrying on wars and managing foreign relations, but in reorganizing local government and administration, codifying and nationalizing the law, reorganizing the relations of church and state, and otherwise putting the French house in order —so successfully, indeed, that in many important matters, *e.g.*, the law codes, no very great changes have proved necessary at any later time. Undoubtedly it is Napoleon the warrior who holds the highest place in French sentiment and legend; but it is Napoleon the statesman whose handiwork, less colorful but more enduring, is mainly to be seen by the visitor to France today. In only one respect (though certainly a vital one) were the political arrangements devised by Napoleon out of line with the best thought and achievement of later times: in all branches of the government, they rigidly restricted or entirely ignored the element of popular control.

From Napoleon to the Second Republic (1814-48). Driven by military reverses, Napoleon abdicated in 1814; and by agreement of the victorious allied powers, the Bourbons were restored to the throne in the person of Louis XVIII. Naturally, the nations that had striven so long to break the rule of the Man of Destiny had no mind to see his style of government perpetuated, and Louis was pledged in advance to a limited constitutional monarchy patterned somewhat closely on that of England. Local government, the law codes, and much besides, suffered little change; but the national government took a fresh start.

A "constitutional charter" of 1814 was notable chiefly for attempting to transplant into France the cabinet or parliamentary system characteristic of England. The king was left with more power, and Parliament was more restricted; but ministers were supposed to be responsible. If not too advanced for the French people, however, the plan was far in the van of Bourbon ideas. Louis XVIII never really understood or accepted it; and his brother, Charles X, came into sharp collision with it, provoked the revolution of 1830, and lost his throne. With the Orleanist Louis Philippe crowned successor, the

constitution was liberalized somewhat. But still matters did not go well; and in 1848 a new revolution toppled the drab Orleanist régime into the dust.

The Second Republic (1848-52). Once more France became a republic, and this time with a constitution showing unmistakable influence from America. The document, as prepared and adopted by a popularly elected national assembly, not only declared the people sovereign, but proclaimed a separation of powers the first requisite of free government. For a legislature, it was decided to go back to the plan of a single large chamber, elected by something approaching manhood suffrage. But, carrying out the idea of separation, executive authority was entrusted to a president of the Republic, chosen directly by the people, by secret ballot, for a term of four years, and reëligible only after an interval of equal length. Powers conferred upon the president were quite comparable with those of the president of the United States; and while ministers were provided for, their status was left so vague that no one could tell whether or not they were to be regarded as responsible. Certainly the tendency was to swing away from the English cabinet system in the direction of the presidential system prevailing in the United States. The nation might not want a king; but it must have a strong executive—one that would supply the active leadership in which kings often fail.

Evidences were soon supplied, however, that the people were not attached to the new order. When, indeed, the first National Assembly, or parliament, was elected, two-thirds of its members turned out to be avowed monarchists; and when it, in turn, addressed itself to choosing the first president, choice fell upon the ambitious and crafty nephew of Napoleon I, Louis Napoleon, himself certainly no republican. The situation lent itself readily to presidential maneuvering; and when, after three years—the end of the constitutional term being in sight—a *coup d'état* gave the country a revised constitution extending the term to ten years, there was little protest. Thenceforth, all was plain sailing; though still nominally existent, the republic was really dead. Near the end of 1852, all disguises were thrown off. A *senatus-consultum* decreed the reëstablishment of the Napoleonic empire, and the people, asked to approve what had been done, obligingly responded by a vote in the proportion of forty to one. The plebiscite was a favorite device of both the first and the

second Napoleon; and it is significant that no proposal ever submitted by either ruler failed to receive the desired endorsement. Much clever manipulation was, of course, practiced. At all events, on December 2, 1852—anniversary of the battle of Austerlitz, and therefore a red-letter day in Bonapartist annals—Napoleon III was proclaimed emperor of the French.

The Second Empire (1852-70). Ostensibly, the Second Empire rested upon liberal principles, and the forms of democracy were preserved—for example, in a one-house *Corps Législatif,* or parliament, elected by direct and fairly broad suffrage. In reality, however, the régime was nothing but a personal dictatorship supported by the army; at all events, it rapidly became such as the legislative body lost all power to initiate laws and ministers became responsible to the emperor alone. For a decade, things went reasonably well. The country was once more prosperous; social and industrial legislation held discontent in check; the people were dazzled by the magnificence of the court, and their pride was stirred by public improvements which drew the envious attention of all Europe. In time, however, the régime began to pall. Lavish expenditures meant increasingly burdensome taxes; the government's free-trade policy offended the manufacturers; its wars with Catholic states alienated religious sentiment; its insistence upon controlling local affairs down to the last detail defied every instinct of self-government; the atmosphere which it radiated was stifling, its attitude was often palpably insincere, and it was itself in many ways a sham.

Napoleon III was not the paragon of wisdom H. G. Wells has painted him, but he was no fool, and he tried hard to stay the tide of unfavorable opinion. Beginning in 1860, one concession after another strengthened the position of the *Corps Législatif* and advanced the revival of true parliamentary institutions. Liberty of press and assembly, long practically extinct, was gradually revived. In 1869, the Legislative Body was authorized to elect its own officers. In 1870, a Senate, previously hardly more than an imperial council, was erected into a legislative chamber coördinate with the Legislative Body and, in addition, both houses were allowed the right to initiate legislation. Furthermore, the ministers were made responsible to the chambers instead of to the emperor; and the power to amend the constitution was changed so as to require, in every case, a favorable vote by the people.

On paper, at all events, the autocratic régime of the second Napoleon was rapidly giving way to a political system comparable with the English—a system which, as we now can see, was destined to be realized in France itself in years that lay no great distance ahead. Whether, under different circumstances, the changes would have saved the waning imperial order is uncertain. Assuredly they had not yet gone far enough to satisfy large numbers of reformers, many of whom, like the orator and parliamentarian Gambetta, had become ardent republicans. Certainly, too, Napoleon III was ill-fitted for the rôle of a constitutional monarch. But, as it was, the concessions—or most of them—came too late to be tested. Hardly were they made before the Franco-Prussian war broke out; and within a few short months the Emperor, who had entered upon the conflict with incredible lightheartedness, was, along with the greater part of his army, a prisoner in German hands at Sedan.

THE RISE OF THE THIRD REPUBLIC

The Provisional Government of 1870. When Paris heard what had happened on the Meuse, the Second Empire forthwith collapsed. For a decade, it had lived mainly on appearances; and when these failed, it could not go on. The Napoleonic name was destined to stir French hearts on many a later occasion, and the Napoleonic legend remained a factor which to this day no student of French politics can wholly ignore. But as for Napoleon III, he simply passed out of the picture, his reputation shattered. Meanwhile, at the capital it fell to a little self-appointed group of Parisian parliamentarians of the Left, led by Gambetta and Favre, and already on record as favoring a republic, to take steps to remedy what Thiers aptly termed a "vacancy of power." Somebody must do something; and the earlier leadership of these persons in republican agitation made it natural for them to assume the responsibility. From the Hôtel de Ville, or Paris "city hall," they proclaimed a republic; and as speedily as possible a "provisional government of national defense" was organized, charged with carrying on the affairs of state and pushing the war to a successful conclusion.

The National Assembly (1871-75). On the military side, the task proved impossible. Following up the advantage gained at Sedan, the Germans pressed toward the heart of the country, encircled Paris, and, laying siege to the city, forced a surrender in January, 1871. In

this new emergency, there was nothing to do but ask for an armistice, permitting the nation to elect an assembly empowered to decide whether to go on with the war or to seek peace; and on February 8, the desired intermission having been obtained, the elections took place throughout France and the colonies. Time was short, and the liberal electoral arrangements of the Second Republic were revived *in toto* for the occasion.

Paris being in enemy hands, the new National Assembly held its first meetings in a theatre at Bordeaux. Its position was from the first extraordinary. The old imperial government—emperor, Senate, *Corps Législatif,* ministers—had disappeared. Furthermore, the provisional government, which had served the country well in the emergency, faithfully carried out its announced intention to dissolve as soon as it should have given the nation an elected assembly. Consequently, the Bordeaux gathering found itself the legatee of all the governments that had gone before, with powers both undefined and unlimited. Furthermore, its members had been elected for no specified term. At once, therefore, the body became the supreme governing authority in the country; and for five years an amazing combination of circumstances quite unexpectedly kept it in that rôle. As such, it made peace with Germany, enacted laws, levied taxes, controlled the military establishment, and finally prepared and put into effect the constitution under which the Third Republic operated for more than sixty years.

The Adoption of a New Republican Constitution. Peace reestablished (under the hard terms of the Treaty of Frankfort), the next question was that of the country's future form of government. Should the emergency republic be continued, or should monarchy be revived? And should the existing National Assembly make the new constitution obviously required, or should some new body be elected for the purpose? The two questions were interrelated, because if the constitution were made by the existing Assembly it unquestionably would be monarchist, since of the 738 members hardly more than 200 were republicans. Many people doubted or denied that the Assembly had any proper authority to undertake the task. As matters worked out, however, the question of authority became academic. Serving perforce as the government of the country during the months while peace was being negotiated, the Assembly became so engrossed

in the management of public affairs that it neither wished to take its hand from the helm nor felt that it could safely do so. Instead, it moved from Bordeaux to Versailles, settled itself to the task of giving the country the strong government manifestly needed, and took no step toward providing the nation with any constitution other than one which the Assembly itself might make.

In the end, the constitution of the Third Republic was framed by the Assembly; and it was a republican constitution. Nearly four years, however, were required for it to evolve; and it turned out republican only because of changes of situation during the interval. One such change was the gradual introduction of governmental arrangements which, although not necessarily so intended, looked unmistakably in the direction of a permanent republic. For example, Thiers, made "chief of the executive power" in 1871, was in 1873 given the title of "president of the republic"; and late in the same year his successor, Marshal MacMahon, was voted a seven-year term. A second development was a steady increase of the number of republicans in the Assembly, as members dropped out and new ones were brought in by by-elections, evidencing growth of republican sentiment throughout the country. But most decisive was the total inability of the different groups of monarchist members to pool their strength in behalf of any one claimant to the throne. The Legitimists, reactionary and clerical adherents of the old Bourbon monarchy, wanted the choice to fall on the Count of Chambord; a party of Orleanists favored the Count of Paris; a smaller group, remaining loyal to the Napoleonic tradition, supported a son of Napoleon III. If at any time during the first two or three years these factions could have buried their differences, France would have reverted to monarchy. But they could not do this; and, with time running in their favor, the republicans finally emerged victorious. Recognizing that their case was at least temporarily lost, monarchists took the lead in 1873 in setting up a Commission of Thirty, charged with drafting a constitution; and though progressing slowly and beset by many hazards, work was carried along to a point where, early in 1875, two of the three "constitutional laws" later composing the constitution of the Third Republic were ready for the Assembly's adoption. Even as the Commission worked, the republic's future remained clouded; indeed, at one critical stage it was saved only by the margin

of a single vote on a test amendment providing for indefinite reëligibility of the president, implying the republic's prolongation into the future.

THE CONSTITUTION OF THE THIRD REPUBLIC

Shortcomings. The National Assembly had performed the task which it had set for itself—but, remarks the principal French writer on the period, "how slowly, how painfully, how incoherently!" [1] Consisting in its final form of three separate, brief, poorly articulated documents—a Law on the Organization of the Senate, a Law on the Organization of the Public Powers, and a Law on the Relations of the Public Powers—the new constitution could not compare as to form or content with the constitution of the United States or, for that matter, with any one of a half-dozen earlier constitutions of France herself.[2] At some points, there was needless detail; at others, startling omissions. A Chamber of Deputies was provided for, but with nothing said as to how its members should be chosen or how long they should serve. Provision was indeed made for election of members of a Senate; although in 1884 the seven articles on the subject were removed by amendment, with the matter thereafter left to be regulated by ordinary law. There was no provision for annual budgets; there was no bill of rights, nor indeed any express guarantee of civil liberties,[3] aside from a clause authorizing the Senate to serve on occasion as a high court, the judiciary went unmentioned, with of course no provision for judicial review; and there was nothing on local government.

Reasons. What were the reasons for this nondescript, haphazard aspect of the fundamental law of a people famed for orderliness,

[1] G. Hanotaux, *Contemporary France* (New York, 1903-09), III, 283.

[2] The texts will be found in L. Duguit and H. Monnier, *Les constitutions,* 319-325, and in English translation in F. M. Anderson, *Constitutions,* 633-639, W. F. Dodd, *Modern Constitutions,* I, 286-294, H. L. McBain and L. Rogers, *New Constitutions of Europe,* 523-528, W. E. Rappard *et al., Source Book on European Governments* (New York, 1937), Pt. ii, pp. 8-14, and N. L. Hill and H. W. Stoke, *The Background of European Governments* (2nd ed., 249-254).

[3] There was a theory that the Declaration of Rights in 1789, never having been rescinded, was still in effect under the Third Republic; and the view had the support of some eminent authorities. Equally respectable authorities, however, were of the opposite opinion, and the matter may be regarded as pretty well settled by the fact that one could not go into the courts and establish a right by reference to the historic Declaration alone. More than once it was proposed that a formal bill of rights be added to the constitution of 1875, but no such step was ever taken. In general, the actual situation of civil liberties was very much as in Great Britain.

precision, and love of the symmetrical and logical? Certainly they did not flow from any lack of experience in constitution-making. Nowhere else in Europe had so many written constitutions been drafted before 1875; and nowhere else had such instruments been so balanced, so explicit, and so letter-perfect. The explanation lay, of course, in the give-and-take method by which the constitution was made. From end to end, it was a product of compromise—the handiwork of men who, for the most part, felt no enthusiasm for their task and took no pride in its results. A monarchist majority found itself maneuvered, largely by its own ineptitude, into writing a republican constitution. But it neither wanted nor expected the instrument to endure; and, viewing the device as a makeshift, it had nothing but apologies for it. As for the republicans, they drew satisfaction from the frustration of their opponents, but had been obliged to make so many concessions that, at best, they could look upon the new frame of government, based as it was upon the ill-concealed hope of a revival of monarchy, as only something with which to start.

Why the Constitution Endured. The French have a saying that "only the provisional endures." So it certainly has been with the country's constitutions. Half a dozen such instruments, meticulously drafted, cleverly phrased, and presumptively permanent, fell to the ground in swift succession. The makeshift instrument of 1875, grudgingly adopted and inspiring little confidence, struck root, proved adequate for the country's needs, emerged unscathed from the acid test of World War I and of various post-war crises, and, although now superseded, lasted nearly half as long as our own American constitution has been in operation. One reason, of course, was that as time went on France gradually grew more republican, leaving the monarchists no opportunity to write a new fundamental law to their liking. A second was that the constitution had at least something to offer all political elements. But a main explanation lay in the very qualities which made the constitution look so shabby in comparison with others—its brevity, its incompleteness, its lack of sonorous phrases and challenging principles. It did not seek to pull down a full-blown political system out of the heavens, but only to piece together a set of institutions that would serve immediate practical ends. Machinery already existing, *e.g.*, the presidency, the executive departments and their ministers, were to be continued, and only the most obvious necessities, chiefly a bicameral parliament to supersede the

emergency assembly elected in 1871, were to be added. Powers and relations were defined sparingly, and often in general terms, leaving further arrangements to be supplied, as need arose, by legislation, interpretation, and usage. Except in so far as the cabinet system envisaged was ultimately of English origin, everything was thoroughly French; at all events, there was no direct and deliberate borrowing, as from Britain in 1814 and from the United States in 1848. Practical rather than philosophical, matter-of-fact rather than doctrinaire, the constitution looked to no abrupt break with the past and affronted no feelings of national pride and spirit. Rather, it was hammered out, piece by piece, on the basis of hard experience, in an effort to meet the demand of an impatient country for a settled, workable system. It grew first, and only afterwards was put on paper. So constructed, it met the needs of the day, without sacrificing capacity to meet those of other days that would be different. If deficient in logic of content and arrangement, it reflected, as a French authority has truly said, "the larger logic of history."

Constitutional Amendment. Without doubt, the final adoption of the three constitutional laws of 1875 was much facilitated by the provisions made for amendment. The authors of earlier constitutions flattered themselves that their handiwork approached perfection. But the makers of the later one labored under no such illusion. Every one expected to find himself wanting changes made; and every one, especially if a monarchist, was interested in setting up arrangements by which changes could be effected quickly and easily, yet without *coup d'état* or revolution. Accordingly, the Law on the Organization of the Public Powers provided a very simple amending procedure, as follows: (1) the president (or the ministers acting in his name) might propose an amendment; or the proposal might come from one or both of the houses of Parliament; (2) each house should consider the matter and decide, by majority vote, whether "a revision of the constitutional laws [on a specific point or in general] was desirable"; (3) if both houses acted affirmatively, the members should meet in joint session as a National Assembly and, after further discussion if desired, take final action, by absolute majority of the total membership. Any proposal running this gantlet successfully was to become part of the constitution. Perils besetting the Republic in its early years inspired an amendment of 1884 forbidding the republican form of government ever to be made the subject of a proposed revision.

Outside of this, the amending power was unrestricted; and there was always question whether, the National Assembly once convoked, and embodying within itself the sovereign authority of the nation, the limitation mentioned would necessarily have any legal force.

In Britain, as we have seen, constitutional changes of any extent and character can be made by simple act of Parliament. This was not true in the Third French Republic. To be sure, amendments were voted by the senators and deputies composing Parliament. But when convened in National Assembly, the two chambers lost their identity for the time being, and senators and deputies became members, on a common footing, of a new, distinct, constituent body, in effect reviving the sovereign National Assembly which made and adopted the constitution in the first place, and even sitting, as that Assembly had done, not in Paris, but at Versailles. Either house could, of course, block a proposed amendment by refusing to vote the necessary preliminary resolution. But, once this initial stage was passed in the two chambers, decision rested with a single body and was likely to be reached quickly. The original constitution was never submitted to a popular vote, and neither were amendments.

Other Modes of Constitutional Development. In France, as in other countries, the actual, working constitution came to be a good deal more than mere constitutional texts, and by the same token, constitutional development more than mere formal constitutional amendment. In point of fact, only two of the half-dozen amendments ever adopted had any genuine significance.[1] Around the three "constitutional laws," however, was built up a vast structure of organic law, ordinary law, and custom; and these it was that put flesh on the skeleton, or, to abandon the figure, transformed an outline into a system.

1. Organic Laws. Under French terminology, an "organic" law is one which, while enacted like any other, and not written into the formal constitution, has none the less, because of the quasi-constitutional nature of the subject with which it deals, a more fundamental aspect than an ordinary statute. Electoral laws furnish as good an illustration as any. In reality, as Professor Munro remarks, there is not much difference between an organic law and an ordinary law

[1] That withdrawing from the constitution the articles on the election of senators and that forbidding any amendment touching the republican form of government.

except a sentimental one.[1] Both are enacted, and may be revised or repealed, in the same way. There is something to be said, however, for a classification that puts a measure regulating the election of deputies in a different category from a statute laying duties on imports of wheat. The one type of law is obviously more basic, less open to change save for weighty reasons and after mature deliberation —in short, more analogous to constitutional law in the strictest sense —than is the other. Indeed, the equivalent of what has been contained in most French organic laws is in many other countries found in the written constitution itself. But this merely illustrates how necessary it is in studying the working constitution of any state to take into account statutes as well as formal constitutional documents.

2. Custom. Custom, or usage, too, was important in the Third Republic, as it certainly is in the United States. Great Britain has no monopoly of that sort of thing. It is true that the elements of the cabinet system, for example, were provided for in a fundamental law in France, as on the opposite side of the Channel they are not; but the actual workings of the system, including the high rôle played by the premier, have been almost as much a matter of usage in one country as in the other. In 65 years, the Chamber of Deputies was dissolved only once; and what stood in the way of further dissolutions was not simply the unusual constitutional requirement that the Senate must be consulted and give its assent, but a tradition or custom that would have made a dissolution appear almost a *coup d'état*. In the same length of time, only two presidents of the Republic were reëlected; and usage seemed to have made a one-term rule almost as much a matter of unwritten law as a no-third-term rule was long considered to be in the United States. The president's right to demand reconsideration of a measure that had passed the two houses of Parliament—in other words, his suspensive veto—was never once exercised, and his right to send messages fell completely into disuse. It also was by custom alone that statutes were never made retroactive, that budgets were submitted annually, and that the person of the president was rarely or never made a subject of parliamentary debate.

[1] *The Governments of Europe* (3rd ed.), 414.

CHAPTER XXI



THE GOVERNMENT OF THE THIRD REPUBLIC—PARLIAMENTARY

A Bicameral Parliament. In France as in Britain, political democracy found its topmost expression in a national parliament; and under the Third Republic this parliament consisted of two houses, a Chamber of Deputies and a Senate. There had been experience with parliaments differently constructed; indeed, for almost a hundred years, the country, as different political régimes succeeded one another, has oscillated between one house and two; and when the constitutional laws of 1875 were being formulated there had been sharp differences of opinion as to which plan ought to be adopted. The radical followers of Gambetta, along with other republicans, strongly preferred a single chamber. But the monarchists wanted an upper house as a check upon democracy and a bulwark for the interests of birth and wealth. They argued, too, that such a body would be a barrier against revolution; and the rejoinder that the device of two chambers had not prevented the Napoleonic *coup d'état* of 1799 fell rather flat for the reason that many of the monarchists would have been willing enough to see something of that sort happen again. English and American precedent, also, pointed in the direction of bicameralism. But the plan was adopted, in the last analysis, because the conservative elements insisted on it, and because the bulk of the republicans did not care to jeopardize the new constitution by holding out too stubbornly for their own preferences.

Moreover, the two branches of the French Parliament were intended to be, and in practice were, coördinate, like the two houses of the American Congress. No measure could become law without

being passed by both; any bill except a money bill might be introduced in either; revenue and appropriation bills were amended freely by the second chamber; the upper house as well as the lower might, and occasionally did, upset ministries. Nowhere, indeed, except in the United States were the branches of a national representative body so evenly balanced.

THE CHAMBER OF DEPUTIES

Structure. As it stood on the eve of World War II, the Chamber of Deputies numbered 618 members, of whom 599 represented single-member districts in France proper, nine came from Algeria (considered an integral part of France), and 10 were elected in certain of the overseas colonies. Unlike Great Britain, France endeavored to carry out frequent reapportionments with a view to equality of electoral power for equal numbers of people. The ideal, however, was never attained in more than very rough fashion, for the reason that, although reapportionments were always made in advance of an election if a census had been taken since the last one, the electoral districts had in the main been formed, not *ad hoc* and irrespective of areas utilized for other purposes, but of departments, *arrondissements,* or subdivisions or combinations of such local-government units, commonly having rather widely differing numbers of inhabitants.[1] A deputy represented, on the average, 70,000 people, as compared with the 75,000 represented by a British Commoner at Westminster, and the 301,164 (under the reapportionment of 1941) by a congressman in the United States.

The term was four years; and all members of the Chamber were elected at the same time. To be sure, the Chamber could be dissolved at any time by the president of the Republic, with the assent of the Senate. Actually, however, there was only one such dissolution (in 1877) during the Third Republic's existence, and every newly elected Chamber could look forward with assurance to filling out substantially its full quadrennium. Consequently, parliamentary elections normally took place in France with almost the same unvarying regularity as congressional elections in the United States, although only half as frequently—*normally,* however, rather than invariably, for the reason that, the term of members being a matter of statute only, Parliament sometimes found it convenient to extend the life of

[1] See p. 591 below.

a given Chamber somewhat beyond four years, as it did in 1892 and again in 1923 in order to throw elections into the spring of the year, in 1918 in order to avert an election in war-time, and in the summer of 1939 in order to avert domestic political controversy in a period of international crisis.

Election: 1. Suffrage. Deputies were chosen by direct popular vote, under a suffrage system applying in parliamentary and local elections alike, and with four qualifications required of the voter: (1) male sex; (2) age of 21 or over; (3) citizenship and possession of full civil rights; and (4) registration. Tax-paying requirements had long since disappeared, and of educational, or literacy, tests there had never been a trace. All told, the Republic had one of the most liberal suffrage systems in the world—*for men;* for in France, "universal suffrage" had always meant "manhood suffrage." A woman's suffrage movement had made much headway, and on as many as nine occasions the Chamber of Deputies had placed itself on record for woman voting. The Senate, however, had always blocked the proposal.

2. Campaigns. A parliamentary election took place on a date—always a Sunday—fixed by presidential decree and was preceded by a period of vigorous campaigning on the part of candidates, whether nominated by local party groups, or, as was often the case, simply self-announced. Some of the better organized political parties engaged in more or less systematic electoral activities, but in general the typical campaign was that carried on by the individual candidate largely with his own resources and in his own way, aided, of course, by his local friends and supporters. He issued his own *profession de foi,* or platform, stressed issues or arguments which he thought would most appeal to the people whose votes he sought, and in doing so oftentimes wandered far from the principles or programs of any party or coalition with which he was ostensibly identified. Disciplinary power of party organizations over candidates was growing, but still —except in the case of the Socialists and the Communists—had far to go before attaining the level reached in Great Britain and the United States.

The art of campaigning is largely the same everywhere, yet with interesting national variations. French candidacies were floated on floods of oratory, especially in the rural districts. The press was used extensively; and radio-broadcasting, although turned to political uses

later than in Great Britain and the United States, was growing more common. A favorite method of appeal was, however, the placard or poster, and at every election the multi-colored *affiches électorales* on the billboards of Paris and other principal cities afforded no end of both information and amusement for the populace, as well as a good deal of instruction for the student of electoral psychology. So lavishly were such colored posters employed in earlier times by candidates having ample war-chests, and so often were the humbler offerings of poorer candidates plastered over or torn from their places, that it became necessary to remedy matters by requiring, under a law of 1914, that for elections of every kind communal authorities should provide official billboards (in numbers proportioned to the population of the commune) and allot an equal amount of space on each to all of the candidates, at the same time forbidding electoral placards or appeals of any sort to be put up in any other places. As a means of further equalizing opportunity, a law of 1919, made permanent in 1924, gave every candidate a chance to send post-free to all of the voters in his district two sample ballots, and also a circular not exceeding four pages, printed by the public authorities though paid for by the candidate himself. As to how much, beyond this, the candidate might spend, or allow to be spent, in advancing his cause, the laws were completely silent. Except in respect to posters and the franked matter mentioned, the French had not chosen to regulate campaign outlays at all, either by placing limits on the amount as in Great Britain and the United States, or by outlawing certain sources of contributions as in the United States, or by requiring some form of publicity as again in the case of Great Britain and the United States. It is, therefore, impossible to say with assurance how expensive French elections were, although certainly it cost less, on the average, to gain admission to the Palais Bourbon than to the Palace of Westminster.[1]

3. Ballots and Polling. Voting was by ballot, ordinarily in the *mairie*, or town hall of the commune, although in populous communes school-houses or other suitable buildings might be designated as additional polling-places. Ballots were printed, and opaque envelopes in which they might be enclosed were provided, by the state. The cost of ballots, however, was borne by party organizations or individual candidates; and while a reserve was available at the polls

[1] J. K. Pollock, *Money and Politics Abroad* (New York, 1932).

for voters who needed them, the greater part were sent in advance (by the organizations or candidates) to the voters in their homes. When, therefore, the voter went to the polls, he had only to identify himself by means of a *carte électorale* showing that he was duly registered, receive an electoral envelope, step into a booth, seal the ballot of his choice unmarked in the envelope, and deposit the envelope in an electoral urn. Voting by ballot has had a long and checkered history in France, with safeguards for secrecy gradually improved, but never completely adequate. With candidates usually numerous (in 1936, there were 4,815 in all for 618 seats), it many times happened that none within a district received the required majority of votes cast.[1] In such a situation, the voters were called to the polls a second time, eight days later, to vote on any candidates who chose to remain in the race, together with any new ones desiring to enter; and this time the candidate receiving the largest vote was declared elected, whether with a majority or not.

4. The Problem of Electoral Areas. Running through the electoral system's history under the Third Republic was an almost continuous controversy over the geographical unit to be employed for purposes of representation. The issue was essentially between those who favored small single-member districts (normally *arrondissements*) and those preferring districts of greater size (departments or large divisions thereof) and returning several members. Advantages alleged for the small one-member district were its simplicity and convenience and the better chance for voters to know the candidates; arguments against it included (1) that it narrowed the range of choice and led to the selection of inferior men ("little districts make little deputies"), (2) that it caused the deputy to be regarded, and to regard himself, too largely as a promoter of the interests of his own local community merely, rather than those of the country as a whole, and (3) that it was made easier for the government to put pressure on the voters and influence the results of elections. To a degree, differences of opinion reflected objective weighing of the intrinsic merits of the plans, though, in general, different parties and leaders were likely to be found favoring whichever they considered likely to yield themselves greater political advantage. At all events, after starting off with the small district plan (*scrutin d'arrondissement, i.e.*, election by single-member *arrondissements*), the country

[1] In 1936, this occurred in 427 of the 618 districts.

shifted in 1884 to the large-district scheme (*scrutin de liste, i.e.*, election of candidates in lists or groups), went back (after one trial in 1889) to the earlier plan, shifted again in 1919 to *scrutin de liste,* and finally, in 1927, reverted to the single-member system still in use when the Republic fell.

5. Unsuccessful Experimentation with Proportional Representation. During the earlier period when the multi-member-district plan was in use, the parties normally put up as many candidates in a district as there were places to be filled, and the list that secured a majority (or at the second balloting, a mere plurality) was declared elected, to the exclusion commonly of any representation for minority groups. When, however, in 1919, the multi-member system was revived, there was coupled with it a feature for which growing numbers of political leaders had been clamoring, namely, proportional representation. Indeed, the list system would hardly have been restored at all without this new feature, designed to bring France into line with what many people considered the most advanced electoral practice as exemplified not only in Switzerland, Belgium, and the Scandinavian countries, but in Germany, Austria, and other Continental states endowed with new post-war governments. Whether the proportional system would have proved a success had it been adopted in the form prevailing in the other countries mentioned, one cannot say. As it was, the plan installed, being the product of hard-won compromise between Chamber and Senate, was only a partial, hybrid scheme; and trial of it in two general elections led, in 1927, to its complete abandonment, with the single-member plan restored. In the spring of 1939, on the eve of World War II, the Chamber of Deputies voted for another trial of it in an improved form, but the Senate refused to concur.[1]

Characteristics of the Chamber's Personnel. What sorts of people predominantly—regardless of electoral forms—found their

[1] French suffrage and elections under the Third Republic are described in C. Seymour and D. F. Frary, *How the World Votes* (Springfield, 1918), I, Chaps. xv-xviii, and the proportional-representation law of 1919 will be found (in English translation) in H. L. McBain and L. Rogers, *The New Constitutions of Europe* (New York, 1922), 546-549. The principal peculiarity of the law of 1919 was that while it provided for election of deputies in departments, or divisions thereof, returning from three to six members each, and for election under a scheme of party lists as in Belgium and elsewhere, it stipulated that all candidates voted for on a majority of the ballots cast in a district should be declared elected on that basis, leaving the proportional principle to be brought into play only in allotting such seats (if any) as still remained to be filled.

way into the Chamber? To begin with, the general run of the membership was bourgeois, or middle-class. Few members came from families allied with the old nobility; few were large landowners or persons of note in the world of commerce and industry. On the other hand, few—at all events, prior to Communist successes in the elections of 1936—had ever performed manual labor, on farm or in factory. The great majority were "self-made" men who had achieved at least some local distinction in the professions. They were lawyers, journalists, physicians, bankers, school-teachers, former civil servants, with of course a good many professional politicians. Lawyers were not quite so much in evidence as in the average American legislature, yet far more so than in the British House of Commons; indeed, they always formed the largest occupational group; after the election of 1932, there were 250 of them in a membership at that time of 615.[1] Naturally, the great majority of deputies had been active locally as members of party committees or as party workers of other sorts; and an astonishing proportion not only had been members of departmental or communal councils, but continued to be such while serving their constituencies at Paris—for not only was there no legal incompatibility between the two functions, but the dual relationship was a regular, and in some respects an advantageous, feature of the system. All in all, the Chamber was, as Lord Bryce once pointed out, neither aristocratic nor plutocratic; it contained no small amount of talent, being notably apt at fluent and lucid debate; and while the average member, after two or three terms, went back to his home to concentrate upon his law practice or other professional or business activity and was promptly forgotten, a good many of the ablest ones enjoyed long and increasingly useful careers in the Chamber, or, more likely, were translated to the Senate, in either case standing a good chance of winning the coveted distinction of a ministerial appointment—perhaps successive appointments—with even a possibility of attaining the premiership.

The Deputy and His Constituents. In one respect, at least, the French deputy was in a position more like that of an American congressman than that of a member of the House of Commons in England: he had to devote himself assiduously to the claims of his con-

[1] As compared with 63 farmers and "agricultural engineers," 46 manufacturers, 42 physicians, 35 publicists, 32 professors and honorary professors, 27 former civil servants, 19 mechanical and civil engineers, 15 journalists and men of letters, 14 landlords, etc.

stituents, who flocked to Paris and also communicated with him very frequently and insistently through the mails. All sorts of seekers of public favor expected him to assist them in getting action from the various administrative departments of the government. The ministers needed the support of deputies in the Chamber, and therefore they extended these favors on a large scale, particularly when it came to routine matters involving licenses, permits, tax claims, and minor honors. Then, too, the deputy was supposed to get public improvements, such as roads, drainage projects, and bridges for his *arrondissement*. Altogether, demands of this type absorbed the larger part of his time and energy.[1]

THE SENATE

Composition. Having decided that Parliament should consist of two houses, the National Assembly in 1875 faced the task of creating a second chamber that would have dignity and strength, that would not be too democratic, and that would not prove a mere duplicate of the Chamber of Deputies. The scheme hit upon provided for a Senate of 300 members[2]—75 named by the Assembly itself and serving for life, the remaining 225 elected indirectly in groups of from one to five in the various-sized departments[3] and enjoying terms of nine years. Life membership, however, did not prove a popular feature, and after 1884, as life members died, their seats were made elective, the last such member disappearing in 1918. After certain changes made also in 1884, all elective senators were chosen in the respective departments—sometimes after a good deal of campaigning—by an electoral college consisting of (1) the department's representatives in the Chamber of Deputies, (2) the members of the department's elective general council, (3) the members of all *arrondissement* councils within the department, and (4) from one to 24 delegates from each communal council in the department in accordance with population.[4] Terms were overlapping, too, with

[1] For examples of what a deputy was supposed to do for his constituents, as well as for various interest groups, see A. Tardieu, *France in Danger* (London, 1935), 122 ff.

[2] The number became 314 when, at the close of World War I, 14 seats were allotted to three new departments created from the retroceded territory of Alsace-Lorraine.

[3] Except that four were assigned to Algeria and the colonies.

[4] Not, however, on a strictly proportional basis, since (except in the case of Paris) no municipality could have more than 24 electors and under the allotment made a commune with 60,000 inhabitants had the same voice as one with half a million or so.

one-third of the seats falling vacant every three years, as happens every two years in the Senate of the United States, but with all members from any given department elected at the same time, and therefore senatorial elections taking place in any given department only every nine years. Candidates either announced themselves or were put forward by agents or supporters; and while there was no requirement of residence in the department, those who won were almost invariably local men who had gained experience and prominence as mayors, members of the department council, deputies in the Chamber at Paris, or some similar capacity. Elections were held in the department capital and followed a procedure under which a majority was required on the first two ballots, but thereafter only a plurality.

Strength. Observers agreed that the Senate was a vigorous, capable, and useful legislative body; certainly no second chamber elsewhere equalled it in power except the American Senate and the Japanese House of Peers. It originated a good deal of important legislation; it exercised its function of revision with much deliberation and independence; it sometimes delayed, amended, or defeated great measures upon which both ministers and Chamber were agreed; and, as already remarked it repeatedly upset ministries. Much of the time, to be sure, it yielded substantial priority to the Chamber. As an indirectly elected body, its claim to represent public opinion was less convincing; and it usually exercised a fine sense of discrimination in deciding when to stand firm and when to give way. But it certainly was not one of the mere auxiliary and secondary legislative chambers in which Continental Europe abounded between the wars.

Capacity. Furthermore, it was not only powerful; it was able. Fifty years ago, A. Lawrence Lowell described it as "composed of as impressive a body of men as can be found in any legislative body in the world";[1] and in 1921 Lord Bryce expressed the opinion that "no other legislative body has in modern times shown a higher average standard of knowledge and ability among its members."[2] Recruited from the substantial elements of the country's population —from people who as a rule had risen to eminence in their home localities, had had experience in public office, were well educated, and had landed or other propertied interests, including many men

[1] *Governments and Parties in Continental Europe* (Boston, 1896), I, 22.
[2] *Modern Democracies* (New York, 1921), I, 238.

of distinction in letters and science—it was admittedly superior in personnel to the Chamber of Deputies with its large proportion of country lawyers, school-teachers, and other people of circumscribed horizons and limited experience with large affairs. Long terms and numerous reëlections gave further scope for growth in knowledge, experience, and influence.

Political Temper. To be sure, the Senate was often criticized as being too far removed from popular control; and both direct election and shorter terms were frequently advocated—even outright abolition, indeed, by Socialists and Communists. From the very beginning, however, the body proved less reactionary than anticipated; and in later days, although commonly taking its time about turning its support to proposals for liberal legislation, it seldom held out against such proposals to the bitter end, and was, on the whole, hardly more conservative than the other branch.

PARLIAMENTARY ORGANIZATION

The Physical Setting. The French Parliament afforded (as indeed it still does) one of the very few instances in which the two branches of a national legislature were not housed under the same roof. The Paris of the 1870's abounded in massive public buildings coming down from earlier days, and when the government of the Third Republic moved to the metropolis after a brief beginning at Versailles, it was a matter of no difficulty for the two chambers to select suitable, and indeed impressive, meeting-places. The Chamber of Deputies became established in the Palais Bourbon, centrally situated on the left bank of the Seine directly across from the spacious Place de la Concorde; the Senate fell heir to the still older and finer Palais de Luxembourg, situated a mile away in the general vicinity of the Sorbonne and the Panthéon.

Sessions and Sittings. The national constitution required that the two houses meet on the second Tuesday of January of each year (unless convened earlier by the president of the Republic), and that every year they be in session not less than a total of five months. With the burden of work tending always to increase, there came, in point of fact, to be two protracted sessions a year—the first, called the "ordinary" session, extending from January to about Bastille Day (July 14), and the second, considered as a *session extraordinaire,* and devoted mainly to consideration of the annual budget,

running through most of November and December—a schedule, it will be observed, not very different from that of the British Parliament. There might be additional special sessions, but with the two sessions mentioned occupying eight or nine months of the year, there was seldom need for such. During a session, the two houses met commonly at 2 P.M., adjourning for dinner after a sitting of four or five hours; evening sittings similar to those of the British House of Commons were seldom held. Either house could close its doors by majority vote, but sittings were nearly always public, with spectators admitted by card as long as there were vacant seats in the galleries.[1]

Officers. At the opening of every ordinary session, whether or not of a new parliament, each chamber readopted its rules of procedure (usually with only slight changes or none at all) and elected by ballot a staff of officers to have charge of its affairs during the ensuing year. In the Chamber, this "bureau" consisted of a president, six vice-presidents, 12 secretaries, and three quaestors; in the Senate, the same arrangement held except that there was only one vice-president. Certain minor duties devolving upon the bureau were performed by these officers collectively, *e.g.*, appointing stenographers, clerks, and other paid employees. In the main, however, each group had its own special tasks, one of the vice-presidents taking the chair when the president was absent, the secretaries supervising stenographic reports and counting votes, the quaestors looking after accounts, payment of salaries, archives, libraries, admission to the galleries, and the like.[2]

The President. As would be expected, the president was, in each chamber, by all odds the most important official. Indeed, the Senate's presiding officer ranked next to the president of the Republic, socially

[1] Senators and deputies received the same salaries—on the eve of the recent war, 62,000 francs a year, with an added allowance of 15,000 francs for secretarial help, and equivalent at the prevailing rate of exchange to about $1,425.

[2] Another duty of the quaestors was to enforce penalties imposed by the Chamber upon unruly members, who could be arrested and held for as long as three days. As in most Latin countries, the houses had to be protected against possible popular demonstrations, and to that end armed guards were kept at hand. In 1934 and 1935, the people became so incensed at the government in connection with the Stavisky scandal and other matters that they descended in howling mobs upon Parliament. A cordon of police was thrown around the legislative buildings, and persons without permits were not allowed to approach them. Finally, the excitement grew so intense that barricades were thrown up in the streets and fighting broke out which required the calling of troops. The affair lasted for months and several lives were lost.

and ceremonially, and the Chamber's followed immediately after. Both were usually the first men to be called to the Élysée for advice when a new ministry was to be made up. As defined partly by law and partly by the rules of procedure, the duties and powers of the two officials were substantially the same—recognizing members who desired to speak, interpreting the rules (subject to appeal from the chair), putting questions to a vote, announcing the results, signing records of proceedings, receiving memorials and other communications addressed to the chamber, and representing it in its dealings with the other chamber and with the executive authorities. In particular, the president was charged with maintaining parliamentary decorum; and while in the Senate, where debates were carried on in an exceptionally tranquil atmosphere, this entailed no great burden, in the Chamber, where passions ran high, the president's courage and tact were often tested severely. If when dispute was waxing hot the chair could intervene with a judicious observation, or perhaps a *bon mot,* he might be able to restore a semblance of calm. Failing this, he might get results by rapping sharply with his paper-knife on the edge of his desk, or by ringing a hand-bell. As a last resort, he might exercise his terrifying *droit de chapeau*—that is to say, he might put on his hat—as a warning that unless order was restored he would suspend the sitting; and plenty of times such suspensions became necessary as a means of bringing back excited and unruly members to a frame of mind enabling business to proceed. As for himself, the president was not expected to maintain the completely non-partisan attitude of the British speaker. Not so long ago, he was seen descending from the chair and giving the Chamber the benefit of his views on any issue on which he cared to speak. Under later custom, however, he commonly refrained not only from debate but from voting, even in the case of a tie; and about the worst that could be said was that he still sometimes wielded the power of recognition and of interpreting the rules with thinly veiled partiality toward the *bloc* that had elected him. A suitable man for the office once found, however, he was likely to be reëlected over and over, even after the combination that first placed him in office had dissolved or passed out of power.

The Committee System. Both Chamber and Senate made extensive use of committees; indeed, the power and importance of committees was one of the distinguishing features of the French parlia-

mentary system. It was not, however, until as late as 1882 that a regular standing committee system was instituted in the Chamber, and not until 1921 that a similar step was taken in the Senate; before those dates, all committees in the respective houses were only special committees, selected by an antiquated and cumbersome process inherited from the old Estates General. Special committees continued occasionally to be set up as late as 1939. But it was chiefly the standing committees that had importance.

On the eve of World War II, the Chamber of Deputies had 20 of these standing committees (*grandes commissions permanentes*), with 44 members each (55 in the case of the finance committee).[1] Like similar committees in the United States, but unlike four of the then five in the British House of Commons, they were in all cases committees on particular subjects or fields of legislation; and one has only to glance at the list given below to observe a significant correlation between it and the list of government departments and services. Since 1920, they had been elected for a year at a time, though as a rule their personnel remained much the same throughout the four-year period of a parliament; and in Chamber and Senate alike, no person might belong to more than two "grand" committees at the same time.[2] In June of each year, the bureau of the Chamber allotted the recognized groups—sometimes as many as a dozen in number—quotas of committee members determined in accordance with a formula designed to assure fair proportions.[3] In caucus, each group thereupon drew up its list of nominations, settling the matter by simple conference if it could, but otherwise taking a formal vote; and the resulting lists were published in the *Journal Officiel.* If at the end of three days a list had not been protested by as many as 50 members, it was regarded as elected, the Chamber itself actually voting only in the event of a protest, and only upon the committee members protested. The method closely resembled that by which committee members are chosen in the American House of Repre-

[1] The list was as follows: 1, General, Departmental, and Communal Administration; 2, Foreign Affairs; 3, Agriculture; 4, Algeria, Colonies, and Protectorates; 5, Alsace-Lorraine; 6, Army; 7, Social Insurance and Welfare; 8, Commerce and Industry; 9, Accounts and Economies; 10, Customs and Commercial Agreements; 11 Public Instruction and Fine Arts; 12, Finance; 13, Public Health; 14, Civil and Criminal Jurisdiction; 15, Merchant Marine; 16, Navy; 17, Mines and Motive Power; 18, Aviation; 19, Labor; 20, Public Works and Communications.

[2] Indeed to only *one* in the case of the finance and foreign affairs committees.

[3] Until 1932, provision was made for separate committee representation for deputies not identified with any group; but the plan was then abandoned.

sentatives, although in that body the complete committee lists are always actually voted on. Selection of committees in the French Senate was substantially as in the Chamber. There were, however, only 11 standing committees (*commissions generales*);[1] the number of members was 36; the number of party groups to be represented was smaller than in the Chamber; a list might be challenged by as few as 20 members; and election took place at the beginning of each regular session instead of in June. In both houses, committee chairmen, instead of holding their positions by seniority as do committee chairmen in the American Congress, were elected yearly by the members of the respective committees.[2]

PARLIAMENTARY PROCEDURE

The Chambers at Work. The functions of Parliament were multifold, but they could be grouped under three main heads: (1) legislation, (2) raising and appropriating money, and (3) criticism of administrative acts and policies. An English writer of several decades ago made the point that on account of the thoroughness of French political reconstruction between 1789 and 1875, together with the comprehensiveness and durability of the Napoleonic codes, the field for legislation was narrower in France than in England and many other countries;[3] and a later observer was led to assert that the Chamber did not find in legislation its chief interest.[4] However this may be, the steadily widening scope of governmental activities in the past half-century, springing mainly from social and economic changes, had in France no less than in other countries laid an increasingly heavy burden upon parliamentary bodies. Legislative proposals had increased both in number and in complexity; and though a surprisingly large part of the resulting new legislation took the form of administrative *décrets* and *arrêtés*, the chambers not only devoted much earnest study and discussion to the great issues of national

[1] As follows: 1, Army; 2, Navy; 3, Foreign Affairs and Protectorates; 4, Customs Duties and Commercial Agreements; 5, Public Works; 6, Agriculture; 7, Public Instruction; 8, Public Health and Social Insurance; 9, Civil and Criminal Jurisdiction; 10, General, Departmental, and Communal Administration; 11, Commerce, Industry, Labor, and Posts; 12, Finance.

[2] The principal work in English on the French committee system is R. K. Gooch, *The French Parliamentary Committee System* (New York, 1935), and the principal work in French, J. Barthélemy, *Essai sur le travail et le système des commissions* (Paris, 1934).

[3] J. E. C. Bodley, *France*, II, 213-216.

[4] Lord Bryce, *Modern Democracies*, I, 256.

policy, but put forth from year to year a very respectable quantity of new or amended law.[1]

Government Bills and Private Members' Bills. The constitution conferred the right to initiate legislation upon both the president of the Republic (in effect, the ministers) and the members of the two houses. Government bills, *i.e.*, bills backed by the ministry and signed by the president, were termed *projets de loi*; private members' bills, *propositions de loi*. The distinction, however, had no such significance as in Great Britain, where, as we have seen, it is a basic feature of the legislative process. To begin with, although many government bills originated with a minister or a department, many actually started with a private member or group of such and were merely, upon urgent solicitation, taken over by the government; ministers were accustomed to be bombarded with requests of the kind, animated by the consideration that a bill stood a better chance of passage if it had the government behind it. In the second place, private members directly introduced large numbers of bills, and, contrary to the situation in Britain, where the far fewer private members' bills introduced are very unlikely to be passed, many of those introduced at the Palais Bourbon or the Palais de Luxembourg ended by becoming law. Neither as to the introduction of bills and resolutions nor in other ways had the French back-bencher suffered any such eclipse as that which had overtaken the regimented private membership at Westminster. His position was more like that of the American congressman.

The Committees at Work. Once introduced, a bill, whether a *projet* or a *proposition,* was normally referred forthwith, by the president of the chamber, to the appropriate standing committee. A given measure might, of course, be of interest to two or more committees, and for that contingency the French had the interesting plan of asking one of the number to assume primary jurisdiction, while the others might designate non-voting representatives to attend the chief committee's meetings and later give the Chamber the benefit of their own observations. For members who took their assignments seriously, committee work was heavy. Meetings were rarely less frequent than once a week, and often almost daily; sub-committees made additional demands; and although time for committee work

[1] The standard work on legislative procedure is E. Pierre, *Traité de droit politique, electoral et parlementaire* (Paris, 1902). A supplementary volume appeared in 1924.

was supposed to be protected by holding no sittings of the chambers in the forenoons or usually on Wednesdays, one or more of the busier committees could be found grinding away at almost any time, even when the chambers themselves were in session. Contrary to American practice, committee sessions were always closed to the general public—that very familiar American device, the public hearing, being quite unknown.[1] To be sure, experts from the outside might be invited in; and the author of a private member's bill might attend in a consultative capacity, provided he was willing to retire whenever the committee voted. But not even ministers could gain entry unless a committee assented.

The Functions of "Rapporteurs." Still more remarkable was the rôle played by the *rapporteur,* or reporter. In Great Britain, a government bill, after committee stage as well as before, is in direct charge of a minister, who explains it, defends it, and pilots it through to passage. In the American Congress, practically all bills are reported and managed by the chairmen of the committees which have originated them or to which they have been referred. In France, when a bill was taken up by a committee, the first step normally was to designate one of the members as reporter for that measure; and when deliberations were ended, it was that person—not the committee chairman, nor yet the minister in whose province the bill fell—who shouldered the main responsibility for securing action by the Chamber. Having prepared a printed report presenting the text of the bill as recast by the committee, the arguments supporting it, and sometimes (although not always) the views of the minority, he went before the Chamber prepared to bear the brunt of the attack and to marshal and direct the defense. He might receive assistance from the committee chairman and, in the case of a government bill, from the minister chiefly concerned; but his remained the guiding hand. This curious twist by which an ordinary private member acquired precedence over committee chairman and minister alike was criticized on the ground that it confused functions and divided responsibility. The defense commonly offered, however, was that a *rapporteur,* being responsible usually for only one bill at a time, had a chance to concentrate his best effort upon it, and that, in practice, the

[1] Of course, France had its pressure groups and lobbyists who made their wishes known to committee members outside of the committee room.

material prepared by him for the Chamber was frequently a model of exhaustiveness and lucidity.

Committee Relations with the Cabinet. Back at the time when the standing-committee system was instituted, ministers had no enthusiasm for it, because they could see trouble coming; and their apprehensions were later confirmed. Far from merely rubber-stamping government bills, or contenting themselves with scrutinizing general principles and objectives, committees freely picked measures to pieces, amended them almost beyond recognition, and even reported back substitutes. Not only so, but they developed vigorous functions of criticism and supervision of administration, with a result of relations between themselves and corresponding executive departments sometimes amicable, and even cordial, but more frequently uncoöperative or definitely hostile. The vigor and independence of the great committees in the two houses became indeed principal reasons—along with the complicated party situation—for the weak parliamentary position occupied by the French cabinet in comparison with that of the British cabinet.[1]

Debate on Bills. Committee stage on a bill having been passed, the printed *exposé* of the reporter, including the text of the measure as recommended, was distributed among the members of the Chamber,[2] and when the point at which the measure had been placed on the legislative calendar was reached, debate began. First of all, there was discussion bearing simply upon the nature and objects of the bill in general. At its close, the president put the question of whether the Chamber desired to "pass to the articles," *i.e.*, take up the measure in detail, section by section. If the vote was in the negative, the bill was dead; indeed, if it was a private member's measure, it could not be reintroduced until after an interval of three months. If, however, the decision was favorable, consideration of the measure in detail proceeded. At this time, but not before, amendments were in order—both such as might be offered from the floor and such others as might previously have been filed with the committee; and if they were numerous or complicated, the measure would be likely to be sent back to committee for revision. Ministers and committee re-

[1] This situation is discussed at length in R. K. Gooch, *The French Parliamentary Committee System*, Chap. vii, and L. Rogers, "Parliamentary Commissions in France," *Polit. Sci. Quar.*, Dec., 1923.

[2] Procedure in the Senate was substantially the same.

porters were entitled to be recognized whenever they desired to speak; the general run of members wishing to be heard indicated their desire by inscribing their names on lists kept by the secretaries; and the president was supposed to recognize members who requested the floor in the order shown by the lists, except that he usually tried to let supporters and opponents of the pending measure be heard alternately.[1]

Parliamentary Oratory. Debate in the Senate was earnest but urbane and dignified, and onlookers rarely filled the galleries. For entertainment, not to say excitement, the visitor went rather to the Palais Bourbon, where, if the matter under discussion happened to be one of large interest, both floor and galleries were likely to be crowded. Debate in any legislative body has its dull stretches, but in the Chamber these were not numerous. Instead of the mere sparring that often proves so boresome at Westminster and Washington, there was clash of argument against argument, principle against principle, personality against personality—merciless cut and thrust, and often rude jousts which grew rougher and rougher until by dint of persistent ringing of his bell the president succeeded in restoring calm. Hardly any parliamentary body in the world was more susceptible to the power of oratory. A brilliant speech would bring even a deputy's political enemies to their feet, cheering a sonorous peroration as a work of art even though presently they would blandly vote to kill the measure that inspired it. Nor was there partiality to any particular style of oratorical effort. Both M. Poincaré and M. Briand were exceptionally effective as speakers from the tribune, yet it would be difficult to conceive of two men having less similar methods of appeal: Poincaré, always the lawyer, reserved, calculating, full of meticulously assembled information, fortified with armloads of documents; Briand, human, suave, negligent of books, and with no taste for statistics, but hypnotizing his hearers with the music of his voice and the mellow persuasiveness of his argument.

Methods of Voting. Neither chamber used the *viva voce* form of mass voting employed in Great Britain and America. "Rising" votes were taken in both, and in the Deputies there was also voting by show of hands. On all tax proposals, however, and in other cases

[1] The hall in which each body sat was fitted out with individual seats arranged theater-wise, and members speaking at any length commonly "mounted the tribune," *i.e.*, spoke from a platform immediately in front of the presiding officer's elevated chair.

where in the upper house 10 members, and in the lower 20, so demanded, there must be a *scrutin public,* or "public vote." Most commonly, this involved neither a roll-call nor a dispersion of the members to division lobbies, but rather the passing of an urn up and down the rows of seats, in order that each member might drop in a white slip of paper (with his name on it) if he wished to vote "Yes" or a blue slip if he wished to vote "No." A deputy might authorize another member to drop in a slip for him, and it was not uncommon for all of the votes of a party group to be deposited by a single person, however much the procedure might look to the uninitiated like stuffing the ballot-box—or urn. If on announcement of the result, a majority in the Senate or 50 in the Chamber so demanded, the final and most solemn form of voting must be brought into play—*scrutin public à la tribune.* In alphabetical order, the members filed across the tribune, and as they mounted the steps their names were checked and a secretary handed them a small wooden ball. Individually, they deposited their white or blue cards in an urn and descended the other steps, returning the ball as they did so to another secretary, who completed the check. This took time, but had the merit of requiring every member to cast his own ballot; and with voting thus limited to those actually present, the result might differ from that obtained by balloting from the floor.

Questioning the Ministers. Any member of either branch of Parliament was entitled to ask questions of the ministers. Sometimes a query was put orally and answered on the spot, the questioner being allowed 15 minutes in which to state his inquiry, the minister as much time as he wished in which to reply, and the questioner five minutes more in which, if he desired, to make a rejoinder. Or, the question might be both submitted and answered in writing; hundreds, in fact, were so submitted every session and the answers printed in the *Journal Officiel.* To either an oral or a written question, a minister might refuse to reply only on the ground that "reasons of state" made it unwise to do so. At all events, the incident passed with no general debate, and no vote.

Interpellation. Such questions are a means, known to cabinet governments everywhere, of holding ministers accountable for administrative acts and policies. But French usage provided another and still more effective means—one which, although defensible if em-

ployed with discretion, proved in practice liable to serious abuse. This was interpellation. An interpellation was also a demand upon the government for information. But, unlike an ordinary question, it gave rise to debate and culminated in a vote. Simple questions commonly related to minor details of administration. Interpellations more often had to do (or at all events were supposed to) with matters of policy, and might come singly from individual members or in batches from a half-dozen or more joining forces for the purpose. Presented invariably in writing, interpellations were read to the Chamber by the presiding officer,[1] who thereupon sent them to the appropriate minister if they related to the affairs of a single department, or to the premier if, as more frequently was the case, they had to do with a matter of general government policy. The premier or other minister might refuse to "accept" the interpellation, again on the ground that a public answer would be incompatible with the national interest. Only a very plausible explanation of the kind, however, would be likely to satisfy the Chamber, and normally a date (some time within a month) would be fixed for a reply. The appointed time having arrived, the interpellating member or group reiterated and explained the pending question, the premier or other government spokesman made his reply, and then, instead of the incident being closed as in the case of an ordinary question, a general debate ensued and, as indicated above, a vote was taken. By the time the discussion was over, several motions might be pending, among them certainly one to the effect that "the Chamber, having heard the explanation of the minister, pass [*i.e.*, return] to the order of the day," and very likely another expressing the hostile point of view of the questioner. If a motion of the first sort prevailed, the government had weathered the storm: the Chamber resumed the regular order, and the ministers under fire drew a deep breath and went about their business. If, however, the motion adopted was of the opposite tenor, the ministers had no alternative but to resign; and this was the normal method by which ministries were overthrown. Not only, indeed, did the practice consume an inordinate amount of time, but it became a favorite means of heckling the government and driving it from office, often for no reason at all except that ambitious and meddlesome deputies enjoyed embarrassing their political opponents

[1] They were not unknown in the Senate, but were used chiefly in the Chamber.

and perhaps hoped themselves to turn up in a ministry if the existing one fell.

Relations between the Chambers in Legislation. Constitutionally, the two branches of Parliament were co-equals in legislation, except that money bills must first be introduced in, and passed by, the Chamber of Deputies. In point of fact, most bills of major importance, on whatever subject, made their first appearance at the Palais Bourbon. None, however, could become law until agreed to in identical form by both houses, and this raises the question of what happened when a measure passed the two bodies in different form. The answer, in a word, is that if the bill was one in which the government was interested, the minister chiefly concerned, passing back and forth between the chambers, sought to iron out the difficulty by getting a surrender here and a concession there, and even, upon occasion, by threatening to resign unless one or both houses receded from positions that they had taken; while if the measure was sponsored only by a private member or group, the chambers might, if so disposed, seek agreement through the medium of conference committees analogous to those employed for a similar purpose in the American Congress. The Senate's function was always considered as primarily that of slowing up the legislative process when suspicion existed that an impetuous Chamber had outrun public sentiment or otherwise acted unwisely; and its favorite method of doing this was, not precipitate and violent clash, but rather inquiry, revision, inertia, and delay. Many an imposing measure sent over from the Palais Bourbon was artfully trimmed of its more ambitious and bizarre provisions; many a one was gravely referred to a committee and left to die; or if not that, at all events was not brought forth until the Chamber, having cooled off on the subject, was in a frame of mind to accept a more conservative bill. Sooner or later, the Senate probably would yield if public opinion grew sufficiently insistent. But on subjects like taxation of incomes and inheritances, social insurance, labor legislation, public ownership, and woman suffrage, a vast amount of pressure was likely to be required.[1]

[1] A useful work on the powers and activities of the prewar Senate is J. Barthélemy, *Lés resistances du Sénat* (Paris, 1913).

In the hasty outline of parliamentary procedure here presented, it is not possible to include the more or less specialized processes of financial legislation. The subject is treated adequately both under the Third and Fourth Republics in D. W. S. Lidderdale, *The Parliament of France* (London, 1951), Chap. ix.

THE GENERAL POSITION OF PARLIAMENT

Criticisms and Proposals. All in all, the French Parliament of prewar days deserved a reasonably good rating among the world's principal legislatures. Its personnel compared favorably with that of the British House of Commons or the American Congress, and its procedings were as a rule on a fairly high level. It would not be supposed, however, that in an age of world-wide disparagement and criticism of legislative bodies the French chambers went unscathed. In point of fact, they were the object of vigorous attack from many sides.[1] At one extreme were the Communists, who, aiming at a dictatorship of the proletariat, would have done away with the existing type of parliament, substituting some sort of supreme soviet, on the Russian pattern. At the other extreme was the ultra-conservative, essentially fascist, *Ligue de l'Action Française,* demanding a "traditional, hereditary, anti-parliamentary, and decentralized monarchy." [2] Between stood many critics who believed in parliamentary government, yet wanted existing arrangements changed considerably. The Socialists and Communists would have suppressed the Senate, and the Radical-Socialists would have continued it only if elected by a wider constituency and shorn of power to defeat the will of the Chamber. Advocates of functional, or professional, representation would have done away with the existing geographical connections of senators and deputies, substituting electoral arrangements under which, as they believed, the sentiments and interests of the nation would be mirrored more faithfully. Other groups looked rather to reforms of procedure. Some would have curbed the power of the great committees; others would have introduced more effective forms of closure; many would have put interpellation under greater restraint.

Demand for a Stronger Executive. A proposal of much interest on still a different line was that Parliament be reduced to a somewhat humbler rôle in the governmental system by substantially increasing the power and independence of the executive. In England, an oft-heard complaint is, as we have seen, that the cabinet has become a dictator and Parliament a rubber-stamp. In prewar France, both president and cabinet were comparatively weak, Parliament unques-

[1] For a general survey, see R. K. Gooch, "The Anti-Parliamentary Movement in France," *Amer. Polit. Sci. Rev.*, Aug., 1927.

[2] This subversive organization was supposed, however, to have been dissolved by government decree in 1936.

tionably dominant. Many considered that the country would be better off if the situation were reversed. Some looked toward an independent executive of the American type. More would have liked to see the weapon of dissolution brought into effective use. Nearly all would have been pleased if the executive could somehow have been rescued from its existing plight as a football of partisan politics. Notwithstanding particularly lively agitation in 1934, however, there was still, when World War II began, no prospect of early developments on any of these lines; for, after all, the small-scale producers, peasants, small employers, independent craftsmen, traders, and *rentiers* who formed the backbone of the nation did not want strong government as long as weak government somehow managed to carry on without taxing them too much, and as long as the economic system showed no signs of actually breaking down.

Delegation of Emergency Powers. From time to time after 1914, the executive branch of the government was indeed strengthened, temporarily, by dubious parliamentary grants of emergency authority to the ministers; and many people look upon the loose and hazardous resulting situation as both an evidence of and a factor contributing to the weakness of the Third Republic during its last years. The practice was first employed on a considerable scale during World War I. In 1924, when confronted with a situation requiring sharp budget cuts and heavy increases of taxes, the government demanded power to proceed by decree in lieu of regular legislation. On this occasion, Parliament did not yield; but during another and sharper crisis two years later a similar demand was more successful, and on the basis of emergency powers conferred more than one hundred decrees were issued, most of them in time rescinded by parliamentary action.[1] As the country moved into still more difficult times in the thirties, special authority again was sought—in 1934, 1935, 1937, and 1938—and in all instances granted, although sometimes reluctantly. Ministers, indeed, were fast acquiring the habit of assuming that when the economic system was out of gear or the foreign situation critical Parliament should be asked to abdicate its normal functions and hand over more or less undefined and often almost unrestricted authority to be exercised through decree procedures by the executive, with the chambers during such periods

[1] For translations of two of these decrees, see W. E. Rappard *et al.*, *Source Book on European Governments* (New York, 1937), Pt. ii, 58.

of emergency, if sitting at all, hardly more than marking time. Finally, in 1939, the European situation became so tense that Prime Minister Daladier asked and received for his cabinet a grant of emergency authority which, as later renewed, had not yet expired when France fell before the onrush of German arms in 1940. On this occasion, a reluctant Parliament continued in session, but was bluntly told by the Premier that it was not suited to deal with wartime problems.[1]

When a request was made of Parliament for authority to govern by decree, information was, to be sure, submitted as to the reasons for such action, the general scope of the power desired, and the time that it was to run. But once the request was granted, the ministry—with Parliament usually not in session at all—could change established laws, enact new ones, and handle matters of state with full freedom, including immunity from challenge by the courts. Later on, the chambers might revoke decrees promulgated; but that did not prevent them from achieving their objectives while in force, or from sometimes leaving a permanent imprint on the country's laws and regulations. From especially about 1934, the frequency and scope of emergency grants inevitably raised the question of whether, under the strain of deteriorating national and world conditions, regular parliamentary government had not in effect broken down. It would be extreme to say that the increasing reliance on delegated emergency powers accounts for the swift collapse of France after the German invasion started. But undoubtedly it contributed to the over-all paralysis of the governmental system which made so tragic an event possible; and certainly it evidenced a grave weakening of democratic procedures.

[1] For a critical discussion of the actions of Daladier and others at this time of crisis, see "Pertinax," *The Grave Diggers of France: Gamelin, Daladier, Reynaud, Pétain, and Laval* (Garden City, N. Y., 1944).

CHAPTER XXII



THE GOVERNMENT OF THE THIRD REPUBLIC—EXECUTIVE AND ADMINISTRATIVE

THE PRESIDENCY

Republics and Presidents. It was in America, rather than in Europe, that the title and office of "president" first came into their present more or less axiomatic association with the idea of republican government. The United States has had a president since 1789, and various Latin American states from days dating back a hundred years and more. The first French republic, roughly contemporary with our American national beginnings, tried different types of executive, but never had a president. Half a century later, the Second Republic, influenced somewhat by the American example, had a president—but only to see Louis Napoleon make the office a stepping-stone to an imperial title. This unhappy experience left the republican elements of the country in a somewhat skeptical frame of mind; and down to 1870 most of them felt—as, indeed, Jules Grévy had urged in 1848—that there ought to be no president of the Republic, but only a "president of the council of ministers" (in effect, a prime minister)—a head of the government not set up by popular election as an authority more or less coördinate with Parliament, but chosen by Parliament itself and kept under full control of that body. The National Assembly of 1871-75, however, came gradually to a different arrangement. Monarchist though it was, it created—or revived—the most obvious symbol that a republican

government can have, *i.e.*, a chief executive known as "the president"; and, curiously, Grévy himself not only became the first Frenchman to be elected to the office under the constitution of 1875, but occupied it longer than any other incumbent except one.

Theory and Fact of the President's Position. The office itself became one of the curiosities of European politics. In many respects, the president of France was an imposing figure. He was the supreme embodiment of the executive power, the titular head of the state. The constitution endowed him with numerous weighty functions. He received a liberal salary; the nation provided him with three splendid residences;[1] and he lived in semi-regal style. Wherever he went, he was received with civil and military honors such as elsewhere were accorded only to royalty. He was, as a French scholar has said, "a constitutional king for seven years"—and for as much longer as his tenure might be extended by reëlection. In short, his position was as dignified, influential, and powerful as theories and forms could make it. But in "theories and forms" lay the rub. "Each of the acts of the president of the Republic," said the constitution, "must be countersigned by a minister"; and this merciless provision meant that while power might be the president's, it could be exercised only through ministers, who, being responsible to Parliament, naturally and rightfully insisted on determining when and how it should be wielded. The president need not be a nonentity, nor yet a mere ornament. He might, indeed—just as may the king in England—exert influence, and even power. His main practical importance, however, was as a pageant rather than as a ruler—a symbol of national unity, a nominal head of administration, a balance wheel in a complicated political machine. It goes without saying that some presidents were less happy in such a rôle than others.

Presidential Elections. French voters were not called upon to choose a president, and did not even find themselves involved to any large extent in presidential campaigns; for presidents were elected by an absolute majority of the members of the two legislative chambers sitting together as a National Assembly.[2] The constitution provided that the retiring president should convoke the Assembly for the

[1] The palace of the Élysée situated on the Champs-Élysée in Paris and two country places.

[2] For an account of one election, see P. Lyautey, "The French Presidential Election," jn N. L. Hill and H. W. Stoke, *The Background of European Governments* (2nd ed.), 264-267.

purpose at least one month before the expiration of his term; if he failed to do so, the Assembly could meet without call fifteen days before the end of the term; and in case a president died or resigned, the Assembly was under mandate to meet at once without notice.

Meetings were held in the historic palace at Versailles and were characterized by a certain amount of color, although no nominations were made from the floor, no speeches were in order, and the balloting was secret. The most interesting part of the electoral process was not connected with the formal meeting, but went on outside in conferences participated in by party leaders. Here there was much discussion, jockeying for position, trading, and political manipulation, especially among the parties making up the Right and those occupying a Leftist position. Inasmuch as the constitution required an absolute majority of all the votes in the National Assembly and no one party ever could muster that amount of strength, it was essential that there be such negotiations among the party groups; for otherwise a deadlocked Assembly might spend endless time voting. As a rule, the result of all this activity was that two candidates survived for the Assembly's final consideration—one representing the parties of the Right and the other those of the Left.

The Formal Process. After the parties had completed their jockeying, it was comparatively simple for the National Assembly to choose a president; second ballots were required in the election of only three out of twelve incumbents,[1] and in no case was a third ballot ever necessary. The National Assembly in session was presided over by the president of the Senate, who himself might be a candidate—five out of the twelve presidents served in that capacity immediately prior to election. An urn was placed on the tribune—the platform from which speakers address legislative bodies in France—and the names of the approximately 900 senators and deputies were read by a herald. When a member's name was called, he would proceed to the tribune and deposit a ballot for the candidate of his choice. Tellers drawn by lot acted as counting officials and proceeded at once to tally the votes, with the successful candidate taking office immediately if there was a vacancy—otherwise at the expiration of the term of the incumbent.

Qualifications. The qualifications specified by law were not onerous and would permit any adult citizen who had not been de-

[1] The three were Grévy, Faure, and Poincaré.

prived of voting rights, and who was not a member of a former reigning family in France, to hold the office. Actually, considerably more stringent qualifications were imposed by custom. For example, women were never considered for the office; a dignified age was essential; and political activity of a respectable but not too brilliant character was expected.[1]

Term. Presidents were elected for terms of seven years, and could be given more than a single term if the National Assembly so chose. Prior to 1939, a tradition against a second term appeared to have established itself; for no president since Grévy (1879-87) had ever been reëlected. However, after considerable discussion, President Lebrun, in the year mentioned, with war clouds gathering, decided to offer himself for a second term; and he was reëlected.

Removal from Office. Although the president was not subject to the ordinary courts, he could be tried for treason by the Senate upon charges brought by the Chamber of Deputies. A bare majority was sufficient to convict, and the Senate had complete freedom in deciding what the penalty should be. On no occasion, however, was the procedure ever invoked.

Presidential Powers. A casual survey of the constitution and laws might lead one to suppose that the president had very substantial powers. In reality, however, this was not the case. He possessed the legal authority to dissolve the Chamber of Deputies, yet he never once exercised this right after 1877; he could name the prime minister, but, as President Millerand discovered, he had to be guided, not by his own wishes, but by the coalition of parties that at the time could control the Chamber of Deputies. He theoretically played a large rôle in lawmaking and the determining of policies; however, for any acts of this nature he had to have the approval of a minister, and this meant that the cabinet really exercised the functions. Finally, he had a suspensive veto over acts of Parliament—which he never used.

Yet it would be a mistake to assume that presidents of the Third Republic never wielded influence in the government; for, as persons if not as officeholders, they could be of some consequence. As a symbol of national unity, the president was of considerable importance—at least that would seem to be the logical interpretation of

[1] On the backgrounds of French presidents, see E. M. Sait, *Government and Politics of France*, Chap. ii.

the desire to have President Lebrun continue in office during the European tenseness. In presiding over the ministerial council, he could express his views, although he had no vote. If he was on good terms with the ministers, his ideas might be taken into consideration in deciding on policy.[1]

The President and Foreign Relations. Perhaps in no other field did the president have as much influence as in international relations. He signed treaties, both public and secret, and on occasion went so far as to make agreements with foreign governments, after consultation with the prime minister: for example, in 1917 President Poincaré and Premier Briand made a secret agreement with Russia.[2] In 1913, President Poincaré dared to recall the French ambassador to Russia and to replace him with an ambassador more to his own liking. But perhaps it was rather in the field of personal contacts that the influence of the president in foreign affairs was to be observed. For example, when President Lebrun acted as host to the British king and queen and returned their visit in London, he apparently did more than perform a formal duty. His subsequent trip by air to London along with the prime minister and foreign minister would seem to indicate that his rôle in foreign affairs was more than nominal. Of course, a great deal depended upon the particular president.[3]

Miscellaneous Activities. Although the president of France had little official power of real consequence, he was none the less a busy man. He delivered addresses on state occasions, dedicated buildings, unveiled monuments, attended large public functions as representative of the government, opened expositions, and was prominent in various military exercises. Not infrequently he left Paris and traveled throughout France for the purpose of appearing before the people as a symbol of national authority. On occasion, too, he made use of the radio in asking the people to support a given policy.[4]

[1] On this point, see Joseph Barthélemy, *Le gouvernement de la France* (1939 ed.), Chap. vi.

[2] For a document involving the Franco-Soviet Mutual Assistance Pact of 1936 signed by the president, see W. E. Rappard *et. al.*, *Source Book on European Governments*, Pt. ii, 150.

[3] For a French study of this rôle of the president, see H. Ferras, *Le rôle du président de la république dans la direction de la politique extérieur* (Paris, 1935).

[4] In his *The Government of the French Republic*, 83-86, Professor Sharp notes the many demands made upon a president

Incumbents of the Office. It is significant that politicians of the first magnitude rarely held the presidency. Perhaps if stronger persons had occupied the position, its development would have been along different lines; for the constitution of 1875 contained provisions that would have made possible a reasonably strong authority if they had not been allowed to fall into disuse. Of the dozen men who served as president under the Third Republic, only two or three stood out from the general mediocrity of the group as a whole,[1] and perhaps only President Poincaré will occupy any considerable place in French history. In only two instances were prime ministers transplanted into the presidency,[2] although other presidents had earlier experience as ministers. Well over half came to the post from service as presiding officer in one of the legislative houses.[3]

THE MINISTRY

If one had been asked to characterize the government of the Third Republic with telegraphic brevity, he could hardly have done better than reply: "highly centralized administrative control exercised through executive departments presided over by ministers responsible to a parliament elected by the people." To be sure, the constitution did not say how executive departments should be created, how many there should be, or what they should be called; nor did it expressly say that their presiding officials should be organized into a council or cabinet. By requiring every act of the president to be countersigned by a minister, and by making the ministers collectively responsible to the houses for the general policy of the government, as well as individually responsible for their personal acts, the fundamental law nevertheless not only presumed the customary pattern of national administrative organization in departments, but provided for the prime requisite of cabinet government through associated department heads as evolved in England during long generations; and it will be useful to look briefly into both (1) the workings of the cabinet principle in general and (2) the arrangements for administration of national affairs. A convenient starting point will be the process by which a ministry or cabinet was brought into existence.

[1] For appraisal of individual presidents, see E. A. Vizetelly, *Republican France; Her President, Statesmen, and Policy* (London, 1924), and D. W. Brogan, *French Personalities and Problems* (London, 1946).

[2] The two were Poincaré and Millerand.

[3] Five had presided over the Senate and three over the Chamber of Deputies.

Making Up a New Ministry: 1. The Premier. The constitution did not say in so many words how ministers should be appointed, but it did not need to do so because they obviously came within the scope of the president's power to "appoint to all civil and military positions." In form, the procedure was the same as in Great Britain: the titular head of the state named a political leader to be prime minister; [1] the latter drew up a list of persons for the various posts and submitted it to his chief; the list was accepted (almost invariably as presented) and published; and thereupon the new ministers were sworn in and entered upon their duties. Actually, however, the process differed considerably in the two countries. In Britain, as we have seen, the king normally has no discretion in the matter; when a ministry resigns, its chief indicates to the sovereign the man who, as recognized opposition leader, is entitled to be invited to form a new government, and the invitation is extended as a matter of course.[2] In France, where parties were not only numerous but continually forming and re-forming and grouping themselves in ever-shifting *blocs,* and where no party was ever strong enough to command a majority in the Chamber of Deputies and make up a ministry single-handedly, there might easily be no outstanding leader with a preëminent right to recognition, but rather a half-dozen or more leaders having almost equal claim. In this situation, the president naturally had considerable freedom of selection. If he was wise, he would not, of course, decide arbitrarily. Rather, he would advise with persons best informed on the political situation—the presiding officers of the Senate and Chamber of Deputies, committee chairmen, and other party leaders—and, in the light of the information received, make up his mind as to what he should do. The problem might resolve itself rather easily. But again it might not. It was of no use to name a man who could not build a *combinaison ministérielle* that would command parliamentary support. The leader first invited might refuse. Another might accept, only to find that he could not make headway. Not infrequently, the post was tendered to three, four, even half a dozen, men in succession before the right one was discovered. Needless to say, during the week or more sometimes required to straighten out such a situation, the president rose to a

[1] Technically, in France, "president of the council of ministers." The term "premier" (French equivalent of "prime minister") is, however, in common use.

[2] See pp. 77-78 above.

position of supreme importance in the government and bore a heavy load of responsibility. Furthermore, such occasions came frequently. During President Doumergue's seven years at the Élysée (1924-31), 16 new ministries were set up and abortive attempts were made to form five others.

2. The Other Ministers. Having consented to try his hand at forming a ministry, a presumptive premier set to work to select his colleagues and assign them to the various posts. A British leader, similarly situated, has difficulty enough, even though in ordinary times he has only to choose among men of standing in his own party. A French cabinet-builder commonly found the going hard indeed. Not only must he deal with persons of differing and often incompatible temperaments, but he must distribute places and pledge himself to policies in such a manner as to secure the coöperation of usually as many as three or four different, ambitious, and jealous parties or groups. Perhaps he could complete the task in a few hours; but as a rule days were required to reveal whether he could accomplish it at all.[1] If he failed, he would not be premier. Throughout the period of his efforts, the Parisian newspapers would tell in rapidly succeeding editions of his hurried visits to the homes of prominent politicians, of his interviews, parleys, overtures, and solicitations, with daily summaries of his triumphs and disappointments. If in the end he succeeded, he went with his list to the president of the Republic, who again came into the picture long enough to approve it. If he failed, someone else was invited to make the attempt, and the process started all over again. Even after the president had acted and the list had been sent to the *Journal Officiel* for publication, some group might change its mind and by withdrawing upset the combination. Still further, everything would be undone if the new government, upon appearing in the chambers, and presenting its "ministerial declaration," or program, was overwhelmed in the ensuing debate and denied a vote of confidence. In such case, the ministry's life would be snuffed out almost before it began —unless by some quick legerdemain the harassed premier managed to save the situation.

[1] In keeping with the cabinet principle, ministers were commonly, although invariably, selected from among members of Parliament, chiefly the Chamber of Deputies.

The Premier and His Colleagues. Viewed from afar, the relations between the premier and the other ministers were much the same as in England. The chief minister had put his associates where they were; he had only to make a formal request of the president of the Republic to secure the removal of any or all of them; and while legally he was on a common footing with the others, he could assert as vigorous leadership as he liked (or deemed expedient) and compel any minister to stand by him or resign. This, at all events, was the situation on paper, precisely as in England. In practice, some important differences appeared. A French ministry was, as a rule, far more difficult to lead than is an English one. Instead of being a fairly homogeneous group of men belonging to a single party (that is what an English ministry *normally* is), it was a loose-knit combination representing, as a rule, one party predominantly but also one or more other parties, pieced together with difficulty and permeated with opinions and ambitions often next to impossible to reconcile. Precariously situated at best, its life would be brief indeed unless matters were handled adroitly. Possessed of full disciplinary power, the prime minister rarely dared exercise it—certainly not in any arbitrary or autocratic manner. Instead of commanding, threatening, and compelling, he must, for the most part, argue and persuade—and often surrender. Otherwise, his house of cards would topple to the ground. Obviously, much would depend upon the premier's personal qualities and those of his associates, as well as upon the general political situation at a given moment. But it was a rare prime minister at Paris who held the whip-hand in any such fashion as does a British cabinet head. Ex-President Poincaré, as premier in 1926-29, is one of the few who can be cited; while keeping well within his constitutional powers, he in fact ruled France with almost a dictatorial hand.

THE MINISTERS AS A CABINET

1. Responsibility. The salient feature of cabinet government is, of course, the responsibility of the ministers to an elective parliament; and the French fundamental laws of 1875 explicitly provided for such responsibility in the following language: "The ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." Elsewhere, the fundamental laws made ministers liable to impeachment by the

Chamber of Deputies, and to "trial by the Senate for crimes committed in the performance of their duties"; and ministers were occasionally impeached, removed from office, and banished or otherwise punished for offenses which they had personally committed. The responsibility envisaged in the clause first quoted was, however, not penal but political, *i.e.*, the sort of responsibility that arose from the unwritten but clearly implied rule that ministers might remain in office only so long as their management of affairs met with the approval of a parliamentary majority. The rule was, in general, the same as that which operates in the British system, upon which, indeed, it originally was patterned. A difference of some significance lay in the fact that whereas in Britain (as in cabinet-government countries generally) ministers are responsible to the lower house of Parliament alone, in France—as indicated by the constitutional phraseology quoted above—they were responsible to both houses; and in point of fact a ministry was forced out of office on at least a half-dozen occasions by hostility manifested in the Senate. Obviously, however, cabinet government would break down if ministries were actually required to be equally answerable at all times to two separate bodies elected at different dates and in different ways and dominated much of the time by different party groups; and in practice the situation was saved for France by general acquiescence (including that of the Senate itself) in the principle that *normally* a ministry should remain in office as long as it enjoyed the confidence of the lower house. Accordingly, although obliged to give more heed to opinion in the upper chamber than is necessary in Great Britain, ministers commonly stood in much the same relation to the more democratic branch as in that country.

2. Lack of Solidarity. A point at which more actual difference appeared was in respect to the cabinet's unity or solidarity. In Great Britain, the cabinet—and for that matter the ministry as a whole—is composed normally of persons belonging to a single party and presumed to be in substantial agreement on all important matters of principle and policy. The presumption is often belied by the facts. Nevertheless, a ministry—even when a coalition—tries to conceal any internal differences that may exist, and thus to put up a united front in Parliament and before the country. In the Third French Republic, such solidarity—even in appearance—was usually impossible. In the first place, as has been observed, all ministries were of neces-

sity coalitions. They might be ministries of the Right or of the Left, or of Right-Center or Left-Center. But in any event they contained men drawn from a number of different parties or groups. Precariously built into a cabinet, these men differed in many of their principles and were actuated by various more or less opportunistic motives. Even if they were personally disposed to hang firmly together, the groups behind them were full of dissentients who made dependable support impossible, and indeed might shift position or even dissolve completely almost overnight. The average French cabinet, therefore, had about as much stability as the proverbial house of cards. Solidarity was lacking also in that, whereas in Great Britain, responsibility has now for a good while been regarded as definitely collective, French practice, backed up by express constitutional provision, recognized it as both collective and individual. In the one country, a ministry stands or falls as a unit; in the other, it was no uncommon thing for an individual minister, under fire in the Chamber or Senate, to be thrown to the wolves by his colleagues. It is going rather far to say, with Professor Finer, that political practice "virtually deleted the words 'collectively responsible' from the constitution." [1] But there can be no question that the accountability of a French cabinet member to Parliament was of a more personal, or individual, nature than anything known under the British system.

3. Short Tenure. The divergent sources from which they were drawn and the fickleness of their parliamentary support would of themselves explain why French cabinets rarely lasted long. There were, however, additional reasons. One of them was the fact, already noted, that even when a cabinet commanded adequate support in the Chamber of Deputies, it might come to grief through opposition in the Senate. Another was the circumstance that, although entitled to ask the president to dissolve a hostile Chamber of Deputies in order to clear the way for the election of a new and perhaps more friendly one, a French cabinet never even considered doing such a thing. In the first place, under the former French constitution no such dissolution was permissible without the consent of the Senate, which set up a restriction totally unknown to cabinet government elsewhere. In the second place, on the one occasion when a dissolution actually occurred, *i.e.*, in 1877, the device was brought into lasting disrepute by being employed in a boldly conceived effort to upset the republic

[1] *The Theory and Practice of Modern Government*, II, 1050.

in favor of a restoration of monarchy. Cabinet government without dissolutions is a most unusual thing. Nevertheless, that is exactly what the Third Republic had. And of course it means that when an important government bill was defeated or a policy blocked or a vote of no confidence passed at the Palais Bourbon—as would usually be the case before a multi-party cabinet had long been in office—there was nothing for the ministers to do but resign. The Chamber of Deputies invariably lasted out substantially its full legal term of four years; when conflict developed, it was always the ministers who gave way.

4. Elements of Continuity. The upshot was a kaleidoscopic succession of ministerial "crises" which was the despair of those who were called upon to chronicle them and the provocation of no end of uncharitable remarks from even well-informed students of government rushing to the conclusion that because the French cabinet system did not work like the English, it was no cabinet system at all. Between 1870 and 1934—a period of 64 years—France had a total of 88 ministries, with an average life of less than nine months. Of the 88, only 18 lasted as long as one year, and none longer than two years, eleven months, and eleven days. During the same period, Great Britain had 18 ministries, lasting an average of almost three and one-half years. The natural inference would be that government in France was little more than a succession of starts and stops, of rapid, sudden, and bewildering shifts of policy, with no end of confusion and waste. It would, indeed, have been so but for two saving circumstances. One was the fact that, in France as in Britain and everywhere else, the great bulk of government work was carried on continuously by the non-political departmental staffs and was but little affected by changes of party or of personnel in the higher offices. The other circumstance was that changes of ministry flowed in nearly all instances from "crises" that were merely personal and parliamentary, not national, and were in both form and effect merely reconstructions. Ministerial changes in Great Britain commonly are real changes; that is to say, one set of ministers goes out of office and a completely different set comes in. In France—as in Continental multi-party countries generally—this seldom happened. Individual ministers came and went without disturbing the status of the others; and when a ministry resigned as a whole, one could almost depend upon it that a good many of its members would reappear in

the succeeding one. It was not off with the old and on with the new, but usually only a matter of rearrangement—of dropping out ministers who, because of faltering parliamentary support, had become liabilities, taking in others who had followings willing to work with a reconstructed government, and reshuffling portfolios according to the requirements of a changed situation, with quite possibly the former premier reappearing at the head of the new government, or even in charge of some department under a new premier. As Professor Munro has said, the Chamber of Deputies might vote to overturn a ministry one day and within 48 hours give its confidence to a new ministry composed of almost the same individuals, perhaps with the same prime minister at their head.[1] Undeniably, the shifting character of French ministries injected embarrassing stops and starts into the development of public policy, slowed up legislation, and prevented ministers from accumulating desirable familiarity with the work of their departments. The consequences were, however, by no means so serious as one acquainted with merely the surface manifestations might suppose; by and large, they did not extend, in their effects on national policy, beyond a slight edging of the government now to the right and again to the left.

DEPARTMENTAL ORGANIZATION

The Minister and His Department: Theoretical and Actual Position. The inquirer who set out to study departmental organization in prewar France was aided greatly by one happy circumstance: structurally, the departments were all substantially alike. At the top of the departmental pyramid stood the minister himself. In theory, he was the supreme authority, selecting and controlling his subordinates, making all final decisions, answering all important questions, shouldering responsibility for everything that was done. It did not take long, however, for an incoming department head to learn that the theory and fact of the situation by no means coincided. He discovered that the power of appointment (wielded, in any event, in the name of the president of the Republic) was limited by rules and customs requiring fitness of candidates, and by both the legal and

[1] *The Governments of Europe* (3rd ed.), 448. M. Briand achieved the extraordinary record of being a member of 24 different cabinets—in 11 instances as premier. The reasons for the gyrations of French ministries are to be found largely in the party situation, described in Chap. xxv below. For an illuminating discussion of the subject, see L. Rogers, "Ministerial Instability in France," *Polit. Sci. Quar.*, Mar., 1931.

practical necessity of leaving the mass of his subordinates undisturbed. He found, too, that his power to make decisions was sharply restricted by his unfamiliarity with most of the matters that came up, by lack of time to gain such familiarity, by the traditional (and necessary) latitude enjoyed by the permanent officials in the department, and by limitations flowing from decisions arrived at by the ministry as a whole. In other words, the average minister found himself in substantially the same position as a British cabinet officer —a novice surrounded by experts in the persons of the divisional chiefs and other non-political subheads in the department—so that on most matters he could do nothing but follow the lead of those who knew. Nevertheless, the responsibility was his; and if questions were asked in the Chamber or the Senate, he must be prepared to answer them, or at all events to see that some one connected with the department did so.

Under-secretaries. The most natural way of relieving a minister —particularly a premier—whose departmental burden proved excessive was to provide him with subordinates who could take over designated parts of his work; and this was done in the case of several of the principal departments. Under-secretaries first appeared, indeed, in some of the ministerial establishments as early as 1816. Occasionally an under-secretaryship was created primarily as a means of placating some group by awarding it a "half-portfolio"; but most often the object (in addition to relieving the department head) was to accord some important branch of the department more administrative autonomy than it otherwise would have had. Originally, under-secretaries were assigned administrative duties only. In time, however, they began appearing in the chambers to explain and defend ministerial policies and acts, thereby acquiring the mixed political-administrative aspect which they later possessed..

The Departmental Cabinet. Pursuing further the arrangement found in a department, one next comes upon a feature which has no analogy in either British or American practice, *i.e.*, the department "cabinet." The theory in France was that the department head had need of assistance and advice derived neither from the under-secretaries (if any), who as a rule were not so much general assistants and advisers as rather subchiefs in charge of particular branches of administration, nor yet from the permanent staff, which was itself a group to be watched and controlled; and the need was supplied by a

small number of persons whom the department head, with no express warrant from either the constitution or the laws, gathered around himself primarily on the strength of their being friends in whom he had confidence and from whom he could derive comfort and support. Designated as chief, assistant chief, secretary, and attachés, and picked in many instances mainly from the minister's own relatives, or at all events from young men willing to serve merely for the prestige to be gained (as a rule, no salary was paid), these persons frequently wielded considerable influence as confidential agents and advisers. Even French observers were free to admit that as the device worked there were disadvantages in it. One such was the resentment often aroused on the part of the permanent officials, who naturally disliked being "shadowed" and reported upon by mere novices. Another was the fact that, while a minister's cabinet went out of office with him, he commonly succeeded in slipping most of the number into the permanent service—even by resorting to special decrees opening paying positions for them—and frequently into places which they had tried in vain to reach by competitive examination. Nothing in government circles is more difficult to get rid of, however, than a personal perquisite rooted in long tradition.

The Permanent Staff. All of the departmental officials thus far mentioned were of a political, and therefore transitory, character. There was, however, a permanent staff, without which—especially in view of the rapidity with which ministries rose and fell—all administration would have continually floundered. This permanent staff started (at the top) with the *directeurs* of the *directions, i.e.,* directors of "services" into which the work of each department was divided. As a rule, there were four or five such services—purchasing, accounting, personnel work, etc.—in a department. The directors, who were assisted by subdirectors, met from time to time, under the chairmanship of the minister as a "council of directors," and they represented their respective services on various advisory committees having to do with administrative work. Their principal business, however, was to supervise the four or five *bureaux* into which each *direction* was divided. In the bureau, the basic unit in the departmental organization is reached—the place where administrative work proper, as distinguished from direction, began. Each had a *chef de bureau,* or chief, assisted by subchiefs; and under these were *redacteurs* (clerks) and numerous other subordinates, arranged in grades

or classes. The whole gave the effect of a perfect pyramid, with the minister at the peak and with authority converging uniformly inward and upward. So self-contained, however, were the various units, viewed laterally, that the functionaries of one bureau or service commonly had little contact with, and knew little of what was going on in, the others. Taken as a whole, the average department—contrary to surface appearances—lacked anything approaching genuine integration.

THE CIVIL SERVICE

Underlying Traditions and Principles. Directors, subdirectors, bureau chiefs and their assistants, clerks, auditors, and statisticians belonged to the huge establishment comprising the national civil service; and to this important agency of administration our attention must be turned as this chapter draws to a close. Two or three major French traditions supplied necessary setting for the picture. The first was that of centralization. Not only had France a strictly unitary form of government, as was true also of England, but, unlike the latter, she had inherited from earlier régimes a scheme of organization under which no semi-autonomous local jurisdictions were permitted to interfere with direct and immediate control of the national government over all the people. To be sure, there were—as in the nature of things there must be—areas of different names and forms for purposes of local government and administration. But departments, *arrondissements,* and communes had been created by, or existed by sufferance of, the central government at Paris; their affairs were regulated far more minutely from the capital than were those of English counties and boroughs; they swarmed with functionaries who belonged, not to any local or regional, but solely to the national, civil service. A second tradition, coming down from the days of the Bourbon monarchy, was what the French themselves called *étatisme,* a term next to impossible to translate, but denoting a veneration for the state (as made visible in the national government) amounting almost to worship, and entailing a very broad right on the part of the state to regulate both individual and collective enterprise. A third tradition, for which again there was little analogy in English-speaking countries, was that it was the business of the state not only to supply and administer the more usual services, such as police and highways, but to promote the arts and sciences—to maintain whatever univer-

sities were needed, to build and subsidize opera-houses and theatres, and in general to serve as custodian and director of the national culture.

Numbers. With these and related traditions still dominant, it is not to be wondered at that the French civil service was a colossal, complicated, and costly affair. Precisely how large it was numerically, no man could say; for even if there had been agreement on the marginal categories, *e.g.*, part-time employees, to be included, the astonishing fact would have remained that complete statistics of the service had never been compiled. An American investigator who pursued the subject as far as it seemed possible to go computed that on the eve of World War I there were on the national pay-roll some 465,500 civil servants (*fonctionnaires* [1] and employees), exclusive of some 125,000 employees of state railways, and on local government staffs some 350,000 more. The war expanded the former number by a third, and in 1927 it was estimated as being still no less than 547,148, with the number of local government-employees remaining near the pre-war figure. By 1940, the numbers were not far from 600,000 and 400,000, respectively, besides railway workers amounting (after the completion of railway nationalization in 1938) to several hundred thousand more. Even before the last great addition mentioned, about one out of every 40 inhabitants of the country was a full-time employee of some public authority. One will not be surprised to be told that taxpayers' complaints were plentiful and vehement.

Recruitment: The Problem of a Merit System. Like Great Britain, France has never known a spoils system such as was once the curse of the American civil service. She veered toward that sort of thing during the famous contest between President MacMahon and the republicans 70 years ago, when first the monarchist reactionaries sought to monopolize the offices, and when, on regaining the upper hand, the republicans sought, by what was euphoneously called an *épuration,* to purge the service of "enemies of the republic." The fact that very rarely throughout the history of the Third Republic was any single party in full control of the ministry or Chamber of Deputies, however, prevented patronage from being captured and distributed by

[1] This term is not always used with precisely the same meaning, but in general it denotes persons on the staffs of the central government who belong to what may be termed the permanent service with fixed monthly salary.

a party organization, or primarily on party lines at all. There was patronage, and abuse thereof—plenty of it. But it was largely of a personal nature, taking the form most commonly of solicitation by senators and deputies of posts for friends and supporters among their constituents, such favors being sought at the hands of ministers and prefects as rewards for continued support at the polls and in Parliament. Nowhere was pressure of this kind employed with more telling effect. It is true that after World War I the supply of candidates for places fell off, and that some types of posts actually went begging. In general, however, employment in the public service was widely sought, notwithstanding the meagerness of salaries and the often dreary character of the work to be performed; and insatiable demand, coupled with the practical advantage to a politician of having plenty of places at his disposal, was one of the reasons why the number of functionaries remained what it was.

Regulations Developed. Starting with an order-in-council of 1870, Great Britain, as we have seen, brought substantially all positions in the national employ, except only a few of political character in the topmost levels, under a system of recruitment by competitive examination, promotion for merit, and tenure during good behavior. Beginning with the Pendleton Act of 1883, the United States did the same thing for upwards of 90 per cent of its national service. France proceeded differently. The Third Republic had no general civil service law, and no central examining and certifying board tantamount to a civil service commission; nor did the Ministry of Finance have any powers of general supervision like those wielded so effectively by the Treasury in the British system. There were, to be sure, some scattered statutes on the subject. Thus, Parliament had guaranteed university professors and public school teachers security of tenure and immunity from political interference; the same was true of the judiciary and (although not parts of the *civil* service) the army and the navy. Outside of these professions, recruitment, classification, promotion, and tenure were regulated to some extent by general ordinances issued by the ministry, but still more largely, not on a general, nation-wide basis, but department by department and service by service, each branch of administration—even the individual bureau in a department—being regarded as an essentially autonomous unit for personnel purposes. Notwithstanding a good deal of effort to procure a comprehensive, nation-wide law, the method of regulation was still

that of executive order; and while the council of ministers occasionally issued such orders for the benefit of the entire service, most regulations emanated only from the minister for his own department, or even, on minor matters, from a *directeur* or bureau chief for his own particular administrative division. In the aggregate, the rules thus made were numerous; and in both the central service at Paris and the "external" service throughout the country they yielded considerable improvement by introducing competitive examinations, providing means of securing promotion for merit, and making tenure more secure. Indeed, they were gradually bringing the nation to something approaching a general civil service code.

One will hardly need to be told, however, that reform proceeded unevenly in the different departments and subdivisions, with the result that employees in one branch, although doing the same kind of work, might be on quite a different footing from those in another. Moreover, the policies pursued within any given department were subject to sudden and arbitrary change. When a new minister took charge, he might scrupulously maintain, and even tighten up, the regulations of his predecessors in the interest of high standards. On the other hand, he might relax, suspend, or even abrogate them, subject only to such safeguards as were laid down in ministerial decrees of general application. Instances occurred in which an incoming department head suspended a rule long enough to enable his hangers-on to slip into coveted posts, and then revived it without the transposition of a comma.

Some Further Aspects of Personnel. So far, nevertheless, had reform been carried that by 1940 there was not an important branch of the national administrative establishment in which personnel was not recruited mainly, at the base at all events, by open competition. Within broad limits fixed by statute, decree, and administrative jurisprudence, and under the general supervision of the minister, the nature and management of competitive tests were determined for each department, and as a rule for each division, by a personnel bureau attached thereto, with the result that examinations were taking place at all times throughout the year, some in Paris, others in cities and towns scattered over the country. For every examination, a special board of examiners, selected ordinarily by the chief of the personnel bureau concerned, and mainly from persons already in the service, was set up, with duties terminating when results had been duly

ascertained and reported. Although not employed consistently, a favorite form of examination was a written preliminary, followed by an oral final taken by such candidates as had cleared the first hurdle. A list of successful candidates, arranged in order of merit, was reported to the appointing authority; and, unlike the situation in the United States, a person duly certified rarely failed sooner or later to obtain a place. Examinations for posts of higher grade were designed quite as largely as in Great Britain to test the candidate's intellectual attainments and dimensions, and were in many cases of almost incredible difficulty; those for clerical and other minor positions were aimed at measuring ability to do specific kinds of work, on lines more characteristic of the majority of American examinations. In the past quarter-century, women had been admitted to the service far more freely than previously; and in compliance with insistent demand from Parliament, extensive preference was given to war veterans and their widows. By 1940, promotions in the service were less frequently based on formal examination than previously, being, within certain restrictions, decided upon by the appointing officer, guided by an annual *tableau d'avancement* drawn up for each department or subdivision by some specified authority therein, and taking account not only of seniority but of merit—although not without loopholes for political influence and personal favoritism.

Pay and Pensions. Handicapped by the lack of any permanent personnel agency with powers of central supervision over all branches of the service, by a tradition that civil servants must find their reward partly in the prestige associated with public service, and in later days by chaotic conditions flowing from fluctuations of the currency, France was slow in arriving at any general formula for correlating duties and compensation across office and departmental lines and according to the principle of equal pay for equal work throughout the service. A good deal of thought was given the situation after World War I, and more or less important readjustments of salary scales, in accordance with shifting currency valuations and cost of living, took place in 1921, 1924, 1926, and 1930—the last-mentioned resulting in a minimum of 9,000 francs and a maximum of 125,000 francs a year. The major problem of *péréquation* remained, however, unsolved, and the general level of pay remained below that prevailing in private industry. On the other hand, a reasonably liberal system of contributory retirement allowances helped maintain the

attractiveness of the service for a people to whom nothing yielded quite so much satisfaction as a sense of security for oneself and one's family.[1]

Organization of Public Employees. Upwards of 70 years ago, members of the civil service began forming staff associations aimed at securing higher pay, surer promotion, and better working conditions generally. To a considerable extent, the movement was inspired by aggressive union leaders in private industry, who indeed looked toward the ultimate merging of all governmental with industrial functions and operations; and the earlier organizations of postmen, arsenal workers, and state railway employees not only took the form of *syndicats,* but were created with a view to active affiliation with organizations of workers in private industry. This line of policy raised difficult questions with which the government never ceased to wrestle more or less inconclusively. Should public officials and employees be permitted to form corporate organizations at all? If so, should such organizations be allowed to affiliate with industrial labor unions? And what should be the attitude toward any asserted right to strike?

Legal Status. When the first associations appeared, they—and for that matter the organizations in private industry as well—were clearly illegal. A statute of 1884, however, cautiously opened the door to organization in private industry; in 1894, state railway employees, and in 1899 certain postal employees, were expressly authorized to organize; and a memorable Law of Associations in 1901, although imposing numerous restrictions, was generally construed as giving civil servants the same "freedom of association" that their comrades in private industry enjoyed. The further questions mentioned above, however, gave successive ministries no end of trouble. When staff associations began to seek affiliation with the General Confederation of Labor, every effort was made to discourage and prevent them; and when, in 1910, the workers on the state railways, emulating the arsenal workers in 1904 and the postal employees in 1909, undertook a nation-wide strike, Premier Briand stifled the effort by the extraordinary expedient of calling the strikers into the military service of the nation. Notwithstanding these measures, administrative "syndicalism" continued to spread, until on the eve of World War I nearly two-

[1] The civil servant contributed six per cent of his salary to the retirement reserve fund, and became entitled to a pension at the age of 60 if he had spent a minimum of 30 years in the service.

thirds of all public employees in the country, local as well as national —over 600,000 out of a total of between 800,000 and 900,000— were members of some kind of association or *syndicat;* and this remained substantially the proportion until the period of World War II.

An Unsolved Problem. One will not be surprised to learn that harder conditions of life after World War I had the effect of giving civil-servant organizations a more radical slant. Whereas before 1914 the service was but slightly tinged with revolutionary syndicalism, in 1919 the principal federation of civil servant organizations, incorporating the term *syndicat* into its official name *(Fédération des Syndicats de Fonctionnaires),* voted to join the then revolutionary General Confederation of Labor, and the decade that followed was marked by little less than a state of warfare between the government and the employee organizations. On the one hand, the government was willing to concede the legality of *syndicats* whose membership was restricted to employees of a single department or service performing similar functions, while refusing to sanction any federation of groups in different services, federation with groups in other countries, or affiliation with organizations of employees in private industry; and of course it recognized no right of public employees to engage in strikes. On their part, the *syndicats*—at all events their more radical elements—stoutly insisted on full statutory recognition of their legality, and on unlimited freedom to effect solidarity of action across departmental lines and with their comrades in the industrial world, both French and foreign. "At its best, wrote one authority, " the *status quo* is an unstable equilibrium—a truce, as it were, between the strong arm of state authority and the organized numerical force of those who man the public services. At its worst, it occasionally becomes guerrilla if not open warfare." During brief intervals the tension was relieved; but when World War II overtook the country in 1939, the basic problem was still unsolved.[1]

[1] The principal work in English on the subject dealt with in the closing pages of the foregoing chapter is W. R. Sharp, *The French Civil Service* (New York, 1931). See also his "Public Personnel Management in France," in L. D. White *et al., Civil Service Abroad* (New York, 1935); the chapter on "The French Civil Service," by A. Lefas, in L. D. White [ed.], *The Civil Service in the Modern State* (Chicago, 1930); R. Valeur's discussion in R. L. Buell [ed.], *Democratic Governments in Europe* (New York, 1935), 339-390; and H. Finer, *The Theory and Practice of Modern Government,* II, Chaps. xxix, xxxii, and succeeding chapters *passim*

CHAPTER XXIII

FROM THIRD REPUBLIC TO FOURTH

A DECADE OF DECLINE AND DISASTER

On September 3, 1939, France, for the third time in less than three-quarters of a century, found herself at war with Germany. The first of the three conflicts (more properly with Prussia) gave rise to the Third Republic. From the second (in 1914-18), that Republic came off intact, with a halo of military glory, and in some ways stronger than before. But the third brought speedy defeat, collapse, capitulation, revolution, and in the end a new republic—the Fourth. Born in one national defeat, the Third Republic could not survive another.

Unhappy Political Situation in Prewar Years. There will always be differences of opinion as to precisely what caused "the fall of France" during World War II. Obviously enough, the basic factor was military defeat; the country went down before an overwhelming weight of men and machines and military power. But that of itself need not have brought the end of the Third Republic. An armistice was secured while the Republic still stood, and under different circumstances the régime might have held up through the five long years of ensuing war, starting off again with hope, if not also vigor, after it was all over. The reasons why matters did not work out that way must be sought in other directions; and they are to be found principally in the weakened condition of the country, morally and politically, before the war came. For a decade or more prior to 1939, a bad situation had been steadily growing worse. To be sure, geographically, racially, and culturally, the nation still had the unity and solidarity characteristic of it throughout modern times.

To be sure, too, it still had a democratic, industrious, and thrifty people, with also good natural resources and productive agriculture, industry, and trade. But morally and politically the nation was ill—more so than even intelligent Frenchmen commonly realized. To older sources of division and conflict, including clashes of political traditions running back to the Revolution of 1789 and beyond, had been added newer ones such as industrialism, capitalism and socialism, anti-clericalism, and more recently fascism. Caught amid swirling currents of interest and opinion, most ministries of the period had left behind them only records of ineptitude and failure. Six times in the decade, a *crise d'autorité* had led cabinets of different political texture to seek and obtain grants of emergency powers enabling them to govern for longer or shorter periods without parliamentary check or control; one such crisis—in 1934—had brought the country to the very brink of revolution.[1] Eight or ten political parties checkmated one another and maneuvered for advantage, with resulting confusion and futility. Parliament floundered, and popular faith in it —indeed in representative institutions generally, at least as they existed in France—steadily weakened. Openly encouraged from Germany and Italy, fascist organizations, although from time to time banned, carried on insidious and demoralizing propaganda. To communists, fascists, and other avowed enemies of parliamentarism were added multitudes of more moderate people who in varying degrees despaired of the prevailing political set-up (especially the multi-party system) ever yielding intelligent, forceful, and stable management of the nation's affairs. Worse, perhaps, than all else was the fact that in high places there were men—a good many of them—who felt no loyalty toward the Republic, but on the contrary were ready and anxious to help in its overthrow, and some of whom were soon to find their opportunity.

Momentary Improvement under the Popular Front. The crisis of 1934 jarred political elements from left center to extreme left into a realization of how serious the fascist threat was; and the defensive Popular Front [2] which they hastily pieced together not only pulled the

[1] For a succinct review of these episodes, see C. L. Rossiter, *Constitutional Dictatorship; Crisis Government in Modern Democracies* (Princeton, 1948), 117-129. Cf. O. Kirchheimer, "Decree Powers and Constitutional Law in France under the Third Republic," *Amer. Polit. Sci. Rev.*, Dec., 1940; A. Werth, *France in Ferment* (New York, 1935), and *Which Way France?* (London, 1937); Y. R. Simon, *The Road to Vichy, 1918-1938* (New York, 1942).

[2] See p. 559 below.

nation back from the precipice but carried out social and economic reforms frequently compared with the legislative achievements of the first two years of the American New Deal. Before long, however, the Front—never more than a loose working agreement among elements united solely by fear of a fascist *coup*—began to disintegrate, and hope for a new day of economic and political stabilization disappeared.[1] Meanwhile, with the country believed in many quarters to be fast sliding toward anarchy and civil war, proposals for political reform—poured forth in profusion by parties, groups, leagues, economists, and politicians—ranged all the way from moderate schemes for reviving the lost art of parliamentary dissolution, improving the techniques of parliamentary procedure, and strengthening the executive, to curtailment or abolition of the Senate, reconstruction of Parliament on a functional basis, and even suppression of Parliament altogether. The average Frenchman recognized vaguely that the existing political system reflected the ideological, economic, and other divisions in the country without doing much to resolve them—that it was no very effective instrument with which to meet the problems of the modern age. But he did not see much that could be done about the matter; and he had little notion that if war came the régime would fail to carry the country through—much less that it would collapse altogether within a year.[2]

Parliamentary Democracy Suspended (1939). With Hitler fast garnering the fruits of the sorry Munich Pact of 1938, the long deteriorating international situation, by the spring of 1939, reached a truly critical stage; and the upshot for France was a suspension of parliamentary democracy, destined never to be revived until after five and a half shattering years of war. In Britain, Parliament did not enact an Emergency Powers Bill giving the government authority to regulate the national life and economy by orders-in-council until after war began; and even then Parliament remained in session, prepared to criticize and check a government endowed with extraordinary authority. In France, however, an even more drastic step was taken during the previous spring (with the country still at peace), when, at Premier Edward Daladier's request, after two days of debate, and in a statute only five lines in length, the chambers, on

[1] The last Popular Front cabinet (Leon Blum's second) was in office briefly in 1938.

[2] G. Wright, *The Reshaping of French Democracy* (New York, 1948), 22-23.

March 19, handed over to the cabinet unrestricted power to govern by decree until the following December (at which time, with war meanwhile started, the grant was extended for the duration of the conflict). To meet the now imminent danger of war, France was to be turned into an armed camp, a mighty workshop for national defense, with the government free to act as swiftly and as independently as any dictator in a totalitarian state. Civil liberties were left with no assured protection; Parliament lingered in the capital, but (having voted away its powers) with little to do; the government's new-found authority might be used, and later actually was, to postpone parliamentary elections due in 1940. With a frightened country in full retreat from democracy, government policies, and especially decrees relating to finance, industry, and the curtailment of personal freedoms, evinced a full and rapid shift from a peace economy to an economy of war.[1]

Early Wartime Authoritarianism (1939-40). To a nation that certainly did not want it, but nevertheless considered itself militarily and economically prepared to meet it, war finally came, on September 3, 1939; and as the conflict dragged through its earlier months of tedious but portentous *Sitzkrieg,* authoritarianism took still firmer hold. It was not merely that the controls necessarily incident to wartime—in respect to labor, wages, prices, foreign exchange, speech, publication, and what not—were freely exercised; a government representing, quite apart from the war, a sharp reaction against Popular Front objectives and techniques was taking a certain satisfaction in pushing a confused and alarmed nation along the pathway of a resurgent conservatism. Parliament flitted in and out of the picture—now briefly in session, now sent home—but rarely doing more than, on one occasion, renew its grant of full powers and on others pass perfunctory votes of confidence. Intermittent criticism of the government's conduct of the war in its early stages bore occasional fruit, as when attacks upon the management of censorship forced the creation of a Ministry of Information; and when, in March, 1940, the Daladier cabinet gave way to another headed by a new "strong man," the Radical Socialist Paul Reynaud, the change was

[1] Ironically, it fell to the nation at a juncture like this to celebrate the one-hundred-fiftieth anniversary of the Revolution of 1789. In the Daladier government's arbitrary management of affairs, many saw more than a suggestion of the strong hand wielded by the Committee of Public Safety during a memorable stage of that great upheaval.

brought about in part by parliamentary dissatisfaction, although perhaps more truly by discontent among the people at large. When, however, a little later, the new chief minister was to have gone before the chambers to defend his government against charges of appeasement (associated particularly with such suspected members as Pierre Laval, Pierre Flandin, and Georges Bonnet), a swift turn of the war for the worse saved him from such necessity, bringing, instead, unequivocal votes of confidence; and in the little time remaining before its quick disappearance, Parliament never again figured with any prominence.

Military Defeat and Armistice. In the spring of 1940, the war moved swiftly out of the *Sitzkrieg* stage and began engulfing all western Europe north of the Pyrenees. Early in April, Hitler's legions occupied Denmark and invaded Norway; a month later, they overran Holland, Belgium, and Luxembourg; and in June, they launched the titanic conflict eventually known as the Battle of France, in the course of which the Allied armies were forced back from one hastily improvised position after another, until, with Paris abandoned, the Maginot line useless, and the entire military situation in confusion, a stage was reached where defense effort simply could not go on. In Britain, Allied failure to save Norway had placed the skids under Prime Minister Chamberlain and made Winston Churchill his successor. That particular hazard, Premier Reynaud had weathered, although not without reconstructing his cabinet to contain two figures destined to dominate the political scene for some time to come—the eighty-four-year-old Marshal Pétain, World War I hero of Verdun, and General Charles de Gaulle. But when disaster struck in France itself, and the government, fleeing first to Tours and later to Bordeaux, was told by the military that all was lost, the Premier had to find whether he could carry his colleagues with him in a decision to go on with the war (if necessary, from the French possessions in North Africa) or whether Marshal Pétain had won them to his view that, further resistance being useless, the only course left was to seek an armistice. Among the ministers, as in the nation at large, there was sharp division of opinion. But when a vote was taken, 11 were for continuing the war, 13 for an armistice; and with Reynaud at once resigning, the aged Pétain was named premier. On June 21, at a spot in the Forest of Compiègne where on November 11, 1918, Marshal Foch handed armistice terms to the Germans,

and indeed in the very railway coach in which the 1918 ceremony occurred, the armistice that took France out of World War II was duly signed. In summary, (1) French military forces were to be demobilized and disarmed; (2) all of the country north and west of a semicircular line sweeping westward from the vicinity of Geneva to within twelve miles of Tours and thence southward to the Spanish border at St. Jean-Pied-du-Port was to be occupied by German troops, maintained at French expense; and (3) the French government was to administer the affairs of the unoccupied parts of the country from any place within the area that it might select, or might, if it chose, return to Paris.[1]

The Resulting Situation. Practically, if not legally, France was once more "at peace." But her plight was pitiful indeed. More than half of her soil was under foreign occupation; in the remainder, a government nominally independent would have little alternative to following German orders; ten million people had been separated from their homes; food was scarce and transportation demoralized; morale was shattered. Marshal Pétain was optimistic indeed when he asserted that French honor had been preserved and French government left "free." Britain, of course, was left standing virtually alone, and from London Prime Minister Churchill appealed to Frenchmen over the heads of their leaders to keep up the fight. So also did General de Gaulle, who, evading arrest by fleeing to England, there denounced the Pétain government as incapable of protecting French interests, and led in setting up a Provisional French National Committee designed to defend those interests, under responsibility to a "legal" French government as soon as one should come into existence, or in the meantime to "the representatives of the people as soon as they can assemble freely." Accepting the country's defeat as final (though with flag "unsullied"), Marshal Pétain and his cabinet, however, were interested only in making the débâcle a starting point for organizing a new and different political régime.

[1] For a convenient translation of the complete document, with map, see *Foreign Affairs*, Oct., 1940, 130-133; also *Amer. Jour. of Internat. Law*, Oct., 1940, Supp., 173-178. A good account of the French military collapse, with some analysis of its causes, will be found in H. F. Armstrong, *Chronology of Failure* (New York, 1940), amplifying the same author's "The Downfall of France," *Foreign Affairs*, Oct., 1940. Other hastily prepared current accounts include A. Maurois, *Tragedy in France* (New York, 1940); R. de Chambrun, *I Saw France Fall; Will She Rise Again?* (New York, 1940); A. Reithinger, *Why France Lost the War* (New York, 1940); and H. Pol, *Suicide of a Democracy* (New York, 1940).

THE VICHY DICTATORSHIP

The Road Opened. Events, indeed, now set in progress moved swiftly toward bringing the Third Republic definitely to an end. Never really sympathetic with democracy, and convinced that the country's misfortunes had flowed from weaknesses and failures of the parliamentary system, the aged Premier and his scheming associates (with Pierre Laval, vice-premier and long an advocate of fascist collaboration, as a major influence) had hardly moved the nation's roving capital to Vichy, just inside the unoccupied territory, before they decided to have done with the constitution of 1875 and set up a new order based upon the very authoritarian principles against which, as embodied in German nazism and Italian fascism, the French people had been fighting. Emulating Hitler's techniques, all, however, was to be done with a show of legality: eventually the country was to be given a new written constitution; in the meantime, the existing fundamental law was to be "revised." Furthermore—except that the proposed new constitution never materialized—the program proceeded according to plan, and swiftly. With about two-thirds of the members able to be present, the Chamber of Deputies and Senate were convened in the Vichy Casino on July 6; after scant debate, and by almost unanimous votes, both bodies obligingly affirmed that reason existed for revising the existing constitutional laws; and within 24 hours the National Assembly (composed, of course, of the same deputies and senators) was ready to hear the government's proposals.

Resistance Fails. Nor could there have been much uncertainty about what those proposals would be; no mere specific amendments were to be anticipated, but action looking to destruction of the entire existing constitutional system, and with it the Republic itself. And such expectation was speedily fulfilled; in a lengthy and florid statement for the cabinet, the vice-premier Laval not only painted the outlines of a future totalitarian order, with the government possessed of unrestricted power, but demanded the "total" constitutional revision required for immediately bringing it about. One might have expected so revolutionary a scheme to stir vigorous, and perhaps effective, dissent; after all, it had not been long since the liberal Popular Front had dominated the chambers, and elements of the Left continued to be heavily represented in them. Resistance, how-

ever, proved weak. The country was still benumbed by defeat; in the opinion of everyone, a system that had failed was due to be overhauled; liberal elements might, and did, hope that, even with "total" revision undertaken, the Left could hold authoritarianism in check. Counter-proposals aimed at saving the Republic were indeed offered from the Assembly floor. But the clever and unscrupulous Laval outsmarted those who sought consideration for them; and with almost no debate the Assembly, on July 10, gave the conspirators all they wanted by adopting the following new "constitutional law": "The National Assembly grants all power to the government of the Republic, under the authority and signature of Marshal Pétain, President of the Council, with a view to the promulgation, through one or more acts, of a new constitution for the French state. This constitution shall guarantee the rights of work, family, and native country. It shall be ratified by the Nation and applied by the Assemblies which it shall create." [1]

"Unconstitutional" Constitutional Amendment. "On the Third Republic's tombstone," remarks a recent writer, "should be carved the date July 10, 1940." [2] And, in spite of differences of opinion among jurists and politicians during the ensuing five years as to whether the Republic was dead or only in a coma, the observation is correct. For what had happened was tantamount to revolution. To be sure, up to a point everything had been entirely regular: the government had proposed a constitutional revision; there was the unusual aspect that total rather than piecemeal revision was contemplated, but that was constitutionally admissible, and in fact a proposal of that sort had been received by the chambers and referred to committees as recently as 1925; the chambers had separately endorsed the government's suggestion; and the National Assembly had duly convened and acted. *Here,* however, revolution began—in the form which the Assembly's action took. For instead of *itself* adopting the constitutional changes contemplated (the only method by which such action could be legally taken), the Assembly abdicated its proper function and turned over the entire *pouvoir constituant* to the Pétain cabinet—in effect, to Marshal Pétain himself. Not only was parliamentary government to be destroyed (even *that* could have been accomplished through the regular amending procedure), but the

[1] The Assembly vote on this extraordinary proposal was 569 to 80.
[2] G. Wright, *The Reshaping of French Democracy,* 23.

end was to be attained through an agency and by a process wholly foreign to existing constitutional provisions. Even the specification that the future authoritarian constitution should be "ratified by the nation" through a referendum did not help, because that form of action (strongly reminiscent of Napoleonic and Nazi plebiscites) was equally unknown to the authorized amending system. After July 10, 1940, Pétain, Laval, Admiral Darlan, and their fellow-plotters could rub out as much of the constitution of 1875, and as rapidly, as they liked and write in what they chose. Before long, a great deal was gone; and since the promised new fundamental law, tainted with illegality as it would have been, never took form, France, overblessed with constitutions during a preceding century and a half, now found herself for a period to all intents and purposes with none at all. The tragedy of it was that large, perhaps even decisive, numbers of parliamentarians, at heart loyal to the Republic, permitted themselves to be betrayed by cowardice, fear, or confusion into selling the Republic "down the river"; half or more of even the Socialists did so. If the Republic was destroyed at all by the Germans, it was not on the battlefield, but only through the demoralizing influence of fascist ideology. In the final analysis, however, the Republic's ruin was wrought by Frenchmen themselves—disloyal and subversive leaders and blinded rank and file.[1]

Dictatorship in the Saddle. On the morrow of the fateful July 10, a group of politicians who under normal circumstances never could have won either parliamentary or popular support found themselves in full control of unoccupied France, with a blank piece of paper on which to write; and the threatened dictatorial régime, though in the end proving only an unhappy interlude between Third and Fourth Republics, quickly became a reality. Basic to all else in the new set-up was the gathering of all public powers into the hands of Marshal Pétain as "chief of state"—achieved by decrees merging the presidency of the Republic and the premiership, brushing aside all parliamentary controls, and concentrating everything in the hands of a single man. "The chief of the French state," it was tersely proclaimed, "has complete governmental power." In 1942, there was introduced a second high official known as "chief of the government" (with Laval as incumbent), to take over much of the actual

[1] K. Loewenstein, "The Demise of the French Constitution of 1875," *Amer. Polit. Sci. Rev.*, Oct., 1940.

work from the aged Pétain. But this meant no actual division; for all that he did, the chief of the government was completely responsible to the chief of state, as were also all ministers. In the second place, like the Reichstag in Germany, the Chamber of Deputies and Senate were continued inactively in existence—in the French instance, ostensibly until such time as new "assemblies" should have been created. No new elections, however, were held, and no one expected the existing two bodies ever to meet unless, as in the case of the Reichstag, only momentarily for purposes of rubber-stamping some act or policy; and eventually both chambers were liquidated. As a gesture toward increasingly unfavorable public opinion, a National Council was set up early in 1941, composed of 188 handpicked landowners, industrialists, and others—all, however, free from any suspicion of liberalism and prepared to endorse whatever the government proposed or did. On local government, too, a heavy hand was laid. Soon communal councils began to be suspended or dissolved; in 1941, councils in all places of over 2,000 population became appointive rather than elective; police establishments were taken over by the national government; mayors in communes and prefects in departments were replaced by appointees of known loyalty to the régime. The centralization for which France already was notable was tightened up in a score of ways, and on all levels the word of a completely authoritarian government became law.

Suppression and Regimentation. Still further developments followed the familiar patterns of fascism. With all political parties suspect and the Communists expressly outlawed, a committee was set the task (which finally proved impossible) of organizing all parties into a single body to be known as the *Rassemblement National,* with the chief of state at its head—the obvious intent being to add France to the lengthening list of one-party states, with all Frenchmen required to follow a single party line. Civil liberties could not be expected to go unchallenged; and a stream of decrees cancelled citizenship, confiscated property, restricted freedom of contract, and curtailed liberty of speech, press, and association (with often a strong tinge of anti-semitism), leaving the citizenry helpless before an autocracy such as it had not known since the *Ancien Régime.* In an effort to make scapegoats of those whom the régime had displaced in power, persons who fled the country at the time of the military collapse were stigmatized as disloyal, and political and

military leaders held responsible for the débâcle—ex-Premier Daladier, ex-Premier Blum, and General Gamelin among them—were placed under arrest and in some instances brought to trial. By decree of 1940, existing farmers' organizations were abolished and a "corporate" form of agriculture introduced through arrangements under which peasant families were required to be formed into local syndicats, linked up in regional syndicats, and all federated in a national syndicat, operating under direction of the Ministry of Agriculture at Paris. Similar regimentation was extended to labor. Both the General Confederation of Labor (C.M.T.) and the General Confederation of French Employers were suppressed; local labor unions were allowed to continue only on sufferance; and an ambitious scheme of centrally controlled labor-management committees was put into operation. As a bid for Catholic support, all church lands and properties confiscated a generation earlier, at the time of separation of church and state, were ordered restored by 1943 to local religious associations. On the other hand, secret societies, *e.g.*, the Masonic order, were outlawed and their property seized. A scheme of popular education characterized by Pétain as "pseudo-culture, finely academic" was taken in hand for transformation into something more "practical," and on the analogy of other totalitarian countries a youth organization was instituted, with the avowed purpose of encouraging out-door life, cultivating Spartan discipline, and inspiring ideals of abstemiousness, sacrifice, and industry. Maintaining that under the Third Republic the nation had grown "soft," the authors of the new order set out to "harden it up" and prepare it for the sort of existence which authoritarianism invariably exacts from those who live under it.[1]

The Country's Future in the Balance. A government whose character and policies are perhaps sufficiently indicated by the foregoing summary was, of course, always not only provisional (the country itself was still living under an armistice), but illegitimate and even illegal—at best, a government *de facto,* not *de jure.* If the Nazis and their allies should eventually win the war (and the entire Vichy régime was predicated on the assumption that they would do so), France presumably would go on indefinitely as in effect a German satrapy, under a triumphant authoritarianism maintained either by

[1] On the international side, 20 years of French policy found its grave when, in 1940, the Vichy government announced the country's withdrawal from the League of Nations, effective (under League rules) in 1943.

the existing governing group or by some other German-controlled directorate. On the other hand, if Britain (and her later associates, including the United States) should emerge on top, opportunity would be afforded for Winston Churchill's promised "restoration of the independence and greatness of France"; and that undoubtedly would mean a prompt repudiation and collapse of the sorry fascist domination that had been foisted upon the country. For nothing was clearer—as Vichy itself fully understood—than that the régime enjoyed no general popular support.

TOWARD REPUBLICAN REVIVAL—THE LEADERSHIP OF DE GAULLE

In the end, events cast the die for the second alternative: Germany lost the war; the Vichy dictatorship fell; France again became a democratically controlled republic. All this, however, did not take place over night: beyond the French borders, and over the world, war went on for another five years; and discussions, proposals, movements, and experiments during the whole of that time were required for bringing France precariously to a point where a full restoration of republican institutions could be achieved. To follow French politics along the entire thorny, twisting road to this ultimate destination is out of the question here. But a few main developments may be mentioned.

The Resistance. Contributing to the country's final redemption were (in addition, of course, to the German defeat) two main factors: (1) the underground resistance operating within the country itself and (2) the organization by Frenchmen overseas of agencies for providing leadership, rallying support, planning action, and eventually creating machinery with which to fill the political void when liberation should have become assured. Recovering from the initial shock of the Republic's collapse in 1940, many people turned instinctively to different forms of underground resistance, directed to a degree against the German occupation, but more particularly against the Vichy dictatorship; and soon the country was honeycombed with well-concealed resistance groups and centers. In 1943, it even became possible to federate such local organizations in a National Resistance Council, which thereafter served as a general coördinating and directing agency. In the movement were found people of nearly all political opinions, although naturally the Left contributed most heavily—especially the Communists after Hitler's

invasion of the Soviet Union in June, 1941. The object, of course, was to embarrass and frustrate Vichy in every possible way, but also to plan toward the day when, with the ground cleared, a new, legal, and liberal political order could be instituted. The Third Republic, it was generally conceded, was dead; a Fourth must be established. Whether, however, the new national constitution should be prefabricated by some sort of committee or left to be framed by a later popularly elected assembly, whether it should provide for a straight parliamentary system or a presidential system as in the United States, and whether a single broad *rassemblement,* embracing all democratically-minded political elements, should be built up in lieu of the old multi-party system, were simply a few of the questions on which there was wide disagreement. On one point only was there fairly general consensus, *i.e.,* that the country's defeat and humiliation were chargeable mainly to the institutional set-up and personnel of the Third Republic, which therefore ought not to be revived.

French Governments Overseas—The Committee of National Liberation. The underground at home contributed heavily to preparing the way for the country's political deliverance, but the spearhead of the campaign developed overseas. Among numerous Frenchmen who fled the country (mainly to England) after the military collapse was General Charles de Gaulle, under-secretary for war; and to him, with his flaming patriotism and aggressive personality, it fell to take the initiative in, and at all stages to lead, efforts to erect outside of France a political organization capable of speaking for the country and prepared either to take over when opportunity arose or at all events to pilot the nation into the safe harbor of a new constitutional régime. Working from an early stage in close touch (although not always complete agreement) with "the Resistance," De Gaulle set up successive agencies pointed toward the general objective—a Council of Defense of the Empire in 1940, a National Committee in 1941, and eventually, in 1943, a French Committee of National Liberation, based not in London, but on French soil at Algiers, and marking a long step in the direction of the later emergence of the Fourth Republic. Operating indeed as a kind of interim government of Free France, this so-called Committee assumed general jurisdiction over all French lands and possessions not in the hands of the enemy, designated "national commissioners" to serve as ministers, issued decrees and ordinances, commissioned

a group of jurists to work out a plan for a future French constitutional system, and further strengthened its position by creating a Provisional Consultative National Assembly of about 100 members, including former senators and deputies now in exile and other persons appointed to represent resistance groups both in France and overseas. Prolonged rivalry for leadership between De Gaulle and General Henri Giraud proved an impediment; but for a period the difficulty was minimized by a joint leadership, and in the end—by November, 1943—De Gaulle won undisputed control, with finally the significant title of president.

Decisions Looking to a Fourth Republic. Overshadowing all else was naturally the question of the procedure to be followed in restoring full constitutional, republican government in France after the end of the war and Vichy's predestined collapse. In the early days at London, De Gaulle had concentrated on stimulating resistance and had thought only rather casually about what was to come after; as a military man, he had always kept strictly aloof from political parties and movements, and few people would have known what his political views (if any) were—many, in fact, would have assumed him to be more or less fascist. In so far as he gave indication at all in 1940-41, it was that he regarded the Third Republic as merely suspended and expected it to be revived, under the 1875 constitution, when France should again become free.[1] Under the impact of more thinking and experience, however, he gradually swung away from these ideas, and by 1942-43 was definitely of the opinion that the former Republic was extinct and that a necessary prerequisite to the future political order was a wholly new national constitution, to be framed and adopted by a national convention or assembly elected expressly for the purpose.[2] A good deal of time, however, would be required for completing the country's liberation and getting two and one-half million voters (prisoners and deportees) back from Germany, and meanwhile De Gaulle and a hand-picked cabinet should function as a provisional, semi-presidential government, at least until the country's liberation was far advanced, when

[1] In those days, it seemed good strategy to emphasize the overseas organization's continuity with the Third Republic, both as a challenge to Vichy's claim to be the legitimate government of France and as an aid to winning the confidence and later recognition of the Allied powers.

[2] This was one of the matters of contention with Giraud, who, as a military-minded conservative, feared what might happen at the hands of a constituent assembly and wanted the constitution of 1875 merely revised.

an elected provisional representative assembly might decide whether the De Gaulle régime or some different one should finish out the interval until the permanent constitution could be adopted and a new government under it installed. In pursuance of this program, and on advice of the Consultative Assembly (with opposition chiefly from the Communists), the Committee of National Liberation, on April 21, 1944, issued a carefully framed ordinance announcing that the French people were to "decide in full sovereignty the form of their future institutions," and specifying that within a year after the country's full liberation a national assembly, "elected through secret and direct ballot by all adult French men and women . . .," [1] should be convoked for the formation and adoption of a permanent national constitution. In this significant document, the coming Fourth Republic was clearly heralded; and six weeks later (June 3), by unanimous vote of the Consultative Assembly, the existing régime's official name was changed from Committee of National Liberation to Provisional Government of the French Republic.

The Provisional Government of the French Republic (in Paris), 1944-45. On June 6, 1944, the long-awaited Allied invasion of the Continent began on the beaches of Normandy, and two and one-half months later (August 23), with French soil being cleared and a reasonably early German defeat assured, General De Gaulle dramatically entered Paris, bringing with him his rechristened government, including the Consultative Assembly, presently enlarged to 246 members; and during the next 14 months, which saw Germany surrender and the Vichy régime disappear, this Provisional Government ruled France. At the head was General De Gaulle, ostensibly a sort of prime minister, but bearing the title of provisional president; 20 different executive departments were presided over by as many ministers, all appointed by De Gaulle; and president and ministers collectively constituted "the government," by which, in the form of decrees, all laws were made. Progressively enlarged in numbers, and made more representative, yet with all members appointed by the government rather than elected, the Consultative Assembly served purposes of discussion and recommendation, but with no power of decision. In essence, of course, the régime was a dictatorship, even though a dictatorship by consent—perhaps one might say a quasi-dictatorship. There was no constitution or other fundamental law

[1] The inclusion of women for the first time in a French electoral plan was notable.

behind it; the government could take any courses of action that it desired; the Consultative Assembly was simply part of the system, with no power to enforce its will, and in any case not even elective. As general head, De Gaulle himself was under no limitations except such as he chose to accept. To all this, however, it must be added that in operation, as for example in undoing the work of Vichy and in purging Vichyites and collaborators, the régime proved moderate and even constructive.[1]

Some Momentous Decisions in 1945. The great problem of the day was, of course, that of how to shift from the provisional régime to a regular constitutional, parliamentary government. Nothing very significant happened until the spring of 1945, but at that time the question was forced, not only by growing restlessness of elements, especially the Communists, which suspected the Gaullists of wanting to stretch out the provisional situation indefinitely and even make it permanent, but also by a sudden declaration by De Gaulle in rebuttal that the contemplated constituent assembly ought to be elected within a year. In ensuing months, there was a great deal of backing and filling by leaders and groups on the nature of the assembly to be chosen—whether it should have only constituent functions or others as well, what new arrangements, if any, should be made for the management of affairs while the assembly was at work, and even on whether, after all—as the Radical Socialists and some others contended—the Third Republic was not still potentially alive and ought not simply to be restored to operation. At one stage, De Gaulle himself, influenced by the Radical Socialist Edouard Herriot, swung back to his earlier view to this latter effect. At all events, the outcome was highly significant. An August 17, a government decree fixed the following October 31 for election of the contemplated assembly, at the same time specifying two questions on which the voters should also express themselves: (1) whether the assembly should be charged with formulating a new constitution (if the answer was in the negative, the body was to function simply as a Chamber of Deputies, with a Senate also to be elected; if in the affirmative, the Third Republic was dead, a new constitution was to be drafted by the assembly within seven months, and a fresh start was to be made); and (2) whether in case a new constitution was to be framed a plan proposed by the Provisional Government for exer-

[1] D. M. Pickles, "The Political Situation in France," *Polit. Quar.*, Apr.-June, 1945.

cise of the public powers during the interim was acceptable. Moreover, when the time came, the electorate not only chose the assembly, but by substantial majorities gave both questions an affirmative answer [1]—which, in the case of the first one, meant that at last the fate of the Third Republic was settled: the assembly was to make a new constitution and a Fourth Republic was to be instituted; and, in the case of the second one, that France in the meantime was to have a government, still only provisional to be sure, but nevertheless invested by popular action with an aspect of legality. In pursuance of the second answer, the Provisional Government promptly promulgated a "Law of November 2, 1945, on the Organization of the Public Powers" under which the provisional presidency and ministry were continued, the newly elected Constituent Assembly was given a share in the work of legislation, and the president and ministers were made responsible to the Assembly, thus restoring, even if for the moment only, the principle of parliamentary government. On this more regular basis, the Provisional Government (sometimes designated as the second one) operated—with De Gaulle at its head until January 20, 1946, and after him, in succession, Felix Gouin and Georges Bidault, duly chosen by the assembly—until, late in 1946, the constitution of the Fourth Republic was ready to be put into effect.

CONSTITUTION-MAKING IN 1945-46

Two Constitutions. With the convening of the First National Constituent Assembly in the old hall of the Chamber of Deputies in the Palais Bourbon on November 6, 1945, France opened a new chapter in her tortuous constitutional history. To the lengthy series of constitutions marking stages in her political experience since 1789 were now added two others—two for the reason that the first draft offered the voters was rejected, making it necessary for a second Assembly to prepare a somewhat different one before the nation's wishes were met. Some new ground was broken, too: unlike the brief fragmentary laws serving for 65 years as the constitution of the Third Republic, both of the new constitutions took the form of lengthy, systematic, integrated single documents; unlike their predecessor also, both were submitted for ratification by popular vote;

[1] On the first question, the vote was 18,584,746 yes and 699,136 no; on the second, 12,795,213 yes and 6,449,206 no.

unlike that instrument, in addition, both were constitutions not only for France in the stricter sense, but also for the "French Union," embracing, along with the home country, the far-flung overseas dependencies.

The First National Constituent Assembly: 1. Political Complexion. The body to which the nation first entrusted the drafting of a new fundamental law was elected (on October 31, 1945) under a plan of proportional representation, with the departments (and subdivisions of more populous ones) serving as electoral areas, and with the voters merely choosing among party lists of candidates selected and arranged by local leaders. For the first time, women were included in the electorate; and Algeria and all of the colonies except Indo-China were allowed to participate, returning in fact a total of 67 members. Out of 25,717,551 registered voters in France proper, 20,361,709 went to the polls. The most striking thing revealed in the results was the country's pronounced leftward swing since prewar days. Out of a total of 586 members chosen, 159 were listed as Communists and 139 as Socialists—assuring the two parties together a clear, even though slender, majority; returning one or more deputies from all except 10 of the 89 departments, and showing startling strength in rural areas as well as more than traditional strength in such previous strongholds as the "red belt" surrounding Paris, the Communists found themselves with not only the largest group but the one most widely distributed over the country. Largest among more moderate groups—indeed the only centrist or rightist group of size—was one bearing the label of the recently emerging Popular Republican Movement (M.R.P.),[1] totalling 150. Manifestly, the Assembly was so weighted that any constitution from its hands could be depended upon to reflect strong influence of leftist ideas and preferences; as later developments indicated, it probably was farther left than the country itself. Within the membership, laborers and white-collar workers outnumbered all other professional elements, with lawyers, business men, and farmers relatively less numerous than in the old Chamber of Deputies. Only 121 had served in the prewar Chamber or Senate; the great majority had been active in the resistance movement; many had lately returned from German prisoner or concentration camps; 33 were women, half of them Communist.

[1] See p. 556 below.

2. Its Constitutional Committee. Settling itself to its main task [1] (for which it had, by agreed limitation, not more than seven months, and upon which it actually spent some five months), the Assembly naturally employed committees, and among them in particular a Constitutional Committee charged with immediate responsibility for preparing a draft for Assembly consideration. Composed of 42 delegates selected to represent the parties on a proportional basis, this Constitutional Committee contained 11 Communists, 10 Socialists, and 11 M.R.P., with only seven members of groups farther to the right; and of course the leftist weighting was at least as significant as that in the Assembly as a whole. Presided over by a former professor of economics at the University of Lyons (André Philip), fortified with a collection of books on French and comparative constitutional law, and working behind closed doors, the Committee pursued its labors through anxious months, first on the basic principles to underlie the new system and afterwards on practical applications in a drafted document. At times, the Socialist and M.R.P. members coöperated; on other occasions, the Socialists and Communists stood together; and often enough it looked as though no single coherent plan could possibly come out of the stormy deliberations. Finally, however, a completed draft was ready; and on April 19, 1946, amid a tense atmosphere and with galleries packed, the Assembly adopted it by the not very impressive vote of 309 to 249. More than half of the members voting in the negative were identified with the M.R.P., for which the proposed plan smacked too strongly of extreme leftist ideas.[2]

The Proposed Constitution and Its Rejection. As Pierre Cot, who had presented the Committee's draft to the Assembly, was leaving the Palais Bourbon, a rightist member hurled at him the parting shot: "I hope that you may enjoy a long life, *monsieur le rapporteur-general,* but as for your constitution, it is about to die." And so it proved; for when, on May 5, the document was put to a popular

[1] It must be remembered that throughout its existence the Assembly formed an integral part of the operating government of the country. In that capacity, it played a leading rôle in a broad program of nationalization on lines not unlike those being developed at about the same time by Great Britain's new Labor government. From first to last, its constitution-making activities were slowed down, and sometimes deflected into new channels, by preoccupation with governmental affairs of the day.

[2] English translations of the text of this proposed constitution will be found in *A Constitution for the Fourth Republic* (Foundation for Foreign Affairs, Washington, D. C., 1947), 85-98, and the *New York Times,* Apr. 23, 1946.

vote, the nation rejected it by a substantial margin,[1] making necessary a new effort by a second assembly. The plan of government thus repudiated was by no means without merit; save at only a few points, indeed, the one later adopted in lieu of it was not notably better. Conspicuous among its features—and one that had stirred particularly animated discussion—was an exceptionally lengthy and detailed "Declaration of the Rights of Man," comprising an initial section in 39 articles, and with emphasis not only on such customary matters as free speech, press, and assembly, but on social and economic rights of special concern to the laboring masses—the right to work, immunities for labor unions, use of collective bargaining procedures, worker participation in the management of industrial enterprises, a broad system of social insurance, educational opportunities for all youth, and the like. Coming to the framework and powers of government, the constitution in some respects strengthened, but in others weakened, the presidency; made the responsibility of ministers more explicit; sought to increase ministerial stability by placing limitations upon the use of interpellation and of votes of no confidence and by reviving the moribund right of parliamentary dissolution; and looked to making local government not only more democratic by the enfranchisement of women (as also in national elections), but more virile by progressive relaxation of controls from Paris.

A Unicameral Parliament Favored and Opposed. The most startling feature of the new plan offered, however, and undoubtedly the one primarily responsible for its defeat, was the replacement of the old bicameral parliament of Senate and Chamber by a one-house body bearing the time-honored French designation of National Assembly. It was not only in Britain, where the Labor party often had declared for suppression of the House of Lords, that leftist political elements had shown strong preference for a national legislature of but a single house immediately representative of the people, with no intervention or limitation from a second chamber of less democratic rootage; in France, too, the Senate—originally accepted reluctantly enough by the republican elements back in 1875—had long been under fire, with leftist elements, and sometimes even more moderate ones, calling for its abolition. And to the First National Constituent

[1] The exact vote was 9,454,034 for and 10,584,359 against. In the long history of plebiscites in France, this was the first occasion on which a proposed constitution was refused approval.

Assembly both Socialists and Communists came with firm determination to see that in any resulting new constitution provision should be made for a parliament of but a single house. Against firm opposition from centrist and rightist groups, including the M.R.P., this resolution was firmly adhered to; and the new plan of government as put before the voters not only provided for but a single house, democratically elected, but significantly bracketed all of the articles relating to it under the heading of "Sovereignty of the National Assembly." [1] In discussion of the plan throughout the country, as had been true in the constituent body, practically all political elements apart from the Left vigorously opposed such a departure. To be sure, France had experimented with unicameral parliaments before, most recently under the Second Republic of 1848.[2] But results had not been happy; and to earlier failures were now added powerful arguments that under the Third Republic the Senate had been a useful check upon a sometimes impetuous Chamber, that a second chamber was a necessary safeguard for the interests of property, that at best a single chamber would result in unbalanced "government by assembly," and that at worst it would become an easy tool for the Communists and other extremists, ending by absorbing the executive and becoming an all-powerful body, perhaps even suggestive of a proletarian dictatorship. When the nation rejected the constitution as offered, it was commonly regarded as having done so primarily because of the unicameral proposal; and apparently this judgment was correct—at all events, when another Assembly made a new attempt, the most important change introduced was the substitution of a bicameral system, even though a highly unbalanced one.

The Second National Constituent Assembly: 1. Election. With six months of precious time lost, parties and politicians were swept into another electoral campaign. Only a month was allowed, but time enough for much maneuvering and bitterness, in the course of which the M.R.P. claimed to have "saved France," the Communists announced their intention of defending their position to the death, while on the question of bicameralism the Socialists weakened and

[1] To be sure, two other bodies were proposed—a Council of the French Union (to be elected by the councils of departments in France proper and the colonies) and an Economic Council (with a membership to be determined by law). But both were to be only advisory, and certainly would not be capable of imposing any real check upon the National Assembly.

[2] Unless the provisional National Assembly of 1871-76 be taken into the reckoning.

became divided. Under the same system of proportional representation as before, the Second National Constituent Assembly was elected on June 2; and that the people recognized matters to be approaching a climax was evidenced by the largest turnout of voters in the country's history. Political forecasters had predicted that the results would substantially follow the pattern of the recent referendum on the defeated constitution; and so they did—exactly as in the referendum, 47 per cent voted Communist or Socialist, while 53 per cent supported the M.R.P. and other groups responsible for the constitution's rejection. The Socialists lost ground; the Communists gained, although not greatly; while the M.R.P., with 28.2 per cent of the total vote, raised itself to the position of the country's largest party. To be sure, under the vagaries of proportional representation, Communists and Socialists together captured more seats than all other elements combined.[1] But the Socialists had now broken sharply with the Communists, and the over-all picture was that of an Assembly shifted perceptibly to the right. Three-fourths of the members, however, and nearly all of the leaders, had been in the first Assembly.[2]

2. Decision to Revise the Rejected Constitution. The Second Assembly (also limited to seven months) was not necessarily a more serious-minded body than the first, but it evidenced consciousness of a graver responsibility. France could not go on indefinitely with only a provisional government; the time for mere sparring and stalling was past; the spade work on a new constitution had been done, and matters must be brought to a conclusion. Serious work was therefore started promptly and the task of constitution-making given right of way; while serving like its predecessor as a branch of the currently existing government, the new body devoted far less time to that aspect of its functions and achieved no such record for general legislation. A new Constitutional Committee containing 25 of the former 42 members,[3] and likewise under the chairmanship of André Philip, found itself confronted with no fewer than five proposed constitutional drafts, offered in some instances by groups as important

[1] Out of a total of 546 members actually participating in the Assembly's deliberations, 165 were M.R.P., 150 were Communists, and 128 were Socialists.

[2] For a full discussion of French politics as reflected in this election of June 2, 1946 (and of contemporary Italian politics as reflected in an election of the same day to determine whether monarchy should be continued or a republic set up), see M. Einaudi, "Political Changes in France and Italy," *Amer. Polit. Sci. Rev.*, Oct., 1946.

[3] Of the total membership of 41, 12 were M.R.P., 11 Communist, and 9 Socialist.

as the M.R.P. and the Socialists, but quickly came to a decision (in which the Assembly sustained it) to take the recently rejected constitution as a starting point and simply work toward a revision of that document, which, after all, had not fallen too far short of popular ratification. De Gaulle, who now for the first time injected himself into the situation, called loudly for a constitution starting from scratch; and rightist forces echoed the demand. But the M.R.P. tipped the balance in the other direction.

3. A New Draft Prepared and Adopted. To describe the resulting new draft at this point would too greatly anticipate the following chapter, devoted to the Fourth Republic's constitution and government. Suffice it to say (1) that the first constitution's arduously drafted, voluminous, and highly controversial bill of rights was replaced with a mere prefatory and greatly watered down "declaration of principles"; (2) that the former unicameral plan was abandoned for a bicameral one, with the Council of the Republic, as a second chamber, elected on a different basis from the first and largely restricted to advisory functions; (3) that the president of the Republic regained his traditional authority to name the premier, but subject to approval of his selection by the lower chamber before a cabinet was made up; and (4) that the executive retained power of parliamentary dissolution, but not in the unlimited form desired by the M.R.P. and some other elements. Altogether, there was a good deal of change—too much to please the Communists, not enough to suit advocates of strong executive authority like De Gaulle. At some points, the old Communist-Socialist alliance, briefly revived, had dominated; but in general the new draft followed the ideas of the moderate M.R.P., with a good deal of Socialist support. On September 29, and amid singing of the *Marseillaise,* the document was adopted by an overwhelming vote of 440 to 106; and on October 13, the nation approved it by a vote of 9,297,000 to 8,165,000, with eight and one-half million electors not sufficiently interested to go to the polls.[1]

The Fourth Republic Organized. Even if only a third of the country's voters had expressed themselves in favor of it, France once more had a constitution; and within three months the government of the Fourth Republic was a going concern. With the Communists vaulting again into first place, the new National Assembly (lower

[1] The popular vote was substantially the reverse of that on the first draft.

house) was elected on November 10; the Council of the Republic (upper house) was chosen during December; by January, both branches were organized for work; and at the middle of that month the two joined at Versailles (in accordance with traditional practice perpetuated by the new constitution) in electing Vincent Auriol first president of the new Republic.[1] President Auriol, in turn, named as president of the council of ministers, or premier, his fellow-Socialist, Paul Ramadier, a principal author of the new fundamental law; other necessary cogs were fitted into place; and to the familiar accompaniment of bitter party strife and rapidly recurring ministerial crises, the régime started off—toward stabilized permanence or toward a Fifth Republic, who could tell? [2]

[1] Like Jules Grévy in 1879, Auriol found himself occupying a post which he had favored abolishing.

[2] The most convenient, reasonably full, account of French political affairs culminating in adoption of the present constitution is *A Constitution for the Fourth Republic*, cited above. Mention may be made also of M. Edelman, *France; The Birth of the Fourth Republic* (New York, 1944); P. Tissier, *The Government of Vichy* (London, 1942); and A. Giraud, "The New French Constitution," *Foreign Affairs*, Apr., 1947.

CHAPTER XXIV

THE FOURTH REPUBLIC—
CONSTITUTION AND GOVERNMENT

THE CONSTITUTION

The Constitution as a Document. As constitutions go, the fundamental law of the Fourth Republic is a document of moderate length—longer than the three basic laws of 1875 taken together, but briefer than the constitution framed under somewhat similar circumstances in Germany in 1919, or for that matter, certain earlier constitutions of France herself, including the one rejected by the voters in May, 1946. In print, it fills only a few more pages than the constitution of the United States with its amendments. Save for containing what is in effect a constitution within a constitution, *i.e.*, a pattern of organization for the "French Union," embracing not only France proper but also the overseas territories, it would be considerably shorter. Organized in a preamble and 12 major divisions, called titles, it contains a total of 106 articles, most of them tersely and clearly expressed. The preamble has to do mainly with social and economic guarantees, together with the country's obligations internationally. Then follow as major sections groups of articles on sovereignty, Parliament, the president of the Republic, the council of ministers, the legal responsibility of ministers, local administrative units, the French Union, and constitutional revision, with briefer groups interspersed and dealing with such matters as the Economic Council and the Superior Council of the Magistracy.[1]

[1] The constitution's text, in English translation, will be found in J. K. Pollock [ed.], *Change and Crisis in European Government* (New York, 1947), 194-214; P. W. Buck

Methods of Amendment: (1) Under the Third Republic. It will be recalled that the constitution of the Third Republic specified a single amending procedure in which the essential steps were (1) proposal of either a specific amendment or a general revision by either the president of the Republic (or the ministers acting in his name) or one or both branches of Parliament; (2) formal declaration by the two houses separately that an amendment (or general revision, as the case might be) was desirable; and (3) adoption of the proposed amendment or revision by absolute majority [1] of the senators and deputies meeting jointly at Versailles as a National Assembly, with no provision made for any direct action by the people. Amendments were thus considered and adopted by the same parliamentarians who made the ordinary laws, although differently grouped; and while the Assembly was heavily weighted with members of the lower house, a certain parity of power was preserved for the upper house by the provision that before amendment could be proceeded with at all, the two houses must separately have agreed upon the necessity for it. It was not as in Great Britain, where, as we have seen, any constitutional change whatsoever can be authorized by precisely the same procedure by which ordinary laws are enacted; [2] but, on the other hand, the French procedure certainly was far less difficult than the corresponding procedures required in the United States.

(2) Under the Fourth Republic. The purport of the new French constitution's provisions is to make amendment more nearly like the enactment of ordinary laws, and therefore considerably easier. As set forth in an article devoted to the subject (Art. 90), the process is as follows. First, a resolution proposing an amendment is passed by absolute majority in the National Assembly, or lower house; the proposal must be in specific terms, and can originate only with members of the lower branch. Next, for advisory purposes, the resolution is sent to the Council of the Republic, or upper chamber; and after three months (sooner if the Council has acted promptly and favorably), a second reading takes place in the Assembly. Finally, if this stage is successfully passed, a bill incorporating the amend-

and J. W. Masland, *The Governments of Foreign Powers* (New York, 1947), 439-455; and Anon., *A Constitution for the Fourth Republic* (Washington, D. C., 1947), 109-125, published by the Foundation for Foreign Affairs.

[1] That is, a majority of the entire membership, not simply of the votes cast.

[2] See pp. 34-35 above.

ment is drawn up and put in course of enactment like an ordinary law; and if there is either a two-thirds affirmative vote in the Assembly on second reading or a three-fifths vote in both houses on final passage, the amendment is considered adopted and ready to be proclaimed by the president of the Republic. If, however, neither of these conditions has been met, the final fate of the proposal is determined by a popular referendum, which, of course, introduces a feature quite unknown to the old system.

At first glance, this might appear a more difficult, rather than an easier, amendment procedure than that under the Third Republic. More closely viewed, however, it sustains the observation made above; for it will be observed that, in the final analysis, all that is really necessary for any affirmative action is a two-thirds vote in the National Assembly (with which also all initiative lies); the upper branch has a chance to ease the process a bit by giving the proposal a three-fifths vote, but what it does, or whether it does anything at all, does not matter so long as two-thirds can be mustered in the Assembly, whose will prevails except only as it may be frustrated by a referendum if held. Three express limitations on the amending power are, however, imposed: (1) no revision may be undertaken at any time when any part of France is occupied by foreign military forces; (2) as under an 1884 amendment to the constitution of the Third Republic, no proposal touching the republican form of government may be entertained; and (3) no amendment threatening the existence of the Council of the Republic may be adopted without either the concurrence of that body itself or resort to a referendum.

The Constitutionality of Laws—The Constitutional Committee. France, in the past, has not had judicial review of legislation; and certainly the political elements mainly responsible for the constitution of 1946 would have been unwilling to see the practice introduced.[1] None, however, could fail to recognize the possibility of doubt occasionally arising as to whether legislation newly enacted by the National Assembly was or was not in full conformity with constitutional specifications; and to meet situations of the kind the

[1] To be sure, in the First Assembly's Constitutional Committee the rightist elements proposed a supreme court endowed with the review function, and for a time the moderate party known as the Popular Republican Movement was somewhat inclined to support the idea. Both Socialists and Communists, however, were unalterably opposed, and the M.R.P. eventually fell into line.

framers improvised a new governmental organ in the form, not of a court, but of a non-judicial Constitutional Committee consisting of the presidents of the two parliamentary chambers, seven persons chosen by the lower house at the beginning of each annual session from outside its own membership, and three chosen similarly by the upper house, a total of 12, and sitting under the chairmanship of the president of the Republic. As we shall see, the upper chamber, or Council of the Republic, has little direct control over lawmaking; in the last analysis, legislative power is concentrated in the other branch, the National Assembly. One of the checks, however, which the upper house may impose arises in connection with the Constitutional Committee. A measure having been passed by the Assembly, and the Council of the Republic having doubts about its constitutionality, the latter body may, by absolute majority, and during the period while the measure is waiting to be promulgated, request its own president and the president of the Republic to ask the Constitutional Committee to look into the law's validity. From such intervention, two or three things may result. The Committee may be able to iron out the differences of view between the two branches, without any actual ruling on its own part. Failing this, it must decide (within five days—two in case of emergency) whether the upper chamber's objection is well-founded. If the finding is in the negative, the measure's promulgation follows. If, however, it is in the affirmative, the measure is sent back to the Assembly with notice that it can become operative only if squared with the constitution by a constitutional amendment; whereupon the Assembly will have to decide whether to accept the Committee's ruling as in effect a veto, with the measure left to die, or to seek to overcome the obstacle raised by altering the terms of the act, or, finally, to set in motion the amending machinery described above. The significant qualification must be added, however, that all of this procedure applies only in the case of the main body of the constitution;[1] laws dealing with subjects covered in the preamble—including the entire matter of civil liberties—cannot be carried to the Constitutional Committee or held up by it. Exempted also from the procedures described are Assembly actions taking the form of resolutions rather than of laws. The entire arrangement is novel and may not prove efficacious.

[1] Titles I-X inclusive.

SOME FEATURES OF THE CONSTITUTIONAL SYSTEM

No Very Revolutionary Changes. Before turning to a brief analysis of the governmental system for which the new constitution provides, a word may be said about certain of its over-all characteristics. And here the topmost fact is that, after having vilified the constitutional régime of the Third Republic as inherently faulty and largely responsible for the disasters of the past, the nation found itself after 1946 pretty much back where it had been. That is to say, apart from a sharp reduction of the powers of the upper branch of Parliament and an attempt to superimpose on the government of metropolitan France a "French Union" government for the empire, no very profound changes were to be observed. On the one hand, this has its advantages: as a recent writer has remarked, the new régime "fits easily into the groove of French governmental tradition; for the average citizen, little effort at mental adjustment has been required." [1] On the other hand, and by the same token, it is doubtful whether the shortcomings of old have to any great extent been corrected; and the suspicion of many French people that they did not get what they asked for, or were promised, when they set up their cry for a new constitution seems well founded—certainly the fact that when they were given opportunity to express themselves at the polls only a third of them indicated their approval appears significant. If the first constitution offered had been accepted, there would have been significant change: France would have gone over frankly to a "government by assembly"—government by an omnipotent one-house parliament, which might have been for the better but probably not. But there was enough objection (from moderate and rightist elements) to defeat that plan; and with the advocates of government by strong executive (the De Gaullist idea) equally unable to prevail, the settlement was for something neither fish nor fowl—in short, for substantially what the country previously had, although with a slightly stronger executive and a parliament (with a greatly weakened upper chamber) slanted in the direction of "assembly government," yet hardly more so than in Britain. Circumstances, not logic, dictated the compromise.

Guarantees of Political and Social Rights. In the Declaration of the Rights of Man adopted amid swirling revolution in 1789,

[1] G. Wright, *The Reshaping of French Democracy*, 235.

France rose to a height of devotion to human liberties from which she has never receded. Even with the amorphous constitution of 1875 silent on the subject, many good authorities contended that the original Declaration remained a part of the nation's constitutional law; some even assigned it a sort of superior, supra-constitutional, status. In any event, no one familiar with the political complexion and temper of the two Constituent Assemblies of 1946 would have expected any doubt to be left surrounding the matter. In the first, the subject absorbed fully a quarter of the time of the drafting committee, where (as also later in the Assembly itself) bitter controversy raged over whether the Declaration of 1789 should be accepted as a statement impossible to improve upon, and therefore entitled to be written into the new fundamental law substantially intact, or whether that document, concerned only, as it had been in its day, with asserting liberties of a political nature against an autocratic government, and therefore essentially bourgeois in outlook, ought not now to be greatly broadened, if not indeed replaced, by an enumeration of social and economic rights in a more or less collectivist society. Socialist and Communist elements saw to it that the second viewpoint prevailed; and although most features of the earlier Declaration (including its guarantee of the right of private property, though now somewhat watered down) reappeared in the extremely lengthy and detailed 39-article Declaration with which the first proposed constitution began, there were plenty of provisions also on social and economic matters envisaged in a twentieth-century, industrialized, and essentially leftist context.

When the second Assembly met, it was well enough understood that the resulting fullness of detail and radical slant had been a factor in the first constitution's defeat; and in an atmosphere in which, as we have seen, the dominant idea was that this time there must be no failure, a shorter cut was taken: the bulky, somewhat academic, Declaration of the Rights of Man set at the beginning of the rejected document was scrapped and in its place was adopted—although again only after prolonged and bitter debate—a terse, one-page Declaration of Principles, today of course presumed to be in effect as part of the constitution in operation. Discarding even the formality of numbered articles, this Declaration does two things. First, it reaffirms "the rights and freedoms of man and of the citizen consecrated by the Declaration of Rights of 1789 and the fundamental

principles recognized by the laws of the [Third] Republic"; and second, it proclaims and guarantees, by way of complement to the foregoing, newer social and economic principles on which there had been substantial agreement, studiously avoiding other things—such as freedom of the press and the right of religious organizations to maintain a private school system—on which provisions could not be inserted without stirring heated, and perhaps fatal, controversy. Among salient newer social and economic rights expressly recognized are equality of women with men "in all domains"; equal access of both children and adults to education, professional training, and culture, with the state required to establish "free, secular, public instruction on all levels"; universal right to work; complete freedom of laborers to organize, to bargain collectively, and to strike; and adequate public assistance for the aged, the ill, and all others unable to labor. Looking toward continuation of the program of nationalization already carried far by the provisional National Assembly, a clause also enjoins that all property and enterprises having, or later acquiring, the character of "a national public service or a monopoly" shall be taken over by the state.

Popular Sovereignty. Two or three further general aspects of the present constitutional order may be mentioned briefly. One of them is the unqualified sovereignty of the people; and Americans will be struck by the constitution's own characterization of the new government as, in Lincoln's words, "of the people, by the people, and for the people: [1] In the basic matter of amending the fundamental law, popular sovereignty may manifest itself literally through employment (under given circumstances) of the referendum, although in no case the initiative; in all else, such sovereignty finds its expression at the polls, where all members of the one body authorized to make laws, *i.e.,* the National Assembly, are chosen.

No Separation of Powers. In the second place, everything is organized around the principle of cabinet, or parliamentary, government, with separation of powers fully and deliberately repudiated. The system is a single, monolithic structure—a compromise, said the Constitutional Committee's reporter in expounding it before the Constituent Assembly, between a presidential system based upon separation of powers and a government by assembly based upon "confusion

[1] Art. 2.

of powers." As a consequence, it is, of course, a system much closer to the British than to the American.

Situation Internationally. Finally, while the people are completely sovereign with respect to government within France, the nation is, or at all events may become, something less than sovereign internationally. Faithful to its traditions, says the constitution, the French Republic abides by the rules of international law, and will not undertake wars of conquest or use its arms against the freedom of any people. Of itself, this is not incompatible with unimpaired national sovereignty; the nation simply, of its own accord, agrees to observe certain rules of international conduct and renounces certain forms of international action. In another clause, however, limitations of sovereignty deemed necessary to the organization and defense of peace are unequivocally accepted, subject only to the natural condition that such limitations shall be on a reciprocal basis, *i.e.,* accepted in equal degree and with equal good faith by other nations. The present United Nations is not construed to entail surrender of sovereignty on the part of its members; certainly it would have been difficult to enlist the United States as a member had understanding been otherwise. Should, however, proposals for something in the nature of "world government," heard from many directions, eventuate in a new international set-up on that basis, sovereignty of individual states would have to be surrendered; and France, under her new constitution, stands as the first important nation solemnly agreeing to accept such a consequence.

PARLIAMENT

A Shadowy Bicameral System. Under the Third Republic, France had a true and effective bicameral parliament, not only in the obvious sense that there were two legislative chambers, but in the deeper sense that the two had, in general, the same functions and were substantially equal in power. The first constitution offered the electorate in 1946 went to the extreme of providing for a parliament of but a single house. Rebounding from this violent swing, the second Constituent Assembly reverted to the idea of bicameralism; and, as we have seen, the constitution finally adopted provided for, and France now has, a two-chamber parliament, consisting no longer, to be sure, of a Chamber of Deputies and a Senate, but of corresponding branches termed the National Assembly and the Coun-

cil of the Republic. French commentators on the new arrangements, however, are the first to concede that Parliament as constituted is bicameral in form and appearance only, and not in reality.[1] To be sure, in order to be genuinely bicameral, a parliament need not consist of two houses of equal power and importance. In Britain, the House of Commons greatly outweighs the House of Lords because of its acknowledged primacy in the field of finance, the responsibility of ministers to it alone, and its authority, if difficult conditions can be met, to enact general legislation by its own independent action; yet the Parliament at Westminster is still regarded as bicameral. If, however, one chamber is reduced to merely presenting observations, formulating objections, and offering advice which need not be accepted, there is no such division and balance of authority as true bicameralism presupposes; and that, as we shall see, is the position of the present French Council of the Republic. So independent, indeed, is the National Assembly—which, as the constitution bluntly specifies, "shall vote all laws"—that many look upon the existing system as not, after all, widely different from the "government by assembly" contemplated in the rejected constitution. Certainly if there was possibility under the earlier plan of one powerful political element, *e.g.*, the Communists, proving able, by capturing control of the single chamber, to drive through legislation revolutionizing French life and economy, there is but little less latitude for such a thing happening today in complete disregard or defiance of any checks that the feeble Council of the Republic could impose. At the very least, the National Assembly far transcends the former Chamber of Deputies, while the Council of the Republic is but an extremely pale image of the old Senate.

The National Assembly. On the composition of the National Assembly, the constitution has three things to say: (1) the members are to be elected on a territorial basis; (2) they are to be chosen by "universal, equal, direct, and secret suffrage"; and (3) the mode of their election, together with the qualifications to be required, are to be determined by ordinary law.[2] In anticipation of the initial regular elections held on November 10, the National Constituent Assembly, in its capacity of provisional legislature, on October 5, 1946,

[1] See, for example, J. Laferrière, *Manuel de droit constitutionnel* (2nd ed., Paris, 1947), 995-996.

[2] Art. 6.

duly enacted an electoral law supplying all of the necessary details; and the electoral system presently to be outlined is that for which this organic statute provides.

1. Membership. The French Chamber of Deputies was at all times a large body; on the eve of World War II, its members numbered 615—which curiously happened to be also the membership of the British House of Commons. The National Assembly of today contains 627 members—544 sitting for constituencies in continental France and 83 (in accordance with the French tradition of giving representation to the colonies) sitting for constituences overseas.[1] All have terms of five years and are elected at the same time.

2. Election: (a) The Suffrage. Under the Third Republic, the Chamber of Deputies had a democratic basis in that all men 21 years of age, citizens in possession of full civil rights, and duly registered were entitled to vote for members. The "universal suffrage" recognized in the laws was, however, only suffrage for males. The National Assembly of the Fourth Republic is still more democratic in that women are now voters on the same terms as men. First introduced under various decrees of 1944-45 during the period of provisional government, woman suffrage is permanently ordained in the new constitution's fourth article, which reads: "All French citizens and nationals of both sexes, who are of age and enjoy civil and political rights, may vote under conditions as determined by law"; and female voters slightly outnumber male. As before, there is a single nation-wide electorate for all elections, national and local; and, also as before, lists of eligibles are revised in the communes before March 1 of each year by commissions consisting in each case of the mayor, an appointee of the communal council, and an appointee of the prefect of the department. There is, of course, the usual disqualification of the insane and other unfortunates or delinquents, with bankrupts added to the list, and with persons convicted of crime disfranchised permanently. Plural voting is not permissible in any form, and there is no attempt to make voting compulsory.[2]

(b) The Proportional System. We have seen that during the period of provisional government, proportional representation, with

[1] Of these, 30 represent Algeria.

[2] In general, the conduct of elections remains as under the Third Republic. The parliamentary electoral date is fixed as the fifth Sunday after issuance of the requisite presidential decree.

which there had been somewhat unhappy experience during 1919-27, but for which there had continued to be a good deal of demand, was revived; and except for continuance of the single-member, majority-election system in most of the overseas constituencies, the system was brought into regular operation by the electoral law of 1946. To the disgust of the smaller parties, the electoral unit was again the department, with, however, seven more populous departments split into from two to six *circonscriptions*, or divisions, yielding in all 106 electoral areas; and among these the 544 seats allotted to continental France were distributed, with from two (in only four areas) to 11 assigned to each. A general election having been proclaimed, any parties or groups desiring to enter the contest in a department (or subdivision thereof) prepared their lists of candidates, arranged the names in the desired order, and at least 21 days before the election placed two copies in the hands of the department prefect, who, upon sending a copy to the Ministry of the Interior at Paris and receiving back word that no name appeared on another list in the same department or on any list in a different department, gave the official approval necessary to the list's appearance on the ballot. On election day, the voter had to vote some one of the competing lists "straight"; he could not scratch his ticket, voting for candidates appearing on different lists. Of course, this severely restricted his range of choice; and to people who opposed the system on this ground, the concession was made of permitting the voter at least to go down the list for which he was voting and by inserting numbers indicate his preference for a different arrangement, or order, of the names from that which the party or group had offered. Ostensibly, this afforded the voter some chance to see who among the candidates on his list should first be declared elected in case the list won some seats. Actually, however, the concession was illusory, because coupled with it was a provision that a candidate could not be moved out of his assigned place unless on the basis of at least half as many votes as had been received by the list as a whole—a condition not easy to meet, and as a matter of fact met in only a single instance in the first National Assembly election. When all the votes cast in a particular election were in and counted, the seats to which the electoral area was entitled were distributed among the various lists prepared by the several political parties in proportion to their respective strength as shown at the polls.

(c) Compromise of 1951. There was widespread dissatisfaction with the proportional system except on the part of the leftist parties and after prolonged and frequently bitter debate a compromise arrangement was arrived at for the National Assembly election held in 1951, though its permanence may be doubtful. Under the electoral reform act proportional representation was provided in the Seine and Seine et Oise Departments (Paris), but elsewhere a modified type of majority election on a departmental basis was instituted, with a provision that various groups could combine to present coalition lists of candidates. Any list or coalition of lists receiving 50 per cent of the votes is entitled to all seats in the department or area. If no list or coalition receives 50 per cent of the votes, the seats are divided among the parties according to the law of the "largest mean" which favors the large parties. The inconsistencies and lack of clarity characterizing the act caused the French press to refer to is as the "monster."

The Council of the Republic: 1. Circumstances of Establishment. After it was settled that the Third Republic was not to be revived, there still was the question of whether, under a new constitutional order, Parliament should consist of two houses or of only one, and of what should be the composition and powers of a second chamber if there was to be such; and along with the question of mode of election and powers of the president of the Republic, this issue held a central position in the debates of 1945-46. As we have seen, the Socialist-Communist-dominated First National Constituent Assembly went all out for a unicameral system, and for a time it appeared that in future there would be no second chamber at all. Fear of Communist control of an all-powerful single chamber, however, produced a revulsion; the single-chamber plan was voted down with the first constitution offered the people; and with the logic of the situation driving the country, however grudgingly, toward revival of the principal institutions of the former régime, the constitution finally adopted provided a place for a second chamber—deliberately, however, given the new name of Council of the Republic in order to discourage the body from laying any claim to being the heir of the old Senate.[1] Beyond providing that Council members should be

[1] The most informing study in English of the new parliament is D. W. S. Lidderdale, *The Parliament of France* (London, 1951). Chap. xi deals with the Council of the Republic.

chosen "on a territorial basis" by communal and departmental bodies "by universal indirect suffrage," the constitution had little to say about the composition of the new chamber—except, in addition, that one-sixth of the total membership might be elected by the lower house, or National Assembly. A law supplying the necessary details was enacted on October 27, 1946; the first elections took place on November 24; and the Council met for organization on December 26—on which day the new national constitution officially took effect. A law of 1948 modified the composition somewhat.

2. Composition. In enacting the 1946 law, the National Assembly encountered great difficulty; and it perhaps would have proved impossible to reach conclusions at all but for agreement that the law should be only provisional, and indeed applicable only to the Council first chosen. On this basis, the legislation provided for a rather composite body containing the following elements: 200 members chosen by electoral colleges in departments in France proper; 50 elected by the National Assembly; 14 chosen by electoral colleges in Algeria; and 51 similarly chosen in other overseas territories—a total of 315, as compared with 314 in the old Senate, and well within the constitutional specification that the number should be between 250 and 320.[1] In all instances the electoral procedures prescribed were exceedingly complicated; and for present purposes it would not be profitable to become entangled in them. Suffice it to say that of the councillors chosen in metropolitan France in all cases election was indirect, *i.e.*, by an electoral college consisting of (1) the department's representatives in the National Assembly, (2) the members of its general council, and (3) delegates chosen in the communes by members of the municipal councils. The number of seats allocated each department varied from one to nine, except for the Seine with 20. The 1948 act increased the size to 320 to be apportioned as follows: 253 from continental France and Guadeloupe, Guiana, Martinique, and Réunion; 14 from Algeria; 44 from overseas and mandated territories; one to represent French Indo-China; five to represent French citizens in Tunisia and Morocco; and three to represent French citizens residing abroad.

Parliamentary Sessions. The theory of the constitution is that Parliament shall be in session more or less continuously, and also

[1] A. Cobban, "The Second Chamber in France," *Polit. Quar.*, Oct.-Dec., 1948.

largely independent in controlling its sessions and adjournments. A regular annual session must begin on the second Tuesday of January, with the two chambers always in session simultaneously; and no adjournment may be for a period longer than four months. The government, *i.e.*, the council of ministers, may propose, or even request, an adjournment, but only the National Assembly can determine upon it. On the other hand, while the Assembly's bureau of officers must call the chambers back into session earlier than a date agreed upon if one-third of the members of the lower house so demand, it must do this also if requested by the president of the council of ministers. The main change from former arrangements lies, not in longer sessions (under the Third Republic, Parliament usually sat as much as eight months out of a year), but in increased freedom from control by the executive. During sittings, either house may close its doors, but normally all proceedings are public; and complete records must be published in the *Journal Officiel.*

Officers. Each chamber, by secret ballot and at the beginning of a session, elects its own "bureau," or staff of officers, consisting in both instances of a president, six vice-presidents, 14 secretaries, and three quaestors. The president is chosen separately, by majority vote unless a third ballot proves necessary, in which case a plurality suffices; the rest are chosen from lists prepared by the various parties, and by proportional representation. Functions remain largely the same as in the old days, though there seems now to be more emphasis upon the presiding officer's abstention from debate and voting, and indeed from every form of political activity.

Committees. The constitution contemplates full use of committees for studying "bills and proposed laws," with each chamber authorized to set up its own committee system. Each body has created 20 *commissions générales,* or general committees, the list being the same in both branches, and all committees consisting of 44 members (30 in the council) designated anew at the beginning of each sesssion by a plan of proportional representation designed to make each committee a political microcosm of the chamber in which its functions, and with no member of either house permitted to serve on more than two. With slight exceptions, every bill and resolution, whether coming from the government or introduced by a private member, is supposed to be acted upon only in pursuance of a committee report, occasionally oral, but usually written; and a maximum

of three months is allowed for a committee's work on a measure to be performed. Ministers, on request, are entitled to be present at committee meetings—also the authors of bills or amendments—and close working relations are contemplated between committees interested in the same problems, and especially between finance committees and the others. For particular inquiries, special committees may be employed, the resolutions creating them specifying their size, duration, and purpose; and they may be planned to include members from both chambers and even experts from outside. Presidents (chairmen) of all regular committees are members of a "conference of presidents," consisting of the six general vice-presidents, the committee presidents, and the presidents, or chairmen, of all recognized party groups in the chamber; and to this fairly large body it falls to assist a chamber's presiding officer in planning the order of business and the agenda of daily sittings, subject to approval by the chamber itself.[1]

Powers and Functions of the Two Chambers: 1. Primacy of the National Assembly. The most striking feature of the new Parliament is, of course, the disparity deliberately established between the two branches—a disparity so profound that, as already intimated, the system almost may be said to be a unicameral one in disguise. Even the name given the lower house is significant: throughout modern French history, "National Assembly" has always carried the implication of full sovereignty. But the matter is clinched by the terse provision of the constitution itself (Art. 13): "The National Assembly alone shall vote the laws. It may not delegate this right." From this categorical specification flow at least three major consequences. The first is a drastic shift of legislative power from its location under the Third Republic. "The legislative power," asserted the constitution of 1875, "is exercised by two assemblies, the Chamber of Deputies and the Senate"; and not only did the upper chamber have full power to kill measures coming to it from the lower, but (except for finance bills) it could initiate legislation on equal terms with the other branch, and all parliamentary legislation was literally by the two houses acting concurrently. Under the present constitution, the ministry may propose and the Council of the Republic may suggest, but only the National Assembly can *enact*. A second consequence,

[1] For an authoritative treatment of the committee system and the rules of debate, see D. W. S. Lidderdale, *The Parliament of France* (London, 1951), Chaps. vi and vii.

not so obvious at a glance, but very real and important, is that if the National Assembly has *all* legislative power and may not delegate any part of it, no place is left for streams of "decree-laws" such as the ministry used to pour forth by authority of Parliament in periods of national emergency. In an earlier chapter we saw something of the situation formerly existing, with harassed ministries habitually running to Parliament for grants of "full powers," retaining such powers over prolonged periods, and to such degree taking over the legislative function that Parliament's abdication of its constitutional rôle became almost a public scandal.[1] It may perfectly well be, as some have predicted, that under stress of future emergencies—almost certainly of war—delegations of power and laws by decree will reappear. But if they do, it will be in defiance of a perfectly plain constitutional injunction. In deference to the basic principle of popular sovereignty as exercised through a democratically elected legislature, the constitution of 1946 undertakes a rehabilitation, or restoration, of Parliament (even though applying to only a single branch of it) in full plenitude of powers. And last among the consequences of the monopoly of legislative power given the Assembly is the exclusion of any direct participation in lawmaking by the people. As has appeared, there are circumstances under which constitutional amendments may be submitted to a popular vote. But the constitution provides for no such procedure on ordinary laws; and the ban on legislative delegation debars the National Assembly from resorting to the device, at all events for other than purely advisory purposes.[2]

2. The Rôle Remaining to the Council of the Republic. In all phases of the legislative process, the Council of the Republic occupies perhaps the weakest position ever assigned a European

[1] See pp. 469-470 above.

[2] Recognizing the high importance and often technical character of economic and social legislation, the authors of the new constitution wrote into the document an article (25) providing for a large and representative Economic Council to advise the National Assembly, and also the ministry, on matters of the kind. As constituted under later statute, the Council has 184 members, representing chiefly professional organizations (in the fields of industry, agriculture, labor, and the like), named by them, and serving for three-year terms; and, sitting during sessions of Parliament, it busies itself with considering and advising on Assembly bills falling in its field and giving the council of ministers advice on any matters referred to it. The Council is not a "third house" of Parliament, and its advice does not have to be followed. But the fact that, in contrast with earlier economic councils which the country had known, it was given a constitutional status indicates that it was meant to be useful and important. Bills within its purview must be sent to it for scrutiny before they are even considered in the National Assembly.

second chamber—perhaps an even weaker one than that remaining to the British House of Lords. To be sure, along with the ministry (speaking through the premier) and the National Assembly, the Council may initiate legislation. Any bill or resolution introduced by a Council member, however, may merely be filed with the Council's bureau of officers and transmitted to the bureau of the National Assembly; it may not at this stage even be debated, much less passed, by the Council as a whole; and the Assembly, through its bureau or acting directly, may refuse so much as to receive the proposal and politely send it back. Practically, Council initiative is largely reduced to suggesting amendments to bills sent over from the Assembly. In the final enactment of legislation, the Council's position is even weaker. After a measure has passed first reading in the Assembly, it must be sent to the other house; and the latter normally has 100 days (less if the Assembly chooses to allow less in the case of finance bills or bills of emergency character) in which to register an "opinion." If the opinion is favorable, or if none is registered within the prescribed time, the measure forthwith is proclaimed as "passed by the Assembly." If the opinion is unfavorable and perhaps amendments are proposed, the Assembly must give the measure a second reading, either accepting or rejecting amendments; but the outcome is the same—the measure becomes law by affirmative vote of the Assembly alone. The Council thus has a chance to interpose a little delay and to force the Assembly to confront and decide upon amendments tendered as "advice." But it can in no wise frustrate final passage—an operation in which it, indeed, has no part. In Britain, finance bills automatically become law a month after being passed by the House of Commons, and other bills may, having been delayed by the House of Lords for a period of twelve months, be placed on the statute-book by sole action of the popular branch—yet, in general, legislation is by the two houses acting independently and each in its own right.[1] In France, as the new constitution says, the National Assembly votes the laws.[2] The Council of the Republic shares, to the extent of its more limited membership, in electing the president of the Republic; it chooses three members of

[1] As explained elsewhere, the length of time during which the second chamber may hold up general legislation was reduced under an act passed in 1949. Prior to 1949 the period was two years. See pp. 227-229 above.

[2] On the right of the president of the Republic to request both chambers to reconsider a law passed, see pp. 536-537 below.

the Constitutional Committee; and under certain circumstances it can force a constitutional amendment to be submitted to a referendum. But that is about the extent of its powers. In legislation, it is simply, as the French put it, a "council for reflection," not a council for action; and even as such its influence during the first years of its existence was practically negligible.[1]

THE EXECUTIVE—PRESIDENT AND MINISTERS

General Aspects. The outstanding feature of the constitution offered the nation by the first National Constituent Assembly in 1946 was the decidedly inferior position accorded the "government," *i.e.*, the president and ministry, in comparison with the single-chamber Parliament; the presidency, indeed, barely survived at all. That constitution was rejected by the voters, and, as we have seen, in making the one eventually adopted the second Assembly swung rather far back from its predecessor's extremes: a Parliament at least nominally bicameral was provided for, and with it a somewhat strengthened executive. The result was an executive a good deal nearer that of the discarded Third Republic, although not without some significant differences. The president of the Republic was left even weaker than before, but the president of the council of ministers, or premier, was given a far more vital pivotal position.

The Presidency of the Republic: 1. Term and Election. Throughout the period of constitution-making, it was taken for granted that the president of the Republic, if there was to be one (and in spite of earlier Socialist and Communist opposition there never was much doubt that provision for one would be made), would be chosen, as in the past, by the members of Parliament; and the fundamental law now in effect so specifies. As before, the term is

1 "Despite the care which we devote to our labors," testified a member in 1947, "the National Assembly takes no notice of our opinions. Only 35 per cent of our amendments have been accepted by it, and these only when they introduced merely formal alterations." *L'Aube,* June 27, 1947. See the article by A. Cobban cited above. In summarizing the evidences of the Council's inferiority, M. Laferrière enumerates the following: (1) it has nothing to do with the formation of governments, *i.e.*, ministries; (2) ministers are not responsible to it; (3) it has no part in bringing the president of the Republic or ministers before the High Court of Justice; (4) it has nothing to do with choosing the members of the High Court or of the Superior Council of the Magistracy; (5) presidential messages are not sent to it; (6) on a declaration of war it can merely give advice; and (7) the constitution can be amended without its consent, even in a manner jeopardizing the Council itself provided a popular vote is taken. *Manuel de droit constitutionnel* (2nd ed., Paris, 1947), 998.

seven years (a limit of two terms, however, is now imposed), with an election for a full term held, normally within 10 days, whenever the office falls vacant either by limitation or because of the incumbent's death, resignation, or incapacity, and with the president of the National Assembly discharging the functions during any necessary interim; and election takes place in a joint meeting of the members of the two chambers—now referred to as a "Congress"—held at Versailles and devoted solely to actual voting on candidates. The constitution does not say whether election shall be by secret ballot, but the Fourth Republic's first president, Vincent Auriol, was chosen in that manner on January 16, 1947, and presumably the precedent (carried over from the Third Republic) will be followed in the future. The constitution is silent, too, on the nature of the majority necessary for election; but on the occasion mentioned it was decided by the Congress that a simple majority of the votes cast (rather than of the entire membership) was sufficient; and this ruling also is likely to stand.[1] As under the Third Republic, no age or other qualification is prescribed, but no member of any family that ever reigned over France is eligible.[2]

2. Some General Functions. Turning to powers and functions, one finds the rôle of the president in the affairs of government not altogether easy to determine; certainly General De Gaulle, in his vigorous criticism of the new constitutional system, considered it wholly inadequate, and certainly, too, the importance actually assumed by it will depend to quite an extent upon the capacity and vigor of earlier presidents themselves. If the constitution first offered the voters in 1946 had been adopted, the presidency would have been reduced to insignificance indeed. The constitution later put into operation restores a good deal, and even adds a few functions not possessed under the Third Republic. On the other hand, it also withdraws some functions, such as control over sessions of Parliament and initiating constitutional amendments; and of course to a very great extent it takes away with one hand what it purports to bestow with the other by requiring that every presidential act shall be countersigned by "the president of the council of ministers and by a minister." [3] With the latter qualification understood, a few functions

[1] M. Auriol received 452 out of a total of 883 votes.

[2] There is a small group of Frenchmen who would like to see the Bourbon family restored to power.

[3] Art. 38.

definitely conferred may be mentioned. (1) The president presides over various official bodies such as the Superior Council of the Magistracy,[1] but chiefly the council of ministers, in which his part, however, is merely to occupy the chair, announce decisions, and have custody of minutes. Ministers continue to meet for more or less political purposes as a cabinet; but with such meetings the president has nothing to do. (2) The president names a certain number of high officials, principally the president of the council of ministers and the ministers selected by him, though under the same practical limitations upon genuine freedom of choice as during the Third Republic; and instead of assigning the appointment of "all civil and military officials" to the president, as did the constitution of 1875, the present constitution devolves the entire function upon the president of the council of ministers. (3) In the domain of international relations, the president is charged with sending and receiving all diplomatic representatives and signing and ratifying all treaties; though no treaty, can be made effective without the assent of Parliament. (4) War may be declared only with approval of the National Assembly and concurrence of the Council of the Republic, but, in the absence of any specification to the contrary, it is assumed to be a presidential function to sign the actual declaration; and, like the chief executive in the United States, the president is designated commander-in-chief of the armed forces. (5) An article of the constitution associates the president with the Superior Council of the Magistracy in exercising the power of pardon; and in practice the Council hears appeals and expresses opinions, but the president makes decisions and countersigns pardon decrees.

3. The President and the Laws. Under the Third Republic, the president was expressly given the right to initiate legislation, however little he may have exercised it personally. The new constitution recognizes no such right; laws may be initiated only by the president of the council of ministers and by members of Parliament.[2] To be sure, the president may, as before, send messages (though now only to the National Assembly, not to both houses), and there would seem to be no constitutional impediment to such communications at least indirectly suggesting desirable legislation. Inasmuch, however, as all messages must carry ministerial countersignature, they can propose

[1] See p. 540 below.
[2] Art. 14.

nothing, nor even express any point of view, of which the ministry does not approve; and if the ministers desire to bring forward a given piece of legislation, they will do so through channels of their own, not through a presidential message. After legislation has been enacted, it becomes the express duty of the president, save in one contingency, to promulgate it, thereby giving it effect; and this must be done within a period of 10 days—five if the National Assembly has labelled the act an emergency measure. The contingency referred to involves a situation in which the president, presumably dubious about an act's merits or about the circumstances under which it was passed, interposes what amounts to a suspensive veto. No veto of stronger character is provided for. But within the time limit fixed for promulgation, the president may, by written message, demand of both chambers that a given measure be reconsidered; and both must promptly comply. If, however, the National Assembly now enacts the measure a second time, the president has no option but to promulgate it. On its face, this right to request reconsideration might seem to open a way for some presidential control over legislation. Actually, however, it does not; for any measure at which such a request might be aimed would presumably have been passed with ministerial approval, rendering it altogether unlikely that any minister would countersign. Certainly a like provision in the constitution of the Third Republic never proved a significant factor in the legislative process. Finally, there is, of course, the vital matter of the execution of the laws after they have been enacted; and here there is—on the surface at least—an important change. For while formerly the president of the Republic was solemnly charged with seeing that the laws were enforced, the new constitution places that responsibility squarely on the president of the council of ministers. Perhaps, as intimated, the change is hardly more than nominal—a mere recognition of realities; because, of course, under the Third Republic law enforcement was only in the name of the chief of state rather than by him. But at all events that dignitary no longer is even in form the head of the administrative system; nor does he any longer enjoy, even in theory, the ordinance-making power inevitably going along with administration.

4. Responsibility. In ordinary civil matters, *e.g.*, property relationships, the president is no more exempt from judicial action than is the humblest citizen. Criminally, too, he enjoys no immunity in

the case of acts performed in a private rather than a public capacity. Politically, however, he can be held responsible for nothing except in the single situation where a charge of treason is involved. He cannot be forced from office because of any dislike for him personally nor for any political opinions held or official acts performed; for all of the latter, responsibility lies entirely with the ministers. By secret ballot, however, the National Assembly may indict him for treason, with his trial held before a High Court of Justice elected by the Assembly at the opening of each parliament.

Ministry and Cabinet. Persons familiar with the French ministry and cabinet as operating under the Third Republic will not need a full-orbed discussion of their counterparts of today; for in several major respects there has been no significant change. Ministry and cabinet still consist of numerous ministers in charge of executive departments, occasional "ministers of state," *i.e.,* ministers without portfolio, and varying numbers of ministers of second rank, or under-secretaries of state; and the old distinction between *conseil de ministres,* as the ministers sitting under the chairmanship of the president of the Republic for the transaction of official business, and the *conseil de cabinet,* as the ministers meeting less formally under the chairmanship of the premier for consideration of policies and programs, especially from party viewpoints, still holds, although practically the distinction is not of great importance; in point of fact, the constitution speaks of the council of ministers (comprising "the government") almost exclusively. Ministers to a total in recent years varying from 18 to 37 are commonly members of Parliament (chiefly the National Assembly), although with no requirement of membership like that operating in Great Britain; and all have access to both houses, irrespective of membership.

Some Changes: 1. Making Up a Ministry. Certain significant changes, however, have been introduced; and the brief comment here possible must be devoted mainly to them. First to be mentioned are some interesting new procedures associated with making up a new ministry. Speaking broadly, there have been historically two conceptions of the place of the ministers in the French parliamentary system. One has been that of these functionaries as being ministers of the president whom he was entitled to name by his own independent right, even though they must afterwards win the support of Parliament if they were to stay in office. Naming the ministers, indeed,

used to be the one act which the president could perform with no countersignatures required and no intervention from the legislative chambers, at all events until questions of confidence arose. The other view was that of the ministers as springing essentially from Parliament in its capacity of reflector of the national will—a sort of committee chosen to act as the executive body, with Parliament and president at least collaborating in the selections made. Under the Third Republic, practice was, on the whole, in accordance with the first of these conceptions. The first constitution offered the voters in 1946, however, carried the second to such an extreme that, instead of directly naming a president of the council of ministers, the president was rather to give the National Assembly the names of a number of candidates (including persons simply announcing themselves as applicants), with the Assembly choosing among them by public, majority vote; the premier-elect was thereupon to select the other ministers, and only then was the president to appoint the full group by executive decree. The plan finally adopted represents a middle course between the two viewpoints. As under the Third Republic, the president ("after the customary consultations," says the constitution [1]) selects a ministerial head and transmits his name to the National Assembly—doing this, however, not simply when the position falls vacant upon the resignation or overthrow of a ministry, but at the opening of every newly elected Parliament. The Assembly has no opportunity directly to elect; but it can refuse to confirm, so to speak, because the premier-designate must lay before the body "the program and policy of the cabinet he intends to constitute," and he and his ministers can be formally appointed by the president only after the Assembly has given him an expression of confidence by roll-call vote and absolute majority. Passing this test, the nominee proceeds to prepare his ministerial slate and the president duly makes the appointments. Failing to pass it, he must step aside and the president must try again. Theoretically, the Assembly passes judgment on the proposed president of the council only; but it is considered likely that in practice it will, when hearing the forecast of program and policy, insist also on knowing something about the full ministerial group that is to carry the program and policy into effect.

[1] A polite way of saying that the president will have to be guided, as always, by information given him as to what party leader or representative of a coalition can be expected to command adequate parliamentary support

At all events, the National Assembly now shares in the procedure of cabinet-building in a manner wholly new.

2. Position of the President of the Council of Ministers. Readers of an earlier chapter will recall the inevitable weakness of the premier's position under the Third Republic because of ministries necessarily being formed from differing political groups only temporarily and precariously bound together in a coalition. With ministries still coalitions, the situation of their chief official is not likely to be much improved politically; certainly ministries have risen and fallen almost as rapidly since 1946 as in former days. But there is another significant aspect of the matter. Under the Third Republic, and as until quite recently in Britain, the premiership was unknown to the law, a product only of development; in the constitution of 1875, there was no mention of it whatever. Today, the situation is altogether different. Referred to always as the presidency of the council (of ministers), it not only has been "constitutionalized" by the fundamental law of 1946, but is placed in a greatly altered position in relation to the ministry as a whole, to the president of the Republic, and necessarily also to Parliament. The president of the council, asserted the Constitutional Commission's reporter to the second National Constituent Assembly in 1946, "has become a prime minister in the English sense." [1] Actually, he has become even more than that—"a head of the government," with powers at some points considerably transcending those of the British ministerial chief. The "government" no longer consists, in a general sort of way, of the president of the Republic and the ministers, but much more precisely of (1) the president of the council of ministers and (2) the council of ministers, as separate elements, with functions concentrated upon the former at the expense of the other ministers on the one hand and of the president of the Republic on the other. The latter dignitary still has a place in the general system, but he has lost much; and nearly everything lost has been transferred to the head of the ministry. So it comes about that, in summary, the president of the council is now independently charged with (1) proposing legislation to the chambers (a function no longer enjoyed by either the president of the Republic or the ministry as a whole or any single minister, though of course a bill presented by the president of the council may actually have

[1] J. Laferrière, *Manuel de droit constitutionnel* (2nd ed., Paris, 1947), 1075.

originated with a minister); (2) independently appointing all civil and military officials except where, as in the case of judges, the power has been left nominally to the president of the Republic; (3) directing the armed forces and coördinating all measures for defense, although with the president of the Republic bearing the more or less nominal title of commander-in-chief; (4) seeing to the execution of all national laws, with as broad a mandate at this point as that of the president of the United States; (5) exercising the exceedingly important *pouvoir réglementaire* formerly possessed by the president of the Republic, *i.e.,* the power to issue edicts prescribing rules and regulations supplementing the laws and assuring their enforcement; and finally (6) exercising numerous powers of a miscellaneous character—declaring a state of siege, removing mayors of communes, dissolving communal councils, and others—formerly belonging to the president of the Republic on the basis of grants anterior to the constitution of 1875 but never revoked. The point need not be labored that under the new constitutional system the president of the council has become a very superior sort of official, with powers and functions comparable in many interesting ways to those of the president of the United States.

3. Relations of Government and Parliament. As has appeared in an earlier chapter, the relations between ministry and Parliament gave rise to many of the difficulties and weaknesses characteristic of the Third Republic; [1] and in attempting to regularize and stabilize these relations, the new constitution introduces some further significant changes. To begin with, while ministers are declared responsible in accordance with a formula substantially the same as that laid down in the constitution of 1875 ("collectively for the general policy of the government and individually for their personal acts"), their responsibility is no longer to two chambers but only to one, the National Assembly;[2] and thus disappears an anomaly of the old system which caused no end of confusion and trouble. In the second place, while familiar parliamentary devices for enforcing responsibility—investigations, questions, interpellations, votes of no confidence, votes of censure—continue, some are subject to new limitations. Inquiries or investigations may still be undertaken

[1] See Chap. xxi above.
[2] Art. 48.

through the medium of general or special committees, but only in the National Assembly; the Council of the Republic has laid claim to an equal right in the matter, but apparently without justification. Questioning of ministers, either orally or in writing, is still admissible, and in both chambers, with only minor changes of procedure; and thus far the right, especially of oral questioning, has been exercised vigorously in both houses. The special device of interpellation continues also, though in the National Assembly alone, and shorn of some of its terrors. Moreover, two easily available ways are expressly provided for bringing tension between ministry and National Assembly to a test and for compelling a ministry to resign if the Assembly so ordains. On the one hand, the president of the council (and he alone, in the name of the council, though only after the group has discussed the matter) may demand of the legislative body a vote of confidence. The Assembly may not vote until after a day of reflection, and then only by roll-call in open session. If, however, when the vote is taken a motion asserting confidence is supported by anything less than a majority of the Assembly's total membership, the ministry must resign. On the other hand, the National Assembly may itself take the initiative; and this it may do by a vote of censure, which also, if supported, after a day for "cooling off," by an absolute majority on roll-call vote, accomplishes the ministry's overthrow.[1] It was remarked above that the device of interpellation has been shorn of some of its terrors for ministers; and in a sense this is true, because an interpellation no longer culminates in a vote on returning to "the order of the day" which used to hurl many a ministry to the ground. The gain, however, is perhaps only illusory, because the "order of the day" technique has merely given way to that of vote of censure. On the question of whether a ministry, balked by the Assembly on a matter considered vital to government policy, is entitled to resign, the constitution is silent; and differences of opinion have existed. The proper conclusion, however, would seem to be that a ministry may resign at any time it desires; otherwise it would tend to become merely an involuntary servant of the Assembly.

4. Dissolutions. A ministry may be forced out by a parliamentary vote of no confidence, by a vote of censure, or in effect by mere obstruction. What about the reverse side of the picture—parlia-

[1] Arts. 49-50.

mentary dissolution? Under the constitution of 1875, this well-known device of cabinet systems was of considerable interest, but little practical importance. The president of the Republic might dissolve the Chamber of Deputies (with new elections following in two months), provided the Senate agreed. But with an initial dissolution (in 1877) bringing the practice into bad repute, nothing farther ever happened; and for two generations complete disuse of the constitution's provision—leaving all executive-legislative crises to be resolved solely by resignation of the ministers—aggravated the country's already unfortunate tendency to ministerial instability. In the constituent assemblies of 1946, the subject provoked wide differences of opinion, eventuating in somewhat strained and artificial provisions which very well may prove of no greater practical effect than the dissolution article of 1875. Dissolutions of the National Assembly there still may be, but under the following conditions only: (1) a newly elected Assembly may not be dissolved during its first 18 months; (2) if later as many as two ministerial crises involving votes of no confidence or censure occur within an 18-month period, a dissolution is in order, though optional; and (3) recourse to a dissolution can be determined upon only by the council of ministers, with the president of the Republic performing merely the formal act of issuing the duly countersigned decree. On the situation of the ministry during the interval between dissolution and the meeting of a new Assembly, there are also certain somewhat curious provisions. In general, the ministers remain, at least temporarily, at their posts. But the president of the council of ministers drops out, being replaced by the president of the National Assembly just dissolved, whom the president of the Republic must appoint to the vacant position; and the minister of the interior must give way to a new incumbent designated by the new president of the council along with any other new ministers needed.[1] Ironically, therefore, dissolution, presumed to be in the interest of ministerial stability, has as one of its first effects the replacement of one prime minister by another, even though only for the 20-30 day period until the ensuing elections. Notwithstanding that dissolution has as its sole object a

[1] Arts. 51-52. Those who devised these strange provisions must have been haunted by memories of the dissolution of 1877 and fearful lest ministers who had got rid of the Assembly would proceed to abuse their power as ministers on the former occasion had done.

fresh consultation with the voters, the French have always mistrusted it; and the general opinion is that it will play no more of a rôle under the new constitutional system than under the old.[1]

PROPOSALS FOR CHANGE

Considering the compromises which were made in order to secure a constitution for the Fourth Republic and the difficult problems which France has had to face since the liberation, it is not surprising that there has been widespread desire for change in the political system. Some have proposed a stronger executive; others want a more powerful upper chamber; still others no upper chamber at all. A modification which would make it more difficult to cast aside a premier and easier to dissolve the National Assembly would receive substantial support. Large numbers of alterations have been suggested in the election system. A few changes have been accomplished by law,[2] but at the time of this writing (1953) no constitutional modifications had been agreed upon, though the National Assembly passed and sent to the Council of the Republic a resolution on November 30, 1950, calling for the revision of articles 7, 9, 12, 14, 20, 22, 45, 49, 50, and 52 of the constitution and the cabinet declared its intention in May, 1953, of submitting a bill providing for the amendment of 11 articles. The main difficulty seems to be the diversity of attitude—almost everyone favors certain changes but there is much difference of opinion as to the exact modifications to be made. What the future holds it would take a bold prophet to predict.[3]

[1] The main central organs of government in the Fourth Republic have now been reviewed, leaving developments in the fields of justice and local government to be touched upon more appropriately in two later chapters. Somewhat casual allusion has been made to an elaborate section of the constitution (Arts. 60-82) under the heading of "the French Union"; but because this organization is rather peripheral to our present interest, the subject will not be treated here. Consisting of metropolitan France, the overseas departments (as in Algeria) and territories, and certain "associated territories and states," the Union has a sort of over-all government interlocked with that of France proper, yet technically distinct from it, and consisting mainly of (1) a president, who is the French president *ex officio*, (2) a High Council, composed of "delegates" of the French government and representatives of associated states, and (3) an Assembly, composed of not more than 240 members from France and the other constituent units, all elected (for six years) in various proportions by the respective legislative bodies. The Assembly began its activities with a brief session in December, 1947.

[2] For example, in the election system for members of the National Assembly.

[3] For an excellent analysis of the general situation, see R. Pierce, "France Reopens the Constitutional Debate," *Amer. Polit. Sci. Rev.*, June, 1952.

CHAPTER XXV



FRENCH EXPERIENCE WITH POLITICAL PARTIES

THE MULTI-PARTY SYSTEM

Parties in the English-Speaking World. The English or American student who approaches the subject of French party politics must start by divesting himself of many preconceptions; for he is entering a world decidedly different from that which he has known—a world in which even the term "party" is sometimes given meanings as yet unfamiliar to him. As an Englishman or an American, he is accustomed to see the voters of a country divided more or less evenly between two (or perhaps three) major parties, each strong enough to gain control of the government from time to time, and, having gained it, to hold it for a period of years. Each of the parties has continuous national and local organization, with officers, committees, treasuries, platforms, publications, and what not; and the parties in the legislature are identical with, or at all events correspond closely to, those among the people outside. Each at election time selects or endorses candidates and gives them all possible assistance in winning at the polls; and, after such candidates have been elected, each expects from them loyal support of the principles and policies of the party as formulated by party conventions and leaders and in party caucuses. Whips keep the members in line in legislatures, and central offices, committees, and other agencies maintain morale and discipline among the rank and file throughout the country. The parties, furthermore, have existed for a long time—in some instances, for generations—and may be expected to endure for a good while to come. Though

taking different attitudes on numerous matters of public concern, they usually do not hold views diametrically opposed, but merely diverging in degree or emphasis. On many subjects, large and small, there often is no sharp clash; and on fundamentals such as the form, character, and general objectives of the system of government, there is likely to be no disagreement at all.

A Different Situation in France. For nearly all of these characteristics, there are no parallels in France. To begin with, instead of two or three significant parties, there usually are upwards of a dozen; the number at any given time depends quite a bit upon what the observer chooses to regard as a "party," and in any event does not long remain unchanged. Following from this, no one party ever gathers sufficient strength to command a majority in either branch of Parliament, or to form a ministry single-handedly; coalitions of at least three—often more—are invariably required. Such combinations are by their nature short-lived, and consequently often unable to pursue a program very far beyond its initial stages. Again, with but few exceptions, parties bear but little resemblance to those in English-speaking countries. Of nation-wide organization, there often is little—sometimes none at all—numerous members of Parliament being chosen by the constituencies less upon the strength of party labels than upon the individual records, backed by personal appeals and promises, of the candidates. Contrary, too, to the situation in English-speaking lands, there is sometimes complete and vehement disagreement on matters reaching to the very roots of the governmental system, including the perpetuation of republicanism itself. Finally, the pattern of parties in the truer sense is overlaid and crisscrossed with a network of ever-shifting parliamentary "groups," often called "parties" by courtesy, but frequently bearing little or no relation to the divisions (themselves nebulous enough) among the voters; in the Chamber of Deputies as it stood at the beginning of 1939, no fewer than 17 such *groupements* were officially recognized, all but six of the number having sprung into existence within the previous year and a half.[1] The opinion may be hazarded that the party system

[1] In the National Assembly of 1947 (the first under the Fourth Republic), there were nine groups having the minimum 14 members necessary to entitle their presidents, or chairmen, to places in the conference of presidents (see p. 531 above); but this does not account for all of the lesser ones. In the Council of the Republic at the same time, there were six groups with more than 11 members each.

is the most difficult phase of French public life for an Englishman or American to understand.

Reasons for the Multiplicity of French Parties. When one turns to inquire into the reasons for things being as they are in France, a fully satisfying explanation is not readily forthcoming. On the one hand, it is not a matter of racial or linguistic divergences such as have operated to multiply parties in various Central European states; for France, from these viewpoints, is exceptionally homogeneous. Nor is it, at least mainly, a matter of political immaturity. To be sure, a leading American writer, A. Lawrence Lowell, some decades ago, suggested that the French had not yet enjoyed self-government long enough to have learned the advantages of bi-partyism.[1] But the lapse of time since he wrote has seen parties increase rather than diminish in number; besides, one recalls that England, classic land of bi-partyism, came by the system, not as a result of long experience, but when parties themselves began, and without learning any "lesson" on the subject at all.[2]

Temperamental Factors. Several contributing factors are, however, not difficult to discern. The first is the power of theory in French politics. On occasion, the Frenchman can be as realistic and practical as anybody—for example, when called on to pay heavier taxes. But in his politics he tends to be theoretical; that is to say, having inherited or otherwise acquired a principle or an ideal, he holds out for it with a tenacity not so often encountered among Englishmen; and this makes it difficult for him to identify himself with a wide-sweeping political alignment which necessarily must be a product of compromise. Implicit in his devotion to abstract ideas is, of course, a high degree of individualism—manifest in every aspect of French life, but in none more than in politics. As an eminent Spaniard has remarked, politics is to the average Englishman or American a game, to be played normally by two opposing sides and —despite occasional appearances to the contrary, and even actual lapses—in a spirit of good humor and tolerance.[3] Taking for granted the necessity of cöoperation, one willingly subordinates his own convictions and preferences to party decisions and discipline. In France, it is otherwise. The typical voter refuses to allow others to do his

[1] *Governments and Parties in Continental Europe* (Boston, 1896), 106.
[2] See pp. 21-22 above.
[3] S. de Madariaga, *Englishmen, Frenchmen, and Spaniards* (New York, 1928), 158-159.

thinking for him, spurns the dictates of any group that presumes to try to control him, and rarely is found running with the pack. Politicians, too, are temperamental, prone to sudden enthusiasms and violent hatreds, and easily swayed to extremes in one direction or the other. For the Frenchman, politics is a battle (one may almost say a free-for-all fight), rather than a game.

Historical Factors. But political *morcellement* in France is not merely a matter of temperament. It is rooted also in history. Though the great bulk of Frenchmen are devoted to the republican régime, there are irreconcilables who still believe in, and would like to revive, monarchy. Prolonged and bitter struggle over the relations of church and state have left the nation divided into ardent Catholics, nominal Catholics (a very large proportion), and anti-clericals; and politics perennially takes on much color from the "religious question." The rise of industrialism has produced deep cleavages between capital and labor, reflected in the growth of socialism and trade unionism, and more recently of communism. Reaction against twentieth-century parliamentarism has found expression (particularly before the recent war) in varying forms of authoritarianism, associated chiefly with fascist programs. On many broad and fundamental issues, in short, individuals and groups assume the most varied and irreconcilable positions. Political disagreement is no mere matter of Right and Left; otherwise, we might look for a gradual shaking down of two opposing sets of political elements into two great parties. Clash of attitudes on all of the issues mentioned, besides many others, releases cross-currents of opinion that keep the scene perpetually agitated and frustrate nearly every tendency toward compromise and coagulation.

Other Factors. Still other causes of political pluralism and fluidity exist. One is the peculiarly close and personal relation of the deputy to his constituents, leading the former to assign to party ties a purely secondary importance, and certainly to have little regard for party discipline except when it happens to run on lines consistent with his supreme interest in serving the people back home on whom he depends for votes. Another factor, if one may judge by the experience of Great Britain with a reverse situation, is the disuse, under the Third Republic, of the power of parliamentary dissolution. If a deputy belonging to a group momentarily supporting a coalition government knows that failure to heed orders from his leaders may have the result of putting him to the trouble and expense of running for re-

election, he may think twice before casting a rebellious vote. As matters stood until of late at all events, the French deputy had little to lose by deserting his chiefs; it was they who, if matters came to the worst, would have to give way; the individual deputy might, indeed, profit from a reshuffling of the offices.[1] As still another factor, one may mention the practice of interpellation, which, contributing as it did in the past to the instability of ministries, used to add considerably to political confusion.[2] Finally may be noted, as a newer postwar factor, the rivalries injected by resistance elements which helped liberate the country from the Germans and the collaborating Vichy régime. From some of these elements, indeed, new parties sprang into being.[3]

Some Practical Consequences. Whatever weight is assigned to particular causes, there can be no doubt about several significant effects of the party situation referred to. In the first place, the volatile, kaleidoscopic nature of party politics makes it more difficult, by and large, to ascertain public opinion upon a given matter than in a country like England or the United States, where, notwithstanding frequent blurring of issues, elections often result in clear-cut popular decisions on questions on which two, or at the most three, great parties have taken differing positions. To be sure, the French people sometimes speak with an unmistakable voice; under the aegis of the Popular Front, a coalition of liberal elements formed in 1935 to defend the constitutional régime, they so spoke in 1936 in repudiation of fascist leagues and programs. As a rule, however, decisions are reached by ministers and Parliament, on lines largely of their own devising, rather than by the people directly, and one can be somewhat less certain how the electors would themselves decide, and by what majority, than in the case of English-speaking countries. In the second place, the multiplicity of political groups stimulated the

[1] As has appeared, the constitution of the Fourth Republic contemplates dissolutions, but under carefully guarded conditions; and there is no assurance that in practice the device will mean anything more than before 1940.

[2] As pointed out elsewhere, interpellations are now supposed to be less dangerous to a ministry. See p. 542 above.

[3] Professor Munro attaches a good deal of earlier importance also to a succession of "affairs" and scandals which have tended to accentuate personal, as opposed to fundamental, issues in politics. See *The Government of Europe* (3rd ed.), 509-515. Studies dealing with the complicated factors influencing the French party system include F. Goguel and G. Dupeux, *Sociologie electorale* (Paris, 1951), and F. Goguel, *Géographie des elections françaises* (Paris, 1951).

demand for proportional representation so persistently voiced during the last 30 years of the Third Republic whenever electoral procedures came under consideration, and met not only in the electoral law effective during 1919-27 but likewise in that under which the National Assembly (lower house) was at first chosen in the Fourth Republic. Next, it has had the effect, as already shown, of compelling practically all ministries to be coalitions, and of helping to produce ministerial instability, with all of its familiar disadvantages. Further, it slows up legislation and decisions upon policy, since little can be done except after long-considered compromise. When a given party is in power in Great Britain or Australia or Canada, it can map out a program, prepare measures for carrying it out, and procure reasonably prompt adoption of them by a legislature dominated by its supporters. No single party in France is ever so situated. In addition —and this is serious—there is an almost perpetual division of responsibility for what is done or not done. The Liberals can be held definitely responsible for the successes and failures of government in Great Britain in 1906-14,[1] the Conservatives for those in 1924-29. But who shall say that this party or that, this group of leaders or the other, had similarly clear and undivided responsibility for what happened in France in any comparable period in the last generation? Finally, the ineptitudes and failures of parliamentary life, from which in the past sprang much of the criticism of Parliament, and of representative government itself, and which certainly may not be overlooked in any appraisal of the causes of the fall of the Third Republic, are traceable in no small degree to the chaos of party politics, which indeed colors and gives tone to contemporary French government in nearly all of its phases.

Proposals for a Different System Fail. One will not be surprised to learn that amid the general unsettlement incident to World War II there were numerous proposals, and some efforts, looking to a drastically reconstructed party situation. In 1944-45, a good deal of interest was stirred by a scheme proposed by one of General De Gaulle's principal lieutenants under which, with the Communists isolated on the extreme left, the general mass of French people should be gathered into two major parties, one moderately socialist and the other Catholic and conservative, with control of the govern-

[1] Except, of course, as their policies and measures were frustrated by a Conservative House of Lords.

ment oscillating between the two, perchance at times attaining a certain equilibrium on a basis of coalition. Other people visualized a single broad *rassemblement,* excluding only the Communists on the one hand and the die-hard reactionaries on the other. And of course if the authoritarian Vichy régime had established itself permanently, it assuredly would have sought to enforce a one-party system like that in other totalitarian countries. As might have been anticipated, plans for a two- or three-party régime proved, at best, only wishful thinking. Except for the Communists and possibly the Socialists, the old parties were undeniably in a bad way. But to clear the wreckage and put an ordered and balanced party system in its place proved beyond all possibility of achievement. De Gaulle himself was inclined rather to encourage the revival of prewar parties and indeed the formation of new ones. And even proposals to get more regularity and order into party affairs by tightening up party discipline—as by requiring every deputy elected on a party ticket to join that party's group in Parliament and follow the party directives on penalty of losing his seat—fell of their own weight. When the constitution of the Fourth Republic went into operation (1946), party conditions carried over substantially as before (though with the list of existing parties considerably changed); and the constitution itself was barren of provisions on the subject.[1]

PARLIAMENTARY GROUPS

Nature. Coming now to a closer view of the situation under the Third Republic—and thus far persisting in essence under the Fourth —we may start with the group system as found in the parliamentary chambers, and afterwards pass to parties of the truer sort reaching down into the electorate and therefore functioning more or less extensively through the country; and so far as the group system is concerned, comment can be more concrete and assured if we take for illustration the former Chamber of Deputies, rather than its successor, the present National Assembly, in which, however, conditions are tending to become much the same except for the existence of a few larger and more stabilized groups. When, in former days, a newly chosen Chamber of Deputies met, one of the first things to be done

[1] On the regulatory "party statute" which the Socialist-M.R.P. majority sought in vain to write into the constitution as first drafted, see G. Wright, *The Reshaping of French Democracy,* 120-125. The plan finally collapsed under determined Communist opposition.

was, naturally, to elect officers and make up the standing committees. It would have surprised an uninitiated visitor from Great Britain or the United States, however, to be told that before these tasks could be proceeded with, the deputies must arrange themselves in formal and definitely labeled groups—this for the reason, if no other, that standing committees were made up from such groups. To be sure, most of the deputies had been elected in the *arrondissements* under one party label or another; and some of the parliamentary groups of which we are speaking bore regular party names and in personnel were substantially identical with party quotas in the Chamber. Party labels (if any) under which deputies had been chosen meant, however, in many cases, little or nothing. Once the members were assembled at the Palais Bourbon, most of them felt free to seek out congenial spirits, or to fall in behind a leader who was rounding up a following, and to inscribe themselves as members of one or another of various groups which neither in name nor in attitude corresponded to any recognizable party. All told, there might be as many as 15 or 20 groups (as indicated above, there were 17 at the beginning of 1939), some containing a mere handful of deputies, others as many as 100, or even more; and whether or not they adopted designations employing the term party (*e.g.*, Socialist party, Communist party), they became, to all intents and purposes, *parliamentary* parties, corresponding or not, as the case might be, to parties throughout the country. Joining a group, it may be added, was a voluntary act, and one might, if he chose, announce himself as *non-inscrit, i.e.,* as belonging to no group. A deputy doing this, however, could hope for a committee assignment only if he made a "declaration of understanding" with one of the groups.

Operations. Once formed, the groups were seated in the Chamber in the supposed order of their radicalism, with the ultra-conservatives on the right, the moderates in the center, and the radicals on the left. Too much significance was not, however, to be attached to a group's precise location, for especially the lesser ones often differed but slightly from their neighbors, and the fact that one sat farther to the right or the left than another did not necessarily mean that it was actually more conservative or more radical. To discern, indeed, the shades of opinion that separated some of the groups required, as Professor André Siegfried once remarked, "the subtlety of a theologian expounding the Athanasian creed"; certainly the

names employed gave no sure indication of the political attitudes sustained.

Each group had a "president," held conferences, and, in theory, functioned more or less like a parliamentary party at Westminster; and it was a combination, or *bloc,* formed from such groups that constituted the support upon which the ministry at any given time must depend. Poor enough support it naturally was. For not only might the *bloc* itself be rent asunder overnight, but as a rule the individual groups had little control over their members, and even less stability. After a group caucus had reached a decision, members were guided by it or not as they severally chose. The decision might have been to abstain from voting on a given question, but members could disregard it and perversely proceed to vote. It might have been to support a pending measure, but in the face of it they might vote the other way. They might, indeed, desert the group altogether. Not for them the iron rule of whips so familiar at Westminster! Originally, it was not at all unusual for a deputy to belong to two or more groups simultaneously. In later days, this was less common, yet adherents rarely took their membership very seriously. The individualism which they displayed when seeking election carried over into the Chamber, and they thought little of breaking with the group of their initial choice and joining another. As a consequence, groups were all of the time dissolving and re-forming, being—to quote Siegfried again —"as uncertain and changeable as the clouds." [1]

PARTIES IN THE TRUER SENSE

Embracing simply members of a given chamber, the groups just described were, in the days of the Third Republic, and under the Fourth Republic similar ones now are, formed only to function in parliamentary activities in the respective bodies. They might, and still may, of themselves, constitute nothing more than little localized legislative parties. On the other hand, they might, and still may, be identified with larger, more or less country-wide political organizations constituting parties in the broader and truer sense; and it is

[1] Groups operated in somewhat the same way in the Senate, but usually were fewer. The constitution of the Fourth Republic assumes similar group organization in the National Assembly, and even in the Council of the Republic; and, as already indicated, the system has been developing in both bodies. Election of the bureau of officers in each chamber is, indeed, required to be "by proportional representation of party groups." Art. 11.

these more imposing organizations—in two or three instances now approaching the English and American concept of parties—that must next be brought into the picture.

Some General Aspects. Looking over the party list at any given time (and it never long remains the same), one finds that although to some extent reflecting the country's rich historical background of republicanism, imperialism, syndicalism, socialism, and clericalism, it has of late contained no name of any party antedating the present century; and not only so, but that at least half of the present number have arisen only in the period since World War II. Even where parties can point to a life of more than a few years, they usually have undergone reorganizations or formed new connections amounting almost to a new birth. Another thing that attracts attention is the fondness of the parties for names suggesting liberal or leftist programs. Indeed, if one relied simply upon the appellations which French parties adopt, he might suppose that there are no conservative or rightist parties at all; in not a single instance does the term "conservative" appear. Most Frenchmen cherish an instinctive antipathy toward anything overtly suggesting anti-republicanism; and those not so minded find it inexpedient to flaunt a name or title of that tenor. Consequently, present (or recent) rightist parties bear such names as National Republicans, Republican Party of Liberty, and Democratic Alliance. Liberal parties commonly bring into their names such terms as "Socialist," "Popular," and "Radical"; and so there are (or have been) Socialists, Radical Socialists, Republican Socialists, and Popular Republican Movement. Parties on the extreme left, however, do not hesitate to assume the appellation "Communist."

Parties of the Right: 1. The Republican Party of Liberty. For purposes of the present discussion, it must suffice to call attention briefly to some half-dozen parties now (1952-1953) looming most prominently on the political landscape—although one or two of the number have declined sharply since former days of prosperity and new ones are capable of projecting themselves into notice almost over night. Starting on the right, one first encounters two parties of very recent origin known as the Republican Party of Liberty and the Rally (or *Réunion*) of the French People. The Republican Party of Liberty arose in 1945 through the merging of four smaller rightist parties known as the Republican Unity Party, the Republican Fed-

eration, the Republican Renovation, and the Democratic Alliance. Some of these constituent elements formerly contained the most truly conservative people in the country (unless any lingering fascists be considered such), including wealthy aristocrats, leaders in industry and finance, clericals who have resigned themselves to the republican régime, and other inveterate opponents of socialism and radicalism. The Democratic Alliance, formed in 1920 and reorganized in 1936, approached rather the character of a center party, drawing support mainly from the industrial and commercial middle classes, and favoring secularism and religious freedom, economic liberty, moderate decentralization of administration, and social reform of not too drastic a nature, but certainly not socialism. As would be expected, the consolidated Republican Party of Liberty defends the capitalist system, opposes current tendencies to socialization, and in foreign policy is strongly nationalistic.

2. Rally of the French People. The Rally (or *Réunion*) of the French people is a party organized still more recently, and largely under the eye of General De Gaulle. The personality of this volatile leader is, indeed, its principal rallying point. Most of its adherents belong to the middle and well-to-do classes and are center or right center, if not positively conservative; in fact, charges and countercharges have been focused upon the R.F.P.'s alleged objective of moving away from a democratic system to a one-man government of totalitarian type. In the first parliamentary election in which it participated—the election of 269 members of the Council of the Republic in 1948—it won some 40 per cent of the seats. In 1951, it elected 117 members of the National Assembly, taking first place; however, in 1952, serious internal dissension led some 30 of the deputies to leave the party. After a sharp drop of support in the 1953 municipal elections, General De Gaulle announced its withdrawal from the parliamentary scene if not from politics.

Center Parties: 1. Radical and Radical Socialist Party. In a more definitely central position stand also two parties, one older and one newer, but both, for the time being at least, in apparent decline. During long periods between the two wars, the Radical and Radical Socialist party (dating from 1901), with a large popular following and relatively effective organization throughout the country, was a pivotal party whose point of view more commonly dominated the successive governments at Paris than did that of any other political

element. Once more, names mean little; for, speaking broadly, Radicals are not radicals and Radical-Socialists are neither radicals nor socialists, even though on occasion both elements have coöperated with socialist groups, as for example in the Popular Front of the middle thirties, to be mentioned again presently. Supported predominantly by small farmers, retail tradesmen, and other middle-class elements, the party is critical of various features of the existing social and economic order, yet unprepared to subscribe to socialist programs of action; and on account of its opportunism and tendency to coöperate with the German occupation during the war, its hostility to nationalization, and its stubborn adherence to the constitution of 1875 as against the new instrument finally adopted in 1946, it has lost heavily. In the national elections of 1946 and 1951 it polled somewhat in excess of two million votes or hardly more than 10 per cent, although in the municipal elections it has made a better showing.

2. Mouvement Républicaine Populaire. Formed in the early postwar period, the *Mouvement Républicaine Populaire* [M.R.P.] shows occasional mildly leftist (essentially socialist) inclinations, but favors only limited nationalization and on the maintenance of French colonial possessions and power takes a stronger stand than either the Socialists or the Communists. Enlisting numerous Catholics and moderates who were at least in the center if not often pretty well to the right, the party for a time grew so fast as to be considered the most important in the country. In the elections of June 2, 1946, it polled the largest popular vote and received 165 seats in the second National Constituent Assembly; in those of the following November for members of the first National Assembly under the new constitution, its popular vote fell off somewhat, yet yielded 160 seats. After so auspicious a beginning, however, the party encountered difficulties. Its membership lacked cohesion; its program could not be clearly focussed; and widespread criticism developed because of its opportunism and failure to bring about results in the government. The municipal elections of 1947 evidenced a sharp decline, and in the National Assembly elections of 1951 it polled less than half of the votes achieved in 1946, electing 85 deputies.

Leftist Parties: 1. Socialists. Turning to parties definitely on the left, one finds two of major rank, *i.e.*, the Socialists and the Communists, and at least two or three of lesser importance—although only the larger ones need be considered here. Socialists in France in

the past hundred years have been of many stripes, and, as we have seen, not all elements calling themselves socialist have actually been such. In 1905, various socialist groups were brought together under the name of Unified Socialists; and the large and important Socialist party of later days represented substantially the same combination. Standing firmly for constitutional methods, the party now advocates abolition of indirect consumption taxes, the substitution of heavier levies on wealth, advanced labor laws, agrarian legislation in the interest of small owners, tenants, and farm laborers, the nationalization of large industries, and the extension of state monopolies generally. For a time after the elections of 1946, the party held more seats in the Chamber of Deputies than any other, and as recently as 1945 its 139 seats in the first National Constituent Assembly placed it second (on the left) only to the Communists. In later years, however, the party was forced into a position between the M.R.P. and the Communists resulting in heavy loss to the former of members fearing Communist collaboration and, on the other hand, to the Communists of members dissatisfied with what they considered to have become only a party of compromise; and in 1951 the Socialist quota in the National Assembly was only 104.

2. Communists. At the extreme left is found the Communist party, dating from 1920 (when a Communist wing split off from the Unified Socialists), and later forming the French section of the Third International. For years, the party pursued rapidly shifting tactics, now maintaining a scornful aloofness, now voting in the Chamber with bourgeois groups (even the most conservative) as a means of embarrassing harassed cabinets. On the eve of World War II (*i.e.*, in 1939), the party held 72 seats in the Chamber of Deputies and two in the Senate and dominated the councils of no fewer than 800 communes. As soon as the war began, over half of the Communist deputies were jailed on the ground of disloyalty, all were excluded from the Chamber, similar exclusion from local governments was ordered, and finally the party itself was dissolved by government decree. Merely driven underground, however, the party lived on; and, later reëmerging, it became a leading factor in wartime resistance to the Vichy régime and the German occupation. With the war over, the party—fast growing in numbers, especially at the expense of the Socialists, and also among the rural peasantry—was in a position to capitalize on its services to the country, and in the elections to the

first and second National Constituent Assemblies captured large numbers of seats (159 and 150, respectively), with an even more impressive showing made in local elections. In combination with minor affiliated groups, the party held, indeed, in 1946 a total of 182 seats (the largest *bloc*) in the National Assembly, but this was reduced in 1951 to 103 seats, though its popular vote fell only about 10 per cent. Loudly asserting its democratic and national character, the party has made frequent overtures to the Socialists looking to a combined labor party.[1] But though public confidence was at one time strengthened by the impression that all connections with Moscow had been severed, events demonstrated this to be untrue, and the Socialists, notwithstanding continuing losses to the Communist ranks, have chosen to remain aloof. After all is said and done, the Communists have one, and only one, clear goal: to capture full control of the state and on the ruins of the Fourth Republic erect an ultra-leftist totalitarian régime.

"BLOCS" AND "FRONTS"

1. *Bloc National* and *Cartel des Gauches.* As if parliamentary groups and more or less nation-wide parties did not present a sufficiently complicated picture, a third set of political affiliations, on still a different level, forces itself upon the attention, *i.e.*, the great coalitions or *blocs* which from time to time contend for mastery at Paris. Good illustrations are afforded by the *Bloc National* and the *Cartel des Gauches,* which contended sharply with one another some 20 years ago, and by the *Rassemblement des Gauches* and the Third Force of more recent days. Ostensibly a continuation of the *union sacrée* which for a time during World War I embraced substantially all political elements, the *Bloc National* was a combination of bourgeois parties and groups actuated by a sense of solidarity on the towering issues of the early post-war period, and especially by hostility to both the domestic and international programs of the Unified Socialists. Rallying the forces of half a dozen supporting parties, it routed the Socialists in the election of 1919 and gave France one of the most conservative Chambers in her history. Taking a leaf out of the conservative book, the Unified Socialists thereupon built up an equally imposing *Cartel des Gauches*, which, in the elections of 1924,

[1] For an excellent discussion of the rôle of labor in French politics, see H. W. Ehrmann, *French Labor from Popular Front to Liberation* (New York, 1947).

completely turned the tables on the rival coalition. One familiar with the volatile nature of French politics would not, however, have expected the competing alignments to endure; and, truly enough, both the *Bloc National* and the *Cartel des Gauches* presently dissolved into their original elements.

2. Popular Front. The "Popular Front" of later fame was a gigantic coalition born of the fear of fascism, and, unlike some previous coalitions, intended not merely for electoral purposes, but also to govern. As early as 1927, a vigorous fascist "political league," the *Croix de Feu,* made its appearance, to be followed by other similar organizations in such numbers as to suggest that a people manifestly disheartened by the failure of parliamentary government to cope with urgent problems of the time might quite possibly surrender almost over night to the fascist ideology. To build a bulwark against such conquest, the great parties of the Left—chiefly the Radicals and Radical-Socialists, the Socialists, and the Communists—drew together in 1935 in a *rassemblement populaire*, or Popular Front, which first engineered a considerable amount of progressive legislation on lines of a French "New Deal," and, afterwards, in the elections of 1936, won a smashing victory, gaining a clear majority of 165 in the Chamber, with the Socialists appearing for the first time in their history as the largest voting group. Once more, however, the precarious nature of coalitions formed from essentially incompatible political elements was demonstrated; and although three successive ministries rested upon a Popular Front basis, all proved to be quite short-lived.

3. Rassemblement des Gauches. The new electoral law of the Fourth Republic in 1946 made it difficult for smaller parties to secure seats in the National Assembly, by requiring all voting to be for party lists rather than for individual candidates, and especially by making it necessary for a party, in order to win any seats at all, to contest at least 20 constituencies and poll at least five per cent of the total nation-wide vote. To meet this situation, the rapidly declining Radical and Radical Socialist party and a minor Democratic and Socialist Union of Resistance (U.D.S.R.)—the latter itself a coalition of Socialist and non-Communist resistance groups—pooled their electoral strength by forming a *Rassemblement des Gauches,* which for practical purposes became a new party, although technically only a new *bloc.*

4. Third Force. The most significant coalition during the period immediately following the establishment of the Fourth Republic was known as the "Third Force." Made up of Popular Republicans, Radical Socialists, and Socialists, and following a middle-of-the-road course, this group of parties rather precariously kept a government going down to 1952.

PARTY ORGANIZATION

Variable Machinery. It is difficult to gain any very clear picture of the machinery of political parties in France because there is so much variation. Some parties are largely one-man affairs; others may cover a certain geographical area; while a few attempt to maintain elaborate organizations resembling those found in the United States and Great Britain. Many parties are scarcely more than political clubs with headquarters in Paris: they lack any very effective party machinery and do not even attempt to recruit widespread membership among the voters. All that they hope for is that those sympathizing with their programs or antipathies will support them at election time; and inasmuch as party loyalty in France is a very fluid and adaptable affair, such hope sometimes materializes.[1]

Internal Organization. The several parties which attempt to maintain nation-wide organization include the *Réunion* of the French People, the Popular Republican Movement, the Communists, the Radical Socialists, and the Socialists. In the various communes, these parties usually have local committees which frequently, but certainly not always, have considerable autonomy but are federated into department committees. Department committees choose representatives to a national party congress, which meets regularly once a year and may be called into special session if occasion demands. The national congress selects every year an executive committee on which party members of Parliament and the officers of the local federations hold *ex officio* membership; and this committee acts for the congress between sessions. This executive committee, however, is so large that it does not function too effectively, and consequently it commonly appoints a small "bureau" to attend to the routine conduct of party business and have charge of the headquarters in Paris. A president,

[1] For a general picture of party machinery in France, see R. Valeur, *French Government and Politics*, Chap. v.

chosen to preside over the bureau, serves as head of the party throughout the country.

As might be expected, the central congress, or conference, adopts the party constitution and by-laws, discusses the general program of the party, and finally adopts what corresponds to a platform in the United States; and more signficance ordinarily attaches to party programs than in the latter country, where they usually attempt to straddle the fence. The Socialists and Communists base their organizations on local cells and in general display greater cohesiveness than the other parties.

Party Membership. One of the most important differences between French parties and parties in the United States may be said to lie in the fact that the rank and file of the citizens of France do not identify themselves with any party. Party membership in France is open to those who pay a nominal sum—a membership card may ordinarily be secured from a local committee for a few francs—but for the most part only those who correspond to the precinct committeemen, ward committeemen, county committeemen, and party stalwarts in the United States take out membership.[1] Unless one is to be active in party affairs, the psychology of the Frenchman poses the query as to why one should belong to a party at all and pay out dues. French parties extend membership privileges, too, not only to people but to newspapers. The parties to the left, especially the Socialists and Communists, place greater emphasis on individual membership; and rather large staffs of full-time workers are maintained to cultivate those sections of the populace regarded as promising material. Newspapers, circulars, placards, and even books are printed in considerable quantities to be used in recruiting new members and keeping up enthusiasm among old ones.

Party Finance. With parties so numerous, it might be expected that huge sums of money would be raised for campaign purposes; but French parties, except perhaps the Communists and latterly the *Réunion* of the French People, ordinarily have to get along on distinctly modest budgets. The fact that memberships are small and dues modest means that no great sums can be expected from that source. Some income is realized from the sale of literature; however, the costs ordinarily eat up most of the receipts. Occasionally

[1] A facsimile of an application for membership in one of the parties is reproduced in W. E. Rappard *et al., Source Book,* Pt. ii, 27.

wealthy men will make generous donations; but this is a much less common occurrence than in the United States, where the majority party can suitably reward its contributors with appointments, contracts, or other favors because it controls the government. With no single party strong enough to dominate the government of France, such rewards can rarely be guaranteed. At times, associations of farmers or business men will give comparatively sizable sums to a party for the promotion of some program favorable to the interests concerned.

In general, French psychology dictates that candidates for public office shall pay the expenses of campaigning, and consequently parties as such are freed from much of the burden which they assume in the United States and Great Britain. In prewar days, Professor Pollock estimated that an average candidate for one of the legislative chambers spent between 40,000 and 50,000 francs ($1,000 to $1,200 in American currency) during his campaign.[1] Considering the number of parties and the consequently large number of candidates, this may mean a total of something like the equivalent of three million dollars in the currency of the United States.

[1] J. K. Pollock, *Money and Politics Abroad* (New York, 1932), 284 ff. On French party phenomena in general, see A. Siegfried, *France; A Study in Nationality* (New Haven, 1930); A. Guérard, *The France of Tomorrow* (Cambridge, Mass., 1942); D. M. Pickles, *The French Political Scene* (London, 1938); G. Wright, *The Reshaping of French Democracy* (New York, 1948); E. M. Earle [ed.], *Modern France: Problems of the Third and Fourth Republics* (Princeton, N. J., 1951); D. Thomson, *Democracy in France* (rev. ed., New York, 1952); M. Duverger, *Les partis politique* (Paris, 1952); F. Goguel, *France under the Fourth Republic* (Ithaca, N. Y., 1952); and F. Goguel, *Geographie des élections françaises de 1870 à 1951* (Paris, 1951); A full history of French political parties under the Third Republic (to 1932) is to be found in F. Goguel, *La politique des partis sous la IIIe République* (2 vols., Paris, 1946). For studies dealing with a single political group, see M. Einaudi and others, *Communism in Western Europe* (Ithaca, N. Y., 1951); A. Rossi, *A Communist Party in Action: An Account of the Organization and Operations in France* (New Haven, 1949); G. C. Cook, "De Gaulle and the R.F.P.," *Polit. Sci. Quart.*, Sept., 1950; H. W. Ehrmann, "French Views on Communism," *World Politics*, Oct., 1950; A. Malraux and J. Burnham, *The Case for De Gaulle* (New York, 1948); and V. Van Dyke, "The Position and Prospects of the Communists in France," *Polit. Sci. Quart.*, March, 1948

CHAPTER XXVI

LAW AND JUSTICE

SOURCES AND NATURE OF FRENCH LAW

1. The Roman Element. For the origins of French law, it is necessary to look far into the past. To start with, it must be recalled that the country which we know as France formed at one time—under the name of Gaul—a segment of the far-flung Roman Empire. The same was true of England northward to the Firth of Forth. But whereas in the latter country there was practically no survival of Roman institutions and culture from the days when the Caesars ruled, so that any ultimate influence of Rome upon legal concepts and principles must be traced rather to a belated and not very powerful infiltration from the Continent during the Middle Ages, in France the law of Rome, once planted, was never uprooted and has persisted as a basic influence throughout all later times. Naturally, it was in the southern and more thoroughly Romanized part of the country—speaking broadly, the region south of the Loire—that the legal system projected from the Tiber took firmest hold; and for centuries after political control collapsed under the impact of the German invasions, that area was known as the *pays de droit écrit,* or land of the written (*i.e.,* Roman) law. But in the center and north, likewise, the Roman tradition never wholly died out; and when, less than a century and a half ago, the country arrived at a single, uniform legal system, the Roman heritage supplied much of the foundation, framework, and ornamentation of the structure.

2. Custom. Meanwhile, however, in the Middle Ages the field was taken more largely by another sort of law, *i.e.,* custom. France became the classic land of feudalism, and all over the country, par-

ticularly in the north, arose regional or local systems of legal usage, sprung in part from ancient Germanic practices, but largely evolved on the spot by officials to whom it fell to make seigniorial rules and administer seigniorial justice. To a degree, the *coutumes* (customs) of petty jurisdictions tended to merge into bodies of law having force throughout entire provinces or other extended areas. But never in mediaeval or earlier modern times were they welded into a single nation-wide system comparable to the English common law. As late as the middle of the eighteenth century, Voltaire remarked that a traveller in his country had to change laws almost as often as he changed horses; and truly enough, considering that, in addition to some 60 *coutumes générales,* each applying to a province or other large area, there were about 300 *coutumes locales,* each in force in a single city or village.

Originally, the customary law was unwritten. In time, however, jurists began making up collections of it for different regions—*livres coutumiers,* they were called—and judges' clerks sometimes compiled registers of notable decisions. By the sixteenth century, the customs applying throughout particular provinces or regions of the *pays coutumiers* had in most cases been formally recorded. Indeed, codification became a matter of official action. Drafts prepared by the king's judicial agents in the districts were submitted to the central government, referred back for adoption by provincial or other assemblies, and finally proclaimed by royal commissions; after which the texts could legally be altered only by the same procedure. From first to last, however, there was no consolidation of the different systems into one.

Royal Legislation. To all this was added not only a luxuriant growth of canon, or ecclesiastical, law, but also, after the fifteenth century, a considerable amount of royal legislation in the form of ordinances or edicts applying sometimes to the entire country, sometimes to specified sections only. Before such edicts could take effect, they must be "registered" by provincial judicial bodies known as *parlements.*[1] But this set up no serious impediment, because there was a well-known procedure by which the king, in case of opposition or delay, could force registration in a "bed of justice." In days before 1614, when the Estates General was still convoked from time to time, a meeting was likely to be followed by the promulgation of a *grande*

[1] In earlier times, the term always denoted, not a legislature. but a court.

ordonnance covering matters on which the estates had urged or demanded that something be done; and a good deal of new law, as well as much revision of older law, arose in this way. Even after the Estates General ceased to meet, *grandes ordonnances* continued to make their appearance, chiefly in the form of codifications of particular branches of law. All in all, the country by 1789 had a rather imposing superstructure of royally made or codified law, extending throughout its length and breadth. The great mass of law underneath was, however, still regional or local.

The Revolution and the Napoleonic Codes. Recognizing that an integrated, uniform system of law is a prime requisite of national unity, and convinced that a great part of the country's legal heritage needed reworking to fit it for a liberalized society, the early Revolutionary assemblies addressed themselves to displacing regional systems by a nation-wide system, and to restating legal rules and principles on lines compatible with the new political and social order. One body of customs after another was swept away; ordinances were overhauled or rescinded; new and uniform laws, in the form of statutes, were enacted on land tenure, inheritance, marriage and divorce, criminal procedure, and other subjects. It was thought desirable, too, that the law, both new and old, be assembled in systematic codes; and though pressed by other and even more urgent duties, the Constituent Assembly, and in its turn the Convention, got this work also under way. The first of these two bodies gave the country, in 1791, its first penal code; the second, four years later, a new code of criminal procedure. Especially was there demand for a civil code. Many of the *cahiers* of 1789 urged that one be promulgated, and the constitution of 1791 contained a definite pledge on the subject. To rework, round out, and consolidate so vast a branch of law was, however, a herculean task; and although each of the early assemblies tried its hand at the job, no great headway was made until Napoleon turned his attention to it.

The Corsican is best known to the world as a soldier. He was, however, a statesman and administrator of the first order, and from few of his exploits did he derive more satisfaction than from seeing through to a finish the weighty enterprise of revising and codifying the entire expanse of French jurisprudence. Entrusting completion of the civil code to a specially appointed commission of four jurists, he arranged for difficult and disputed matters to be thrashed out by

a body of experts known as the Council of State, over whose deliberations he often presided in person; and on March 31, 1804—less than two months before the Empire was proclaimed—the new *Code Civil des Français* was promulgated in its entirety.[1] Afterwards, in 1807, came a code of civil procedure; in 1808, a code of commerce; in 1811, a code of criminal procedure and penal code—all based to a considerable degree upon codes of Bourbon days, but incorporating such later rules and practices as seemed worthy of preservation and, in addition (as in the case also of the Civil Code), introducing quite a bit of new law as well. Love of symmetry and order inclines the French to a greater fondness for comprehensive codes of law than has ever been shown by English-speaking peoples. The Revolutionary and Napoleonic codifications were, however, made a practical necessity by swift and sweeping changes in the existing legal order such as no English-speaking country has ever experienced; in a period when old regional systems were being supplanted wholesale, the only way of preventing chaos was to set out the new nation-wide system in full, orderly, and explicit form. To be sure, some American states and certain British dominions have developed civil codes, criminal codes, and codes of civil and criminal procedure. As a rule, however, these codes are less imposing than the French; while Great Britain herself has undertaken codification in only a still more limited way. In Continental Europe, in Latin America, and in Japan, the French codes have had profound influence. The Civil Code, for example, will be found in Belgium practically intact, in Germany, it was given up by Baden and the Rhine provinces only when a nation-wide civil code was promulgated in 1900, and indeed left its impress deeply on that code; the civil law of the Netherlands, Italy, Spain, Portugal, Greece, Egypt, and most of the Latin American states is patterned closely upon it.[2]

French Law Today. The law of France today consists primarily of the Napoleonic codes as amended and broadened during the

[1] The 2,811 articles of the code dealt with civil status, marriage, divorce, domicile, guardianship, ownership, wills, contracts, torts, and scores of other matters. Roman influence was perceptible throughout, especially in the paternalistic slant of many provisions.

[2] S. Amos, "The *Code Napoléon* and the Modern World," *Jour. Compar. Legis. and Internat. Law*, Nov., 1928; *Le code civil livre du centenaire* (Paris, 1904)—a volume of essays by French and other lawyers. When, some years ago, the founder of a new dynasty in Persia telegraphed to Paris for the *Code Napoléon*, a boxful of commentaries, and a commission of French jurists, he was doing in effect only what many a creator of a new régime, the world over, had done before him.

nearly a century and a half since they were promulgated. With the passage of time, the original texts naturally grew out of date; new conditions and needs, especially those flowing from increasing industrialization and other economic changes, rendered some provisions obsolete and called for the modification or addition of others. The codes, however, were never discarded; rather, they have simply been revised, supplemented, and extended. As early as 1832, the code of criminal procedure and the penal code—as also that part of the code of commerce pertaining to bankruptcy—required reworking. Again, under the Second Empire the criminal and penal law was remodelled to bring it into line with newer and more humane principles. In 1897, important changes were made in criminal procedure, and in 1904 advantage was taken of a celebration of the centennial of the Civil Code to give that monumental *corpus* of law an extensive overhauling. On all of these occasions, and many others not requiring mention, opportunity was seized to work into the appropriate code whatever new law on the given subject had accumulated since the last revision; and thus the codes are maintained as no mere museums of legal rules and principles, but as living, dynamic organisms.

French law has, therefore, two or three outstanding characteristics. In contrast with its condition in the eighteenth century, it is, in the first place, a uniform system, applying equally from the Belgian border to the Mediterranean. In the second place, in contrast with the law of English-speaking lands, it is a written law. There is, of course, much written law in Great Britain and the United States. Nevertheless, in both countries that great mass of jurisprudence known as the common law is largely unwritten—at all events, for the most part not assembled in formal codes. In France, there is virtually no law that cannot be read in the books. In the third place, French law, although at many points rooted in custom, is enacted or statutory law. In Britain, the common law, essentially judge-made, is, as we have seen, basic, and statute, although growing in amount, hardly does more than fill up gaps. But in France, nearly all of the law is to be found in the great codes and their revisions, formally voted by some constituted authority, and in such acts of Parliament as have not yet attached themselves to any code. It is true that in deciding cases French judges have some regard for precedents and to a limited extent bend the law in this direction or that, thereby at least partly determining what the law shall be. The theory of French

jurisprudence, however—totally different from the British—is that judges will decide each and every case on its independent merits, applying the law as it comes to them from the legislature without addition or subtraction, and aiming only at justice in the particular case, not at conformity with precedent. And the theory is so far realized in practice that no general rule of *stare decisis* has ever developed; such law as emanates simply from the court-room after the manner of the English common law is, even though by no means negligible, at all events incidental.

From all these things it results that French law has the undoubted merits of definiteness, accessibility, unity, and symmetry. Nobody need have much doubt about what the law is. Indeed, it has been spun out in such detail that Parliament commonly finds itself considerably less pressed with legislative work than do the legislatures of other countries. Such amplitude and symmetry, however, carry somewhat of a penalty, *i.e.*, a certain sacrifice of flexibility; and complaint is sometimes heard that it is more difficult to keep the law abreast of social and economic developments and of changing public attitudes than across the Channel, where law is more elastic and grows by less fixed and formal processes.[1]

DEVELOPMENT OF THE JUDICIARY

The Situation before 1789. No part of the French governmental system called more loudly for reform when the Estates General met in 1789 than did the judiciary. The country had no lack of courts, but they were not linked up in an integrated system, and the justice dispensed in them too often left a good deal to be desired. In many parts of the land, to be sure, courts had been established under direct authority of the king. The *parlement* of Paris was a vigorous court of last resort, and something like a dozen provincial *parlements* patterned on it rendered important service in their respective localities. Seigniorial and other largely independent local tribunals surviving from the Middle Ages, however, confused the situation, as did also numerous ecclesiastical courts. Speaking generally, too, the level of judicial capacity and integrity was low. Judgeships and other offices having to do with justice were often turned over by the government to the highest bidder; incumbents

[1] J. Brissaud, *History of French Private Law*, trans. by R. Howell (Boston, 1912); J. Parker, *Some Aspects of French Law* (New York, 1928).

sometimes sold their posts to other people; not a few judgeships became to all intents and purposes hereditary. Having paid well for their positions, judges were prone to recoup themselves by accepting gifts, often in money, from parties to suits.

Revolutionary Reforms. The Constituent Assembly lost little time in deciding to reconstruct the judicial system along with the law itself; and it so well succeeded that few changes of major significance have since been found necessary. First of all, it set up a system of administrative courts to handle suits arising from dissatisfaction of citizens with the orders or acts of public officials. Then it provided for judicial actions of other sorts, civil and criminal. Borrowing from England, it placed in every one of the newly created cantons a *juge de paix,* or justice of the peace. In each *arrondissement,* or district, it set up a civil court composed of five judges. In each department, a criminal court, consisting of judges drawn from the district courts, was to handle criminal cases, with the assistance of a jury. A court of cassation [1] at the capital was to give final consideration to appeals on questions of law. Judges were to be elected for a term of years; and ample safeguards were provided against bribery and other forms of misconduct on the bench.

Legal Basis Today. Save in one respect, the judicial system thus provided for survives today: popular election of judges failing to yield satisfactory results, appointment from Paris was gradually substituted in 1799-1804—significantly, in the early stages of the Napoleonic régime. Furthermore, to this day the system rests almost entirely, not upon constitutional provision, but upon statute: beyond authorizing the former Senate to sit as a high court of justice for the trial of impeachment cases and of cases involving attempts upon the safety of the state, the fundamental law of the Third Republic contained not one word on the subject of courts; and the constitution of the Fourth Republic is almost equally silent, providing only for a High Court of Justice, to be elected by the National Assembly at the opening of each parliament, and for a Superior Council of the Magistracy charged mainly with protecting judicial independence. The reason for such reticence in 1875 is two-fold. (1) When the constitution was framed (a constitution not expected to last in any event), a stable judicial system had long been in operation and was intended simply to go on as before; and in 1946, similar continuity

[1] The term "cassation" is derived from *casser,* meaning "to annul."

was assumed. (2) Moreover—and this is the principal explanation—the judicial function has traditionally been viewed in France, not as distinct and coördinate with the executive and legislative functions, but rather as a branch or phase of the executive, from which arises the habit of regarding the courts as in essence administrative agencies, not inherently different from the customs service or the treasury inspectorate, and, like them, properly to be created and regulated by statute.[1] The American conception is different: the judicial function is regarded as distinct and coördinate, and judges are supposed to have a constitutionally determined status of independence. Nevertheless, our national constitution, too, is extremely sparing of words on the judiciary. Providing expressly for only one tribunal, the Supreme Court, it leaves all others to be created and regulated by statute; and judicial independence is more a matter of historical development, grounded upon the doctrine of separation of powers, than a product of direct constitutional stipulation.

Two Sets of Courts. When the English judicial system was being described in an earlier chapter, attention was called to the fact that whereas all English courts belong to a single integrated system, France has two distinct systems, *i.e.,* ordinary courts and administrative courts, each with its own judges, jurisdictions, and procedures. One group is unified under the Court of Cassation at Paris; the other, under the entirely separate Council of State. The administrative tribunals are of no less interest, and of hardly less importance, than the others, and something will be said about them presently. First, however, we must consider the courts for the trial of ordinary civil and criminal cases.

THE HIERARCHY OF ORDINARY COURTS

1. Justices of the Peace. At the bottom of the scale stand, as in England, the local courts of the *juges de paix,* or justices of the peace, more than 3,000 in number and serving to bring the work of justice closest home to the general mass of the people. Appointed —formerly one for each cantonal division of an *arrondissement,* although eventually, for reasons of economy, some were given jurisdiction over several cantons—by the president of the Republic on nomination by the Minister of Justice, justices of the peace are

[1] In pursuance of this idea, judges—although favored in security of tenure and in other ways—are reckoned as members of the civil service.

required (since 1918) to have a law diploma, backed by two years of practical experience at the bar or in the office of a court, a bailiff, or a notary, and to have passed a professional examination set by the national Ministry of Justice; [1] and, once appointed, they are paid salaries (as English justices of the peace are not), protected against dismissal for arbitrary or partisan reasons, and given opportunity for promotion from grade to grade. When first provided for, in 1790, the justices were designed not so much to hear suits as to prevent them, and to this day those in the rural districts spend most of their time endeavoring to persuade disputants to compromise their differences or accept friendly arbitration. Being usually men of tact and probity, they meet with a good deal of success in these efforts. In the towns, on the other hand, justices' attempts at conciliation are said to have become a mere formality. Long ago, justices were empowered to handle civil cases, with final jurisdiction if the amount in controversy was small (of late, up to 1,000 francs), but with right of appeal to a court of first instance if it was larger (at present, any sum up to 3,000 francs), and also were given penal jurisdiction in the case of violations of police regulations or other minor offenses *(contraventions),* and even, since 1926, certain offenses of more serious nature *(délits).* Many thousand cases of these sorts are handled every year.

2. Courts of First Instance. Next above the justices' courts stand the courts of first instance,[2] of which there at present is one in nearly every *arrondissement.* In each court of this variety will be found from three to fifteen magistrates, or judges, who in *arrondissements* boasting as many as six are grouped in two or more sections, or chambers, each specializing in either civil or criminal cases—although the judges rotate among the sections. Attached to each court, too, is a prosecutor *(procureur),* who, in person or by deputy, "defends the interest of society before the court." In civil matters, the court has both original and appellate jurisdiction, the latter in respect to cases involving more than 1,000 francs and carried up from a justice of the peace; but all cases involving more substantial sums can be appealed still higher. In the matter of infractions of the law, the court has jurisdiction in cases of misdemeanor *(délit), e.g.,* theft and embezzlement, but not in such as involve murder or

[1] This is but one of the ways in which French justices differ rather widely from those of England and America.

[2] Really courts of second instance, in so far as they hear appeals from the justices of the peace.

other crime. Juries are not employed, but all judgments in misdemeanor, or "correctional," cases are subject to appeal.

3. Courts of Appeal. The tribunals to which such appeals are carried form the next grade in the ascending scale, and are known as courts of appeal. Of these, there are 27 (including one in Algeria and one in Corsica), each functioning for a *ressort,* or judicial province, consisting of from one to seven departments. A court of appeal must number at least five judges; but there are usually many more, sitting in sections or chambers of five or more each. Normally, there is a civil section, a criminal section, and also a *chambre d'accusation,* or indictment section, which does the work performed in America by a grand jury; and each court is equipped with a large staff of public prosecutors, assistant prosecutors, marshals, recorders, and other auxiliaries who form part of what the French call the "standing" magistracy as distinguished from the "sitting" magistracy, or judges. Nearly all of the work of these courts consists of hearing appeals; and on questions of fact, although not on points of law, their decisions (known as *arrêts*) are final.

Assize Courts. Appeals in civil cases are handled directly by the appropriate chamber or chambers of the court of appeals having jurisdiction. For criminal appeals, a different arrangement exists. In each of the departments is set up every three months [1] a court of assize, consisting of one of the judges of the court of appeals in whose territorial jurisdiction the particular department lies, together with two associate judges drawn from the local court of first instance; and to these tribunals (important but not constituting a separate rung in the ladder of courts) go all appealed cases of a criminal nature—cases, it should be observed, ordinarily involving offenses of the more serious sort classed by the penal code as crimes.

The Jury System. Here alone in the entire gamut of French justice one encounters that common feature of English and American judicial practice, the jury. In advance of every session of an assize court, 36 names are drawn by lot from the departmental voting list, and from this panel are drawn for every criminal case the names of 12 persons who in that particular case will decide the guilt or innocence of the accused, with a right (more sparingly exercised than in America) on the part of both the prosecution and the defense to challenge and cause to be rejected any number of names up to a

[1] Every two weeks in Paris, where in fact sessions are practically continuous.

maximum of 24. In English-speaking lands, a unanimous vote of 12 jurors is necessary to convict. In France, however, verdicts are rendered by simple majority, except that when a jury is divided six to six, or seven to five, the three sitting judges, if they can act unanimously, may frame a verdict of acquittal, though never of conviction. In any event, the jury determines only the facts, while the judges apply the law.[1] Two alternates sit with every jury, so that if a juror falls ill or otherwise drops out, his place can at once be filled and the trial proceed without the interruption—perchance the necessity of starting all over again—which such a circumstance commonly entails in England and the United States. Jury trial is not, however, indigenous to France,[2] is not wholly suited to the French temper, and is regarded by many competent critics as the weakest element in the nation's judicial system. "Nobody," writes a leading French commentator, "entertains any illusions; there are few institutions more discredited than the jury." The courts, says another, might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." As suggested by the last remark, a main criticism is that juries are now rigorous, now indulgent; prone to severity in cases involving attacks on property, but to leniency in cases of assault or other so-called *passionel* offenses; too often swayed by local prejudices or political feeling; too susceptible to the oratory of clever criminal lawyers. So far as that goes, plenty of fault is found with juries in America, particularly in the handling of murder cases. But no other known device for determining guilt and innocence, when much—even life itself—is at stake, promises better.

4. Court of Cassation. At the apex of the pyramid of ordinary courts stands the Court of Cassation, or supreme court of appeal, established in 1790. Sitting at Paris, this court consists of a general president, three presidents of sections or chambers, and 45 other judges (known technically as *conseillers*); and for working purposes it is divided into (1) a chamber of requests (or petitions), which examines civil appeals in a preliminary way and decides whether they have substantial merit; (2) a civil chamber, which gives appeals recommended from the chamber of requests a final hearing; and (3) a criminal chamber, to which go all criminal appeals. The court has no original jurisdiction, and in appealed cases it considers only

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questions of law and competence, never questions of fact. Furthermore, upon quashing a decision of a lower court, it does not (except by implication) substitute a decision of its own, but merely sends the case back for retrial—not, however, to the court from which it came, but to another of the same grade. If this second lower court takes the same position as the first one, the Court of Cassation brings together a minimum of 33 of its judges and gives the matter a solemn reconsideration; whereupon, if there still is a disposition to hold out against the lower courts' verdict, the case is sent to a *third* lower court—which by law is required, as a matter of form, to accept and apply the dissenting judgment of the superior tribunal. Few high courts throughout the world enjoy as great prestige as does the French Court of Cassation, and large numbers of cases come before it every year. In deciding recurring appeals of similar nature, on similar or identical subjects, it naturally tends to be guided by precedents which it has itself established; and thus, although case law has attained no such importance as in England, the court's decisions not merely serve the interests of justice but aid in developing and preserving unity in the country's jurisprudence.

JUDGES AND JUDICIAL PROCEDURE

The Principle of Collegiality. From even the foregoing meager outline of structural arrangements, certain general features of the system of ordinary courts are apparent. One of them is the "unity of civil and criminal justice," which means that, although procedures may differ, civil actions and criminal cases are for the most part handled by the same courts, not—as commonly in England and the United States—by separate tribunals; even though to a degree the effect of separation is obtained from division of the higher courts into civil and criminal sections. A second fact is that, speaking generally, the English and American system of circuit judges has never been adopted in France, so that courts commonly sit at only one specified place.[1] Thirdly, French courts, except those of the justices of the peace, are characteristically "collegial"; that is to say, they normally consist of a bench of judges, and—again excepting the justices' courts—no judgment is valid unless concurred in by at least three of the number. Except in the highest levels of appellate jurisdiction, England and America regularly (and on the whole wisely) trust to the

[1] A slight exception is afforded by the assize courts.

intelligence and integrity of a single judge. The Frenchman, however, regards this as dangerous. With him, *pluralité des juges* has been a fixed rule; *juge unique, juge inique,* a proverb. In later days, to be sure, the plan has come in for a certain amount of criticism. Not only does the country have more courts than it needs, but the plurality principle results in an astonishingly large judicial personnel (something like 3,600, exclusive of justices of the peace), entailing heavy expense even though judges are generally poorly paid; besides, a very good argument can be made that, far from ensuring greater care and fairness, the plurality plan weakens the judge's individual sense of responsibility and thereby promotes inefficiency. Proposals in Parliament to change to the single-judge system, even if only in the courts of first instance, have never, however, won much support, partly because of the rootage of the existing plan in tradition, and partly, it must be confessed, because of the unwillingness of deputies and their constituents—not to mention the judges themselves—to see a retrenchment carried out in their home localities.[1]

How Judges Are Selected. Moved by regard for the principles of popular sovereignty and separation of powers, the Revolutionary reformers in 1790 made all judges elective. The plan, however, did not work well, and for the same reasons chiefly that it does not work well in most of our American states today. The people did not know how to assure themselves of experience, skill, and probity in their magistrates, and judges were drawn into questionable political connections and activities. Appointment by the executive was therefore revived, accompanied by guarantee of tenure during good behavior; and in 1804, under Napoleon, the last trace of the elective system disappeared. Proposals to go back to the elective plan have, of course, been heard during the last hundred years, and no less a person than the late M. Clemenceau used to argue that under the usual cabinet-government procedure appointment by the president of the Republic (the method followed during the Third Republic) meant in reality selection by the Minister of Justice, a political official, with appointments therefore tinged with politics and judicial independence compromised; and in 1883 the Chamber of Deputies actually passed a bill which would have restored popular election. Under the present Fourth Republic, the president still appoints, but

[1] Early in 1945, the single-judge plan was adopted for courts of first instance, but only for reasons incident to wartime conditions. It was not expected to become general or permanent.

with a significant safeguard added. The constitution [1] creates a new body known as the Superior Council of the Magistracy, with the president of the Republic as president or chairman, and the Minister of Justice as vice-president, and containing in addition six persons chosen by the National Assembly from outside its own membership, four judges chosen by different grades of the magistracy, and two persons of legal training named by the president of the Republic from outside of both Parliament and the judiciary (a total of 14); and when judges are to be appointed, this group canvasses possibilities and presents to the president of the Republic as appointing authority a panel of names from which his selections must be made. Like other presidential acts, appointments must bear a ministerial countersign; but in this instance it is purely formal; and it is believed, or at least hoped, that political interests or motivations will play a diminished rôle.

Training, Pay, and Tenure. In selecting men for judicial posts, those who have part in the process must observe not only the usual and obvious proprieties, but also the highly important rule—developed concurrently with the progressive curbing of favoritism in other branches of the civil service—that appointees shall be persons of special training and experience. Even the justice of the peace, as indicated above, must have a law diploma backed with some experience of a legal or judicial character, and must have passed a special examination. But appointees to higher judicial positions must have more than this. In Great Britain and the United States, judges of all grades are appointed (or elected) freely from the legal profession. They may have had previous judicial experience, but as a rule they have not done so. At all events, they have not pursued studies and taken examinations aimed at fitting them for judicial work as distinguished from practice at the bar; appointment to the bench comes simply as the crowning triumph of a lawyer's career. In France, the judiciary is regarded as belonging to a profession akin to, yet essentially distinct from, the profession of law—a branch, indeed, of the civil service—and, as Professor Munro remarks, the young Frenchman, when he begins to study law, decides whether he wants to be a lawyer or a judge, and plans his studies accordingly. As a judge, he will have the advantage of prestige, secure tenure, and opportunity to mount by promotion toward the coveted positions at the top. In

[1] Arts. 83-84.

return, he is expected to prepare himself for the bench as a life career, precisely as he would prepare for engineering, medicine, or the foreign service. So prepared, he goes as a young man into some subordinate position with a local court, awaits a chance to become a public prosecutor, perhaps gets an opportunity to sit as a substitute judge, becomes a judge in a court of first instance, and, if all goes well, passes on through black-robed service in a court of appeals, and emerges in middle life or later as a red-robed *conseiller* of the Court of Cassation at Paris. Recruitment is therefore almost entirely at the lower levels, from candidates who have passed searching oral and written examinations; judges of higher rank reach their posts in nearly all instances by promotion. Judges can be removed, too, only for misconduct, and only on recommendation of the Superior Council of the Magistracy.[1] Contrary to the situation in Great Britain, salaries are low—even lower than in the United States. There are, however, counterbalancing advantages in the form of prestige, a certain amount of leisure, and fair assurance of promotion. By and large, French courts and judges compare favorably in capacity, integrity, independence, and impartiality with those of any other country.[2]

Some Aspects of Judicial Procedure. An American watching French courts at work would be astonished, if not also shocked, by a good deal that he would see. In the handling of civil cases, he would find no jury used, most of the evidence presented in writing, technicalities playing small part, and decisions reached with more speed than he is accustomed to witness at home. More intriguing, however, would be the procedure followed in criminal cases. To begin with, he would learn that, whereas the criminal procedure of his own country and of England, sometimes termed "accusatorial," lays particular emphasis on protecting the accused against a possible miscarriage of justice, that of France, described as "inquisitorial," stresses rather the safeguarding of the rights of society. The two objectives are, of course, not incompatible; nevertheless, the way in which a trial is carried on is to no small extent determined by whether the one or the other is chiefly emphasized. The observer would find, secondly,

1 This new Council is further charged with safeguarding judicial independence and dignity—although precisely how it is to do this appears not as yet to have been fully determined.

2 On the French legal profession—divided, like the English into *avocats*, or barristers, and *avoués*, or solicitors—see P. Crabitès, "The French Bar from Within," *Amer. Bar Assoc. Jour.*, July, 1928, reprinted in W. E. Rappard *et al.*, *Source Book*, Pt. ii, 120-127.

that there is no grand jury system in France,[1] and that if an indictment is brought against a person, it will be prepared by prosecuting officers attached to a court of appeals and unanimously approved by a *chambre d'accusation,* or section of not fewer than five judges of that court, after preliminary inquiry, with often something approaching "third degree" methods, by an examining magistrate known as a *juge d'instruction.*[2] He would discover, in the next place, that when the trial starts, in an assize court, the defendant is not put under oath, and that the prosecution does not begin by outlining what it proposes to prove, but instead the president of the court opens proceedings with an *interrogatoire,* himself questioning the accused with a view to bringing out the significant facts, and often engaging in a heated colloquy with that person, while his colleagues on the bench, the prosecutor, counsel for the defense, and witnesses look on with such patience as they can muster. He would, indeed, see the presiding judge take a vigorous hand at all stages of the trial, examining and cross-examining witnesses, and the prosecutor follow with such questions as he may care to ask, but with the counsel for defense entitled to ask none except through the intermediary of the presiding judge. Also, he would observe the latter dignitary (after the prosecutor and counsel for defense have had opportunity to address the court), not "charging the jury" or summing up the case, but merely submitting to the jurors a list of questions to be answered by "yes" or "no," including always the query of whether, in the event that they find the accused guilty, there have in their opinion been extenuating circumstances. Next, the onlooker would note that after the jurors have retired they frequently call the presiding judge to the jury room in order to ask him what penalty he and his associates will be likely to inflict in case the jury finds this way or that—a proceeding quite out of line with Anglo-American usage, under which jurors are expected to determine guilt or innocence with only a general knowledge of the penalties which different degrees of guilt entail. And finally, it could not fail to be observed—doubtless with disapprobation—that the accused may be required to give evidence against himself, that a

[1] It will be recalled that England's grand jury system has been abolished also. See p. 348, note 2, above.

[2] That this inquiry, though thorough, is not the star-chamber ordeal sometimes pictured is indicated by the fact that in a late prewar year 470 out of 1,025 cases investigated were dismissed by the judges of instruction and 17 more by the *chambre d'accusation.*

witness will not be excused from answering a question on the ground that to do so would incriminate him, and that witnesses are allowed to go as far as they like in offering as evidence testimony that is palpably the merest hearsay, suspicion, or opinion. It does not follow that justice is harder to get in France than in England or America; and the procedure described has certain advantages, particularly those of discouraging pettifogging practices of counsel, preventing hung juries, and lessening decisions turning on mere technicalities. Any intelligent person, however, can find defects in the system, and, taken as a whole, it could never be made to commend itself to people brought up on Anglo-American traditions.[1]

ADMINISTRATIVE LAW AND ADMINISTRATIVE COURTS

When describing judicial organization and methods in Great Britain,[2] we found it necessary to deal only with a single system, or set, of regular judicial courts. In France, Belgium, and other Continental countries, however, the regular, or ordinary, court system is paralleled (on the civil side, although not the criminal) by a scheme of administrative courts, distinct in form and personnel and applying a different body of law; and in concluding our survey of the French judicial establishment something must be said about these courts and the law that they enforce.

The Problem of Official Liability: 1. Who Can Be Sued? The situation with which we are concerned arises mainly out of the thorny but inescapable problem of legal relationships between a government and its agents on the one hand and the people on the other—the problem that presents itself when, for example, a policeman or other person acting for the government quarantines a citizen's house and keeps him from his business, confiscates the issues of a newspaper alleged to be seditious, or runs down and injures an innocent bystander while in pursuit of an offender, and the izen claims redress. In the United States and certain other countries, a time-honored principle has it that the king (nowadays the state) can do no wrong. The purport of this is that the state cannot be sued, unless, and only in so far as, it by statute expressly

[1] On the methods and characteristics of French criminal justice, see E. M. Sait, *Government and Politics of France,* 413-426; J. W. Garner, "Criminal Procedure in France," *Yale Law Jour.,* Feb., 1916; A. C. Wright, "French Criminal Procedure," *Law Quar. Rev.,* July, 1928, and Jan., 1929.

[2] See Chap. xvi above.

submits itself to such action. A right of suit is sometimes granted, but not often in connection merely with alleged injury inflicted by public officials upon private individuals or corporations. This does not mean that such persons are obliged meekly to submit to any injury done them, but only that they must look for reparation elsewhere than to the state—in other words, to the officials personally. In the United States, therefore, a person having a grievance or claim of a justiciable nature arising out of the official actions of a health officer, a policeman, or a tax-collector goes into court with a suit against such officer, and if he wins, collects whatever damages are awarded, not from the state, but from the officer himself—if he can.[1] The proceeding is essentially as it would be if the defendant were another private individual and not a public officer at all. In France, it is otherwise. There, the state freely admits its responsibility for whatever is done by its agents in their public capacity; the plaintiff brings his action, not against the official personally, but against the state; and if he wins, his damages are recoverable from the public treasury, which of course gives him the comforting assurance that in all probability they will be paid.

2. Where Suits May Be Brought. This is one major difference between the American and the Continental methods of handling the problem. But there is a second, namely, as to the courts in which such cases are heard and decided. In Great Britain and America, the plaintiff will proceed against the offending official in the ordinary tribunals, precisely as if the suit were against another private party. It is a matter of principle, and a source of pride, that public officers have no immunity from the jurisdiction of the regular courts. In France, on the other hand, a citizen with a case of the sort will carry it, not to a court of first instance or other ordinary court described above, but to one of the several administrative courts maintained exclusively for such business. Although liable, as anyone else, to be brought into the ordinary courts on matters not associated with their public functions, officers are, in all matters so associated, entirely exempt from the jurisdiction of these courts. It is deemed more compatible with the interests of public administration, while in the long run no less just to the citizen, that they—or rather the state which they serve—shall be subject to suit only in courts of a special

[1] The officer will not be held liable if he can show that the act on which the suit is based fell within the range of his proper discretion under existing law.

character identified with the administrative rather than the judicial branch of the government. The system was instituted in 1790 primarily to protect the administrative authorities against the ordinary courts, whose judges, although thenceforth to be elected by the people, might nevertheless prove unsympathetic toward the new reforms. Starting, however, with this intentional slant in favor of the government, the administrative courts long since reached the point where they could be regarded—as they certainly are today—as impartial and effective protectors of the citizen against arbitrary and illegal administrative actions.

Administrative Law. Wherever disputes growing out of the relations of public officials with private citizens have to be adjusted—and this means everywhere—there arises a body of rules according to which the liabilities of officials, the rights of citizens, and the procedures for establishing such liabilities and rights are determined—in other words, a system of administrative law. In English-speaking countries, such law is less differentiated from the ordinary law, because both are applied by the same courts, on more or less similar lines. It exists, however; and in France, where separate courts develop and apply it, it forms a vast and essentially distinct body of law. Unlike the ordinary law in that country, it is, indeed, in the main not enacted or codified law, but case law, built up by lengthening sequences of court decisions, precisely as was the common law of England, and, like most branches of that law, ascertainable only by study of the decisions themselves.

The Administrative Courts: 1. Regional Councils. For a little time after the separation of administrative jurisdiction from ordinary jurisdiction, the settlement of controversies growing out of administration was left to persons actively engaged in administrative work. In 1799, however, special administrative tribunals—called "councils," but none the less truly courts—were created for the purpose; and the arrangement survives in its essentials today. The tribunals are of two grades—regional (superseding former prefectoral) councils at the bottom, and a *Conseil d'État,* or Council of State, at the top. Until 1926, there was a prefectoral council in each of the fourscore departments, composed of the prefect of the department as *ex officio* chairman and two other members appointed (as was the prefect) by the Minister of the Interior from among persons who

held, or had held, public administrative positions.[1] The prefect himself was usually too busy with other things to be able to devote much time to the work of the court; but since those who heard the cases and made the decisions were also identified with the administrative services, the tribunal was, to all intents and purposes, merely an arm or branch of the administration within its particular jurisdiction. The number of cases handled throughout the country in a year frequently mounted as high as 100,000. A very large proportion, however, involved nothing more serious than appeals of thrifty taxpayers against their assessments, while most weightier disputes—including all which turned on the validity of a decree or ordinance—were taken at once to the Council of State at Paris. Partly on this account, and partly because the poorly paid members of the councils (apart from the prefects) were commonly of a rather low order of ability, there had long been demand for a reform of the system, and even for abolition of the councils altogether; and as part of a comprehensive administrative and judicial reorganization dating from 1926, and mentioned above as affecting the courts of first instance, the departmental councils of prefecture were supplanted by a new set of 22 interdepartmental, or regional, councils, each consisting of a president and four councillors appointed by the Minister of the Interior, and each serving a group of from two to seven departments. At the same time, functions of a non-judicial nature were transferred elsewhere, leaving the new councils free to devote themselves exclusively to judicial work, with, as a rule, appeal from their decisions to the superior administrative court, the Council of State at Paris.

2. Council of State. This Council of State is an able, industrious, powerful, and generally impressive body. Some of its varied functions do not concern us here, but among them are those of advising ministers on matters which they plan to deal with in orders or decrees and of serving as the highest administrative court, just as the Court of Cassation serves as the court of last resort in all ordinary cases, civil and criminal. One branch, or section, composed of 39 *conseillers service ordinaire* (appointed by the president of the Republic on advice of the council of ministers, and invariably jurists of exceptional attainment) devotes the whole of its time to this latter phase of the Council's work, hearing the thousands of appeals that come

[1] In so far as the administrative courts are under the direction of any executive department at Paris, it is the Ministry of the Interior, not the Ministry of Justice.

up every year from the regional councils, hearing also the large number of cases that come to it as a court of first instance, annulling decrees (even of the council of ministers) as being *ultra vires,* irregular in form, or flowing from a misuse of power, and generally safeguarding the rights and liberties of the people. Access to the court is easy and inexpensive; all that anyone having a grievance—perchance dissatisfaction with a judgment rendered by a regional council—has to do in order to get attention is to present a petition, stating his case, on a stamped form; even the small fee that he pays is returned to him if a decision is given in his favor. As might be surmised, the docket tends to become congested, and complaints of delay are sometimes heard. Reconstituted by an Ordonnance Décret of July 31, 1945, the Council of State in hearing cases usually consists of some 15 persons of whom nine have a vote, although its total membership approximates 150.[1]

Justification of the System. The theoretical objections that can be raised against this remarkable system of administrative jurisprudence are obvious; some of them have already been mentioned. With the administrative branch of the government sole judge of its own actions, the way would seem open for government control over decisions rendered, for virtual irresponsibility of officials, and for encroachment upon popular rights and liberties. The rejoinder that can be, and is, made, not only by French authorities but by informed foreign observers, is simply that, in point of fact, these potential results do not materialize. There is criticism of the regional, as there formerly was of the prefectoral, councils; indeed, there are those who seek to cast doubt on the entire present arrangement by suggesting that, after all, the distinction between *contentions administratives* and *contentions civiles* is a subtlety and that no harm would come from sending administrative cases to the ordinary courts on the Anglo-American plan. Perhaps, however, the worst that can be said is, as an eminent French political scientist has remarked, that the system, although unjustifiable in principle, has been "a valuable

[1] With one set of courts functioning for ordinary cases and another for administrative cases, and with the court of last resort in each domain entirely independent of that in the other, it becomes necessary to have some agency for settling disputes concerning jurisdiction. This need was met in 1872 by creating a *Tribunal des Conflits,* or Court of Conflicts, which nowadays consists of the Minister of Justice as *ex officio* president, three judges of the Court of Cassation, three members of the Council of State, and two other persons chosen by the foregoing seven.

instrument of legal progress." [1] Certainly it protects public officials against vexatious and absurd obstacles such as are often interposed by English and American courts on grounds of mere technicality; in particular, by substituting state for personal liability, it gives them greater assurance and independence in making decisions and enforcing law. Certainly, too, it in no wise jeopardizes popular rights and liberties. Upwards of a generation ago, one of the most eminent of French jurists affirmed that the great body of case law worked out by the Council of State affords the individual "almost perfect protection against arbitrary administrative action"; [2] and more recently a competent American authority has asserted, "without fear of contradiction," that in no other country of the world are the rights of private individuals so well protected against administrative abuses and the people so sure of receiving reparation for injuries sustained from such abuses.[3] This happy state of affairs is the more significant, considering that France is a country of highly centralized administration, with multitudes of national officers and functionaries who, in the absence of some positive and effective restraint, would inevitably tend to invade and override the liberties of the private citizen. The uninitiated might not expect it, but in point of fact precisely such restraint is supplied by the system of administrative law and administrative courts, more particularly the Council of State, to which all Frenchmen look with high approval as their Argus-eyed defender against official arbitrariness and oppression. Critics in England and America have in later years grown more sympathetic toward the French system, as they have come to understand it better; and in both countries definite tendencies can be observed, not only toward fuller appreciation of the administrative law which they have themselves developed, but even toward the use, in certain expanding fields, of agencies having all the essential characteristics of administrative courts.[4]

[1] Barthélemy, *The Government of France*, 178.

[2] L. Duguit, "The French Administrative Courts," *Polit. Sci. Quar.*, Sept., 1914, p. 393.

[3] J. W. Garner, "French Administrative Law," *Yale Law Jour.*, Apr., 1924, p. 599. The advantages of the French system were first clearly expounded for Americans by F. J. Goodnow, in his *Comparative Administrative Law* (New York, 1893).

[4] Good brief discussions of French administrative law and courts will be found in W. B. Munro, *The Governments of Europe* (3rd ed.), Chap xxx; E. M. Sait, *The Government and Politics of France*, Chap xi; and F. J. Port, *Administrative Law*, Chap. vii.

2. *GERMANY*

CHAPTER XXVIII

FROM EMPIRE TO WEIMAR REPUBLIC

POLITICAL DEVELOPMENT TO 1871

Political Geography of Eighteenth-Century Germany. If you look at a map of the Europe of a century and a half ago, you will find throughout a vast central area stretching from France on the west to Poland and Hungary on the east, and from Denmark on the north to the toe of the Italian boot on the south, a veritable jumble of splotches of color indicating kingdoms, principalities, electorates, duchies, margravates, bishoprics, and what not—the whole plastered over with one grand caption, "Holy Roman Empire," or simply "The Empire." Except for the names of rivers and towns, a few regional names such as Saxony, Bavaria, and Württemberg, you would hardly recognize anything suggestive of present-day Germany. You realize, however, that the Germany of von Hindenburg and Hitler must somehow have been built out of these bewilderingly interlaced political units; and although you may have thought of even this later Germany, with its score of large and small *Länder,* as little better than a patchwork of political geography, you marvel that any substantial degree of unity whatsoever should have been achieved, considering the feudally pulverized areas out of which the Reich of a decade or more ago had to be constructed.

The Shadowy Holy Roman Empire. Such integration as was implied in the term "Holy Roman Empire" was indeed illusory. There was, to be sure, an emperor, nominally chosen by a handful of lay and ecclesiastical magnates, though invariably an hereditary

prince of the house of Habsburg. There was also a diet. But the former commanded only shadowy allegiance, and the latter had long since lost all genuine claim to power. At best a loose federation of sovereign principalities, the Empire was, in the witticism of Voltaire, neither holy nor Roman, nor yet in any proper sense an empire at all. So decrepit indeed was this once proud political creation—the "First Reich," according to later Nazi chronology—that a truly unified Germany could never have arisen from it; and in any case Napoleon erased it completely from the map in 1806.

The Rise of Prussia. For the development of German union, one looks rather to a small, and in the beginning unpromising, principality in the north, the "mark," or electorate, of Brandenburg, whose rulers, belonging to the house of Hohenzollern, early in the seventeenth century extended their sway eastward over the duchy of Prussia and westward over that of Cleves, and, moving on to other triumphs, found themselves even by 1650 the sovereigns of a larger area than any other of German character except Austria. In 1701, the title of elector of Brandenburg was dropped and that of king of Prussia assumed; and in the long reign of Frederick the Great (1740-86)—termed by the jurist Bluntschli "the first and most distinguished representative of the modern idea of the state"—seizures from Austria and annexations in other directions brought the kingdom to a point where it was recognized as one of the principal European powers. Even so, the German portions of central Europe at the close of the eighteenth century were still cut into upwards of 1,800 independent political jurisdictions, ruled in most cases by absolute princes, great or small. Society was as yet feudal; half of the people were serfs.

Napoleon Reorganizes Germany. As every student of history knows, Napoleon's armies swept victoriously across German territory and Napoleonic statecraft followed with revolutionizing transformations. Once Jena and Tilsit had brought central Europe to his feet, the conqueror not only did away with the shadowy Empire, but blotted out most of the petty principalities, reduced Prussia to almost half of its previous area, and erected most of the surviving states into a far-flung Confederation of the Rhine, designed as a tributary and eastern bulwark of France. In this main objective, the plan miscarried, and when the tide of fortune turned, the Germans were found on the side against the Corsican. The consolidations, however, proved for the most part permanent, and the German-speaking

world—especially Prussia—although plunged for a time into the depths of despair by the unexpected and humiliating subjugation, came off with a new consciousness of common interests, a reformed economic order, improved methods of administration, the beginnings of strong national armies, and a generally enhanced morale. Napoleon, remarks Professor Munro, was not least among the makers of modern Germany.[1]

The German Confederation of 1815. When readjusting the affairs of war-torn Europe, the Congress of Vienna restored to Prussia, as one of the victors at Waterloo, some of the territory that she had lost, and then organized the now emerging Germany into a confederation of 38 (after 1817, 39) states, under the perpetual presidency of Austria. The union was hardly more substantial than that under the old Empire. For, although there was a diet, consisting of representatives appointed by the princes, and charged with responsibility for protecting the country against external aggression and internal disorder, the body had no power to levy taxes or to assert other authority over the people directly, and furthermore could arrive at decisions on important matters only by unanimous vote, which could rarely be secured. Two mutually jealous states stood out head and shoulders above the rest, *i.e.,* Austria and Prussia, and around them the lesser ones ranged themselves in two similarly jealous and suspicious camps. When Austria and Prussia could agree, things could usually be done. When, as commonly happened, they took opposite sides of a question, deadlock paralyzed action.

The Mid-Century Liberal Movement. The struggle with Napoleon yielded Germany, however, a good deal more than merely a clumsy new political structure. A sense of nationality was awakened, and with it a desire for less autocratic government. For three decades thereafter, people of liberal inclination waged, against great odds, a stubborn campaign for a new national state, parliamentary institutions, and guarantees of personal freedom. During the whole of this period, however, the malign influence of the reactionary Austrian minister, Prince Metternich, rested like a blanket upon all central Europe, and until near the middle of the century little chance for liberalization appeared. To be sure, beginning in 1816, written constitutions, as ordained by the Congress of Vienna, were promulgated in most of the states. In no instance, however, was a popular

[1] *The Governments of Europe* (rev. ed.), 590.

form of government provided for, and in the two most important states, Austria and Prussia, reactionary princes contrived to avoid taking any step of the kind at all.

The Failure of 1848. Matters were brought to a crisis by the revolution of 1848 in France. All over Germany, sympathetic revolt broke out; no one had realized how much latent strength the reform movement had gathered. Prince after prince, panic-stricken, offered concessions, and if only the reform forces had been united upon a program and ready to strike while the iron was hot, a liberal German Empire might then and there have become a reality. This, in turn, might have meant a very different future for the German people and for the world. Some of the liberals, however, envisaged only a constitutional monarchy; others were wedded to the idea of a republic. Some did not look beyond a moderately strengthened federation; others were prepared to be satisfied with nothing less than a unitary government like that of France or England. The upshot was that when, in May, 1848, a National German Parliament, elected by manhood suffrage, convened at Frankfort-on-the-Main to consider the broad subject of political reform, the opportunity to replace the discredited Confederation with a united, liberally governed Germany was lost. While visionary and dogmatic delegates harangued their colleagues through long months in wearisome attempts to convince them that this clause or that should go into the proposed new constitution, the revolution spent its force and the princes plucked up courage to offer effective resistance. A really excellent frame of government, providing for a federally organized constitutional empire, with a parliament of two houses, manhood suffrage, and a responsible ministry, was indeed agreed upon in 1849. But when the imperial crown was offered to the Prussian sovereign, he waved it aside contemptuously; the government of neither Prussia nor Austria, nor in fact of any other of the larger states, endorsed the plan; and the entire effort collapsed. Never again until 1918 did liberalism have so good a chance to set Germany on the high road toward free and enlightened government.

The Resort to "Blood and Iron." Germany was destined to become a constitutional empire, but not through the efforts of professors, students, poets, and philosophers, and not on the lines that such idealists would have projected. Long after the exciting days of 1848, Bismarck wrote in his *Reflections and Reminiscences* that not

even when the turmoil was greatest did he consider the situation "unfavorable," since the real "barometer" was not "the noise of parliaments great and small" but "the attitude of the troops." It was unfortunately through the use of these troops—by "blood and iron"—that the Germany of more recent generations was created. Becoming prime minister of Prussia in 1862, Bismarck guided the political destinies of the German people for a full generation. Prussia had indeed acquired a written constitution in 1850—the only tangible result of the 1848 revolutions east of the Rhine. But a refractory parliament was not allowed to stand in the way of Bismarck's plans. Assuring the chambers that German unity was not to be attained "by speeches and resolutions of majorities," the domineering minister induced the king to order a dissolution and for four years taxed and borrowed money independently, building up an army adapted to his purpose. Already plotting a forcible ejection of the polyglot Austria from the Confederation as a step toward converting the feeble structure into a consolidated German state, he cynically dragged his intended victim, in 1864, into a war with Denmark, and then, when all was ready, in 1866 announced a plan for reorganization which the Habsburg monarchy could be depended upon to reject—going on, as soon as the inevitable refusal was received, to declare the Confederation dissolved and hurl the Prussian army against the unprepared rival.

Substantial Unification Achieved. A short war ended in Austria's complete defeat; and thereupon Prussia not only absorbed into her own territory a number of lesser states which had shared in her triumph, but engineered the formation of a new German union, a "North German Confederation" (1867), consisting of all of the surviving states—22 in number—north of the Main River. For the time being, the southern states of Bavaria, Baden, Württenberg, and Hesse-Darmstadt were left to their own devices. But the constitution of the new Confederation left a door open for them, and the Franco-Prussian war of 1870, in which they unanimously cast in their fortunes with Prussia, furnished opportunity for a series of hard-won treaties bringing all four into the union, notwithstanding their strong particularist traditions, and clearing the way for the next great step in Bismarck's program. On January 18, 1871, in the famous Hall of Mirrors in the palace of Louis XIV at Versailles, William I of Prussia, president of the North German Confederation, was pro-

claimed *Deutscher Kaiser,* "German Emperor." By its reminder of days when it meant theoretically more but practically less than now, the title, said Bismarck, would "constitute an element making for unity and concentration."

A Political System That Did Not Endure. The Empire so proudly announced to the world while German cannon were still pounding the fast-weakening city of Paris has now for a generation been a thing of the past. To be sure, for 40 years the new Germany advanced by leaps and bounds along lines that Bismarck laid out for it; until William II chose to "drop the pilot" in 1890, the Iron Chancellor was himself the steersman of its course. Eventually, however, militarism led to war; war brought defeat; defeat opened the flood-gates of revolution; and in 1918-19, a chastened people, reduced in territory and hedged about with restraints imposed by triumphant allies, faced the task of regaining national prosperity and strength with the aid of a reconstructed political system unlike, in most of its larger features, any that either Germany or the rest of the world had ever known. Before, however, this republican experiment is brought to view, government as organized and practiced in the Empire may receive a word of comment.

NATURE OF THE EMPIRE

The Constitution. To begin with, the Empire was only an enlarged edition of the North German Confederation. Its constitution was the document prepared by Bismarck for the Confederation, with only such slight changes as were entailed by the adhesion of the southern states and the introduction of the title of emperor.[1] The king of Prussia became emperor instead of president, and a popularly elected Bundestag was renamed "Reichstag," with representatives admitted from the new states. Otherwise, practically everything remained the same. The red-letter date in the building of the Empire was not 1871, but 1867.

The imperial constitution was a deftly framed instrument—concise, clear, and practical. It contained no bill of rights, nor much of anything else bordering on the theoretical.[2] It provided for the principal organs of government—emperor, chancellor, Bundesrat,

[1] The text, in English translation, will be found in W. F. Dodd, *Modern Constitutions,* I, 325-351.

[2] There were bills of rights in some of the state constitutions, including the Prussian, but with little or no provision for making them effective.

Reichstag. It defined, in much detail, the relations of the states with the Empire, and was especially full on subjects like tariffs, railways, posts and telegraphs, navigation, finance, and the army—matters over which, as Bismarck well understood, it would be necessary for the imperial authorities to have supreme control if Germany were to attain her coveted place among the nations. A mode of amendment was provided also, at once easy and difficult: any amendment might be adopted by vote of the Bundesrat and Reichstag, like an ordinary law, except that if as many as 14 votes were cast in the negative in the Bundesrat, a proposal was to be regarded as lost. The catch lay in the fact that the kingdom of Prussia, with 17 votes of her own in that body, was able to defeat any amendment single-handedly, while no other state had enough votes to do so. Americans sometimes complain because one more than a quarter of our 48 states, *i.e.*, 13, can, if they choose, defeat an amendment to our national constitution. In the German Empire, it was possible for one state alone to wield similar obstructive power—provided, of course, that state was Prussia. Down to 1914, a total of 11 constitutional amendments won acceptance, but none involving any significant change in the country's government.

A Federal System. The juristic nature of the Empire was a rather abstruse matter, on which not all Germans were agreed. There can be no doubt, however, that a loose confederation of sovereign principalities had been converted into a much stronger type of state with a federal system of government. Wherever sovereignty was to be found, it certainly was no longer in Prussia, Bavaria, and the other areas as individual political entities. Powers of government were deftly divided between the states and a new super-entity, the Empire. It was because of this division that the system was federal—not for the reason merely that there was a division (for in all countries powers must be divided between national and subordinate governments), but because in Germany, as in Switzerland and the United States, the division was ordained in the fundamental law, and, as a matter of law, could be altered only by constitutional amendment. The general principle on which powers were divided was the same as in the two countries last mentioned; that is to say, the powers of the national government were enumerated and delegated, while those of the states were unenumerated and residual. As in our own country, certain powers were given exclusively to the national govern-

ment, *e.g.*, control over national citizenship, the navy, regulation of the merchant marine, tariff legislation, posts and telegraphs, weights and measures, patents, and coinage. Other powers were vested solely in the states, *e.g.*, determination of their own forms of government, relations of church and state, public instruction, highways, and police. Still others were curiously divided between Empire and states.

As time passed, the Empire tended to draw to itself an ever-increasing measure of authority, partly by constitutional amendment, but far more largely by usage and statute. The same centralizing tendency has been witnessed in the United States; but whereas encroachment on state powers has here been held somewhat in check by judicial review, in the German Empire there was no restriction of that nature.[1] Again and again, protest was heard (especially from Bavaria and other southern states) against the growing consolidation—some called it "Prussianization"—of the Empire. But the tendency was still strikingly in evidence when the Empire collapsed.

Some Peculiar Features. As a federal structure, imperial Germany presented a number of unusual aspects. In the first place, it was, in ex-President Lowell's oft-quoted characterization, a compact between "a lion, a half-dozen foxes, and a score of mice." The lion was of course Prussia, greater both in area and in population than all of the remaining 24 states combined. The tiniest of the "mice" was the free city of Bremen, with an area of only 99 square miles, although Schaumburg-Lippe was smallest in terms of population. The American states differ widely in extent and number of inhabitants; but not even the largest or most populous among them towers over the rest in a fashion approaching that of Prussia in the German imperial union. Such inequality must inevitably have given some states greater political weight than others. But this result was aggravated by constitutional provisions deliberately introducing legal, in addition to physical, disparity. In the United States, all states are legally equal; whatever rights and powers are possessed by one are possessed by all. Not so in imperial Germany. When consenting to cast in their lot with the other 22 states in 1871, Bavaria and Württemberg reserved the right to administer independently the

[1] State laws could be invalidated if in conflict with imperial laws, but the latter, if properly enacted and promulgated, could not be questioned.

postal and telegraph services within their borders; Bavaria, Württemberg, and Baden, exclusive right to tax beers and brandies manufactured by their people; and Bavaria, the right to administer her own railways.

Still more significant were the special prerogatives of Prussia. Her king was *ex officio* emperor; she alone had votes enough in the Bundesrat to defeat constitutional amendments; all committee chairmanships in that body except one were hers. Moreover, to these constitutional advantages were added others arising from her superior population, *e.g.,* a majority of seats in the Reichstag; still others fixed by usage, *e.g.,* the almost invariable appointment of her prime minister as imperial chancellor; and yet others flowing from interstate treaties, notably those by which she acquired exclusive right to recruit, drill, and administer the armed forces of all of the states except Bavaria, Württemberg, and Saxony. Prussia had created the Empire, and with the aid of carefully devised constitutional provisions and interstate compacts, her natural preëminence in the union enabled her to run it, with only a certain amount of grudging deference to the wishes of her associates.

One other interesting feature requires mention. Although in our own country increasing use is made of state officials and agencies in administering national functions, our policy has commonly been to provide national machinery to the full extent required for executing national laws. This, however, has not been the traditional German plan. Under the Empire—and the same was true in lesser degree under the Republic down to the time when, in 1933, the states were all but wiped out by Nazi decrees—the national government looked for the administration of most of its laws, not to officials appointed and paid from Berlin, but to the functionaries of the various states. Exception was made in the case of the foreign service, the navy, and the post office; and military administration was centralized, although in Prussian rather than imperial hands. But otherwise the states were relied upon, subject to only a certain amount of inspecting and directing power in the imperial authorities. So far as machinery went, the imperial government, lacking not only a nation-wide judicial establishment, but also most of the usual administrative equipment, was but part of a government, quite incapable of carrying on the affairs of the nation except as the states collaborated in the task.

THE IMPERIAL GOVERNMENT

1. The Emperor. The most conspicuous figure in the government of imperial Germany was the emperor. The post which this now vanished dignitary filled was, however, unique in the extreme, and few people except Germans ever really understood it. To all intents and purposes, it was merely a continuation of the *praesidium,* or presidency, which the constitution of the North German Confederation vested in the king of Prussia. As revised in 1871, the constitution prescribed that the incumbent should thenceforth bear the title of *Deutscher Kaiser* (German emperor). It, however, conferred few additional prerogatives; and from first to last the emperor, although ranking among the world's leading monarchs, had, *as such,* an amazingly small amount of power. As emperor, he had no throne and no salary. He was not even "emperor of Germany"—that would have implied sovereignty equally from frontier to frontier—but only "German emperor." He was, however, king of Prussia—territorial, and almost absolute, sovereign of by far the largest of the states, and this is what chiefly gave him power and importance. Some functions, to be sure, accrued to him as emperor. In this capacity, and not as Prussian king, he convoked, opened, and adjourned the Bundesrat and Reichstag, promulgated imperial laws, appointed the chancellor and other high administrative officials, exercised supreme command of the navy and, in time of war, of the army as well, and wielded considerable, although not independent, control over the conduct of foreign relations. Needless to say, these functions—especially the last two—carried with them a good deal of power. Even they drew importance, however, chiefly from being exercised by the mightiest of the territorial princes; and in practice it was never possible to say precisely where authority as emperor began and that as king left off. What William II could not do as Kaiser, he commonly could contrive to do as autocratic head of the most powerful state of the union.

2. Chancellor and Ministers. Equally unusual were the arrangements for imperial administration—in the lower levels, because of the large use made of the state functionaries; in the upper ones, because of the insertion between the emperor as titular head and the ministers as heads of departments of a most extraordinary official in the person of the chancellor. When drawing up the constitution of 1867,

Bismarck provided for himself a unique place as adviser to the emperor. Ministers—more properly "state secretaries"—there were to be, but merely subordinates to the chancellor, selected and controlled by him, and functioning only as glorified chief clerks in charge of the routine work of the several departments. Any responsibility that they bore was solely to the chancellor, just as the responsibility which the revised constitution of 1871 imposed upon that official was (in practice at least) to the emperor alone. Throughout its history, the Empire had no cabinet at all—unless, the chancellor be thought of as a sort of one-man cabinet; and of course there was nothing approaching cabinet, or parliamentary, government in the English or French meaning of the term. Appointed by the emperor, and commonly holding simultaneously the post of premier of Prussia, the chancellor was at the same time presiding officer and official spokesman of the highly powerful Bundesrat and head of the imperial administration. He it was who carried all important legislative proposals, after adoption by the Bundesrat, to the Reichstag for its approval. He it was who guided and controlled the ministers, whose departments were in truth merely bureaus of the historic *Reichskanzleramt,* or imperial chancery.

3. The Bundesrat. Viewed from a distance, the German Empire seemed to have a bicameral parliament, with the Reichstag as a lower and the Bundesrat as an upper chamber. Examined more closely, the situation took on a different aspect. The Reichstag was a true parliamentary body. But the Bundesrat was of such exceptional nature, and held so exalted a position, that one would be misguided entirely to think of it as merely a branch of a legislature. More truly than the emperor or chancellor or any other organ, it was the pivot on which the entire imperial system turned. To begin with, the Bundesrat represented, not people, but states, or more properly the governments of states. To each state, or government, the imperial constitution allotted a definite quota of votes—not on the principle of equality as in the Senate of the United States, nor yet in exact proportion to population, but nevertheless with some regard for the states' relative size and importance. Prussia led the list with 17 votes; Bavaria followed with six; and 17 of the lesser states had only one apiece—the total being 58 until 1911, when three were bestowed on the *Reichsland* of Alsace-Lorraine, bringing the figure to 61. These votes were under full control of the respective state

governments, and were cast (1) in indivisible blocks by deputations of state officials (as large as the state cared to send, up to the number of votes possessed), dispatched to Berlin in a quasi-diplomatic capacity, and (2) in strict accordance with instructions given from the various state capitals. The Bundesrat was not, therefore, an ordinary deliberative assembly in which the members, acting as individuals, introduced proposals, debated them, and reached decisions. Most business came to it from outside—from the emperor through the chancellor, and from state governments—and on most matters, the members, if not already instructed, were required to turn to the home authorities to ascertain the course that they should take. Even so, the Bundesrat was a hard-working body, in session, behind closed doors, practically all of the time. The chancellor, or a substitute designated by him, presided; 12 committees functioned in such fields as foreign relations, finance, and military affairs; and not only did the body prepare and first adopt all legislation (including the budget) later sent to the Reichstag for endorsement, but it issued administrative ordinances necessary for the enforcement of imperial laws, took steps to secure the execution of law in troublesome cases, shared the powers of appointment, treaty-making, and declaring war, audited accounts, and served both as a supreme administrative court and as a court of last resort in disputes between the states or between the imperial government and a state.

4. The Reichstag. The Bundesrat represented the federal principle, but the Reichstag was broadly national. Its 397 members were chosen simultaneously from single-member districts for a term of five years (barring dissolution), by secret ballot, with no plural voting, and by an electorate consisting of all duly registered male citizens 25 years of age or over. The conduct of elections left little to be desired; and majority election was assured by a plan of second balloting under which, in the many "circles," or districts, in which, on account of the multiplicity of parties, no candidate received a majority at the first balloting, the voters were recalled to the polls a fortnight later to make their choice between the two who stood highest. The only distinctly unsatisfactory aspect of the electoral system was the extreme inequality of the electoral districts, arising from the fact that, notwithstanding vast changes in the distribution of population, no reapportionment of seats ever took place after 1871.

The Reichstag elected its own officers, made its own rules, created

committees, sat usually with open doors, and in general conducted itself like a true deliberative assembly. Observers rarely failed to note, however, the usually scant attendance of members and the general listlessness of proceedings. Nor were the reasons difficult to discover. In part, they lay in the relative newness of the Reichstag as an organ of legislation and the inexperience of the German people with democratic institutions. But more largely they flowed from the fact that the constitutional order under which the Reichstag functioned gave no opportunity for the chamber to achieve a rôle of more than secondary importance. As indicated above, legislative proposals were considered first in the Bundesrat, and only after being approved there were sent to the Reichstag. The chancellor and other members of the superior body participated freely in Reichstag proceedings, in behalf of the measures in which they were interested. The government refused to recognize any power in the Reichstag to reduce appropriations for existing establishments and services. No responsibility to the Reichstag was admitted by the chancellor or any other imperial authority, and interpellations, although indulged in, were pointless because nobody ever resigned on account of an unfavorable vote. A troublesome Reichstag could always be dissolved, and, contrary to the situation in France, the provision for dissolutions was no dead letter. In a word, as the imperial government was actually operated, the Reichstag was a sort of fifth wheel to the wagon—a necessary concession to public sentiment and to world opinion, and on occasion useful, but never a force to be compared to the French Chamber or the British House of Commons. A mere "megaphone for political ambitions and complaints," with a voice that usually did not carry far, it was regarded with no very great respect, even by the rank and file of the citizenry which it represented.[1]

POLITICAL PARTIES AND PROGRAMS FOR REFORM

Parties of the Right and Center. Plenty of Germans were ready to defend their political arrangements as leaving little to be

[1] The governmental system of the Empire is dealt with at greater length in H. Finer, *Theory and Practice of Modern Government*, I, Chap. ix, *passim;* A. L. Lowell, *Governments and Parties of Continental Europe*, I, Chap. v, and II, Chap. vii; and especially F. Krüger, *Government and Politics of the German Empire*, Chaps. v-xvi, and E. Howard, *The German Empire*, Chaps. i-v, vii, ix. On the highly undemocratic government of the dominant state, Prussia, see F. A. Ogg, *The Governments of Europe* [1920 ed.], Chap. xxxvi, and A. L. Lowell, *op. cit.*, I, Chap. vi.

desired. Many, on the other hand, were of a different opinion; and attitudes on the subject were reflected significantly in the principles and programs of the political parties. Of such parties, there were many—some local and of little importance, but at least five having claim to major rank. To begin with the most reactionary, the Conservatives found their leadership mainly among the great landholders of eastern Prussia, their voters among the agricultural wage-earners and civil servants; and, being interested chiefly in maintaining the disproportionate political power which the imperial-Prussian set-up, combined with antiquated electoral systems, gave them, they were prepared to resist every proposal for constitutional or electoral change. Next to them stood a party, the Center, which, being founded and developed essentially as a Roman Catholic party, contained both aristocratic and popular elements, and naturally was strongest in the Catholic sections of the country, especially Bavaria, Silesia, and the Prussian Rhine provinces. Vigorously hostile toward socialism, the party nevertheless was guardedly liberal; indeed, it deliberately leaned as far as it dared in that direction with a view to attracting working-people who otherwise might go socialist. It had, however, no program of constitutional reform, and was often found acting with the Conservatives in a so-called "Blue-Black *bloc*." Next stood the National Liberals, the party preëminently of the industrial leaders and managers, with a large middle-class following, particularly in the cities, where, of course, the middle class was principally to be found. Here we first encounter desire for political change—an extensive program, indeed, of political reform, embracing not only restriction of clerical influence in government and termination of aristocratic monopoly of civil and military office, but abolition of the undemocratic Prussian three-class electoral system, reapportionment of seats in the Reichstag, and an end of government interference with freedom of voting on the part of imperial and state employees. One step farther leftward, and we come to the Radicals, or Progressives, also largely middle-class and industrial, differing from the National Liberals chiefly in being insistent upon free trade, but also in the circumstance that to the National Liberal program of political reform they added the establishment of a thoroughgoing parliamentary system of government, with responsible ministers both in the Reich and in the states, combined with subordination of the military to the civil power.

The Party of the Left—The Social Democrats. Finally, we reach the only party of radical tendencies, the Social Democrats. Founded in 1869, and therefore having a history almost exactly coinciding in point of time with that of the Empire itself, this party of the workingman found little to commend in the governmental system of either Empire or states. No other party was so effectively organized; no other had so comprehensive, and yet definite, a program.[1] Much of this program had to do, of course, with economic matters. But it also envisaged sweeping changes of a political nature: suffrage for both men and women at the age of 20; proportional representation; biennial elections; popular initiative and referendum; an elective judiciary; decision by the Reichstag of all questions of peace and war; annual voting of all taxes; "self-government by the people in empire, state, province, and commune." There were those in the party who, impatient for revolution, had little use for the tedious processes of political action. The bulk of both rank and file, however, took the more moderate and practical "revisionist" view that the goal of socialization could, and should, be reached only through political means, and were accordingly insistent upon achieving political democracy as a necessary step or stage. Most adherents of the party, indeed, would have been regarded in a country like England as hardly more than left-wing liberals.

A WAR-BORN REPUBLIC

War-Time Demands for Political Reform (1914-18). When World War I came on in 1914, discussion of constitutional matters largely ceased. With few exceptions, even the Social Democrats gave the government their support, voting for appropriations and powers as demanded. As the contest progressed, however, without prospect of early or perhaps favorable termination, criticism revived. In 1916, Chancellor von Bethmann-Hollweg found it expedient to promise electoral reform in Prussia, although to be delayed until after the war. In 1917, growing war weariness, aggravated by effects of the entrance of the United States and of revolution in Russia, not only led the Center party to join the forces of reform, but influenced the Reichstag to set up a special committee on the subject and forced a series of changes of chancellors in a vain effort to stem the tide.

[1] With but slight modifications, the party program continued until World War I to be that adopted by a party congress held at Erfurt in 1891, and commonly referred to as the Erfurt Program.

In the same year, the radical wing of the Social Democratic party seceded, forming a new party, known as the Minority Socialists, which from the first was openly hostile to the government. By 1918, the nation's morale was running low. Strikes and other revolutionary manifestations were occurring on all sides; hope of a smashing victory in arms before America could raise, train, and transport any large number of troops was fading; the government's hollow promises and shifty evasions on the subject of constitutional reform were costing it the confidence and support of increasing numbers of people. After the last great drives on the Western front failed to attain their objectives, the situation grew critical. Desperate efforts of the imperial authorities to hold things together did not prevent conviction from spreading among the armed forces and through the country that the war was lost; in September, the high command bluntly told the government that the army and navy could no longer be counted on, and that no course was open except to seek an armistice.

Failure of Eleventh-Hour Concessions. Then was enacted a chapter strikingly reminiscent of that recorded in France some fifty years earlier when the Second Empire was faced with ruin—except that in the present instance the eleventh-hour reforms designed to bolster up a tottering régime were decided upon and decreed in the brief space of six weeks instead of as many years. First, the Emperor proclaimed that thenceforth the people would have opportunity to "coöperate more effectively in deciding the policies of the Fatherland." Presently, a new chancellor promised immediate electoral reform in Prussia, along with other changes. Already President Wilson had announced that peace would be negotiated only with a German government truly representing the German people, and in rapid-fire correspondence between Washington and Berlin it was made clear that this meant that Kaiserism must be repudiated in favor of some new and more liberal political system. In the effort to convince the President, and through him the Allied and Associated Powers, that the country was actually being democratized, announcements were made, constitutional amendments adopted, laws hastily enacted in bewildering succession. Responsibility of the chancellor and ministers to the Reichstag, transfer of substantial control over war and peace to the same body, reapportionment of Reichstag seats, proportional representation, suppression of the Prussian three-class system—these were only a few of the long list of reforms decreed:

reforms which a few years previously would have met the demands of everybody except perhaps a few of the most intransigent Social Democrats. But as matters now stood, they were not enough. Significant on their face though they were, said President Wilson, there was no guarantee either of their sincerity or of their permanence; and the only inference that could be drawn from his refusal to be impressed was that the old government would have to give way, root and branch, to a new one, in different hands, before he would talk peace on terms other than unconditional surrender.

A Republic Proclaimed. With the German lines giving way at practically all points from the Swiss border to the sea, and with the Allies setting up the cry of "On to Berlin," demand arose on all sides that the Emperor abdicate. Even the Social Democrats did not insist at this point upon a republic; they asked only that a regent be appointed who might be able to procure an armistice, to be followed by arrangements for a liberal monarchy with parliamentary institutions on the English model. Settlement on these lines might have been possible had there been revolution only from above. But there was revolution also from below. Hunger and privation, loss of confidence in the country's leaders, and, above all, unremitting activities of bolshevist and other radical agitators had done their work. Disaffection was rife in both the army and the navy; workers in munition plants and factories, railwaymen, and even agricultural workers, were ready for revolt. Striving manfully to hold things together, the chancellor, Prince Maximilian, planned a national assembly to frame a new constitution, and also talked hopefully of a final desperate rising of the nation in case the Allies' terms proved insupportable. But events moved too swiftly. On November 4-5 (1918), a long-brewing naval mutiny broke out at Kiel; three days later, Bavaria was swept by revolution and a republic proclaimed; two days more, and most of the important cities of the west and center, including Berlin itself, succumbed. On all sides, workers' and soldiers' councils, on the model of the Russian soviets, sprang into being, pushing the constitutional authorities aside and seizing provisional control of affairs. For days, the distracted chancellor, confronted with complete collapse of both the imperial and Prussian governments, tried by every conceivable argument to induce the Emperor to abdicate. Only when finally convinced by his generals that he could no longer count upon the army did the humbled

Hohenzollern give a qualified consent and allow himself to be hustled across the frontier into Holland; not until November 28 did he sign a formal act of abdication. But meanwhile, on November 9, the plan of abdication was announced as being to all intents and purposes effective, and with it a renunciation of the succession by the crown prince, and of the chancellorship, too, by the last surviving official spokesman of the old régime, "Prince Max." [1]

The Social Democrats at the Helm. Recognizing that the Social Democrats, who had borne no responsibility for the old régime, were the logical people to take the helm, the retiring chancellor handed over *de facto* authority to their principal leader, a former saddle-maker of Heidelberg, Friedrich Ebert, who by a sort of legal fiction now became both chancellor and regent. For a regency, however, there proved no need; the psychology of the situation had come to be such that only a republic was feasible; [2] and the chancellorship, as such, was regarded by Ebert himself as having evaporated in his hands within a few hours. Associating with himself two other Majority Socialist leaders and three prominent Minority Socialists, Ebert forthwith brought into being a provisional government of "peoples' commissars" which, on the evening of this same red-letter day, November 9, issued a rallying proclamation as follows: "Comrades: This day has completed the freeing of the people. The Emperor has abdicated, his eldest son has renounced the throne. The Social Democratic party has taken over the government, and has offered entry into the government to the Independent Social Democratic party on the basis of complete equality. The new government will arrange for an election of a constituent national assembly, in which all citizens of either sex who are over 20 years of age will take part with absolutely equal rights. After that, it will resign its power into the hands of the new representatives of the people." After clamoring vainly for a generation for some substantial share in the control of public policy, Germany's Social Democrats suddenly found themselves in possession of all the power there was—involuntary custodians of a storm-tossed nation's destiny.[3]

[1] All of the old state governments collapsed at about the same time. Princes renounced their thrones, and republican governments under provisional councils were set up.

[2] A republic, indeed, had been proclaimed from the steps of the Reichstag building on November 9.

[3] R. H. Lutz, *The German Revolution, 1918-1919* (Stanford Univ., 1922); H. G. Daniels, *The Rise of the German Republic* (London, 1927).

CHAPTER XXIX

THE GOVERNMENT OF THE WEIMAR REPUBLIC—PARLIAMENTARY [1]

A NEW CONSTITUTION

An Uncertain Political Future—Some Possibilities. The old régime was palpably a thing of the past. Monarchy was gone—for the time being, at all events—in nation and in states. The Bundesrat lingered briefly and expired. The president of the Reichstag tried twice to call the members of that body together, but succeeded only in provoking a decree of dissolution. Imperial and state constitutions became dead letters. The only authority left was in revolutionary hands; and for months the world waited anxiously to see what would follow.

There were four main possibilities. (1) Monarchy, somewhat liberalized, might come back in both nation and states. The people as a whole had unquestionably been monarchist; there was no evidence that they had undergone any change of heart; not even the Social Democrats had ever put a republican plank in their otherwise ultra-liberal political platform. (2) A new régime dominated principally by the Majority Socialists might establish itself, with the republic perpetuated, a liberal constitution adopted, genuine political democracy introduced, and a program of gradual socialization

[1] The governmental system outlined in this chapter and the succeeding one perished at the hands of Hitler and his Nazis a decade and a half ago, and of course has never been revived. Some of its high points, however, are significant for any student of comparative political institutions.

The limitations under which this outline can be included at all forbid attention to the constitutions and governments of the *Länder*, local government, civil service, and many other inherently important matters.

launched. (3) On the other hand, the viewpoint of the Minority Socialists might gain acceptance, in which case the moderate ideas and cautious strategy of the Majority Socialists would yield to a program of radical and immediate economic and social reconstruction, with even such essentially political matters as making a new constitution postponed to a later stage of the nation's reorientation. (4) Finally, if rapidly growing extremer elements—Communists or "Spartacists"—came into control, Germany would go the way of Russia, with soviet forms of organization, dictatorship of the proletariat, and all the rest.

The Weimar Constitution: 1. The Constituent Assembly. For a variety of reasons, the situation favored the Majority Socialists, who as rapidly as possible went ahead with plans for giving the country its promised constitution. In January, 1919, more than 30,000,000 Germans reported at the polls and elected a constitutional convention, which, meeting at Weimar in the following month, addressed itself seriously to its difficult task. The Communists boycotted the entire effort, and the leftist Minority (renamed Independent) Socialists and two small parties (People's and National People's) at the opposite political extreme mustered only small fractions of the membership. But the Majority Socialists, the Democrats (embracing many former National Liberals), and the Christian People's party (former Center) formed a dominant central, liberal but moderate, *bloc;* and it was by this combination that the constitution not only was made, but also operated through a good many years. Students of American constitutional history will recall how greatly the work of the Philadelphia convention of 1787 was expedited by the submission by Edmund Randolph, in behalf of his state's delegation, of the Virginia plan, providing the convention at the very outset with a series of concrete proposals with which to begin. The same rôle was played at Weimar by a constitutional draft prepared in advance by a committee created by the provisional government and presided over by the able and eager Democrat, Dr. Hugo Preuss. The original Preuss plan was not adopted by the Assembly in full; its proposal for a dismemberment of Prussia, for example, did not prevail. It nevertheless afforded an excellent starting point for debate, and Preuss himself has ever since been rightly regarded as the chief architect of the new fundamental law.

2. The Constitution Adopted. As was to be expected, much criticism was directed at the convention as its work progressed. Moving too slowly to please some, too rapidly to suit others, it labored under handicaps, not the least among which was a widespread disposition to expect it to achieve the impossible. Ultraradical elements professed to see in it, and in a temporary government which it set up, mere instrumentalities of reaction. Losing their initial enthusiasm, considerable sections of the people became indifferent to its efforts, or grew skeptical as to their success. Disregarding strictures from without, however, and overcoming a tendency to prolixity such as had destroyed the usefulness of the Frankfort assembly of 1848, it pushed its deliberations to a conclusion almost as rapidly as the gravity of its task permitted. A drafted text was discussed on first reading in February and early March, in committee from March to June, and on second and third readings during July. On July 31—three weeks after the body (now acting as an interim assembly for general purposes as well as for making a constitution) had performed another important but less agreeable function in ratifying the Treaty of Versailles—the resulting instrument was finally adopted, by a vote of 262 to 75, the opposition coming chiefly from the National People's party and the People's party at one extreme and the Independent Socialists at the other. The constituent assembly had been elected so recently and was so broadly representative that no one could validly dispute its right to speak and act for the nation; and consequently—notwithstanding that extensive future use of the popular referendum was envisaged—the basic instrument was not submitted to a popular vote or any other form of ratification, but on the contrary (like the French fundamental laws of 1875) took effect forthwith by simple decree of the body that made it.

3. Its Characteristics. Influenced perceptibly by French, Swiss, and American precedents, yet drawn mainly from German sources (especially the ill-fated Frankfort constitution of 1848 and the Social Democratic party's Erfurt Program of 1891), the Weimar constitution's most conspicuous characteristic was its sheer bulk. Aside, indeed, from one or two state constitutions in our own country, the world had never, down to 1919, seen a lengthier one. At the beginning was a well-worded preamble; at the end, a group of 16 "transitional and concluding articles." Between lay two vast stretches

of constitutional matter: Part I, in seven chapters and 108 articles, dealing with the "structure and functions of the Reich"; Part II, in five chapters and 57 articles, devoted to the fundamental rights and duties of Germans." Constitutions overloaded with detail tend to defeat their own purposes; and the Weimar document proved no exception to the rule. It is at least not difficult to understand, however, why its framers piled clause on clause, to a total of some 35 printed pages. In the first place, the political structure provided for, if not truly federal, at all events involved novel and complicated arrangements as between nation and *Länder,* or states; and these seemed to require very full specification. Secondly, in their enthusiasm over the long-awaited opportunity to write their ideas into the country's fundamental law, the convention's liberal forces—particularly the Social Democrats—naturally were tempted to put into the constitution everything that they wanted to see come about, thereby, so to speak, nailing their program down. In the third place, the constitution was a product of compromises, not the least of which was a concession to the more radical elements eventuating in extensive sections in the fundamental law, *e.g.,* those relating to economic councils, which otherwise might not have been included. Through bitter experience, the Weimar Republic learned, however, that mere constitutional elaborateness is no guarantee of constitutional stability and permanence.

Still further characteristics flowed, at least in part, from the circumstances mentioned. For one thing, the constitution was, in its subject-matter, almost more economic than political; certainly it was crowded with provisions on economic subjects usually left for regulation by ordinary law; no fewer than nine articles, for example, had to do with the single matter of railways. On the other hand, the impossibility of agreement on many issues was responsible for incompleteness, not so much in the sense that subjects logically requiring to be covered were omitted altogether, as rather in that provisions on a subject sometimes started off with an air of assurance, only to come to a sudden stop or evaporate in more or less meaningless generalities. Finally, as many as four alternative procedures for constitutional amendment were specified: (1) a two-thirds vote in both Reichstag and Reichsrat; (2) a two-thirds vote in the Reichstag alone, provided that the Reichsrat, in disagreeing, did not within two weeks demand that the amendment be referred to the people;

(3) a two-thirds vote in the Reichstag, followed by approval by the people, in case the Reichsrat called for a referendum; and (4) popular initiative, followed by a referendum and adoption of the proposal by majority vote. Joining, as it did, the initiative and referendum with action by the legislative bodies, the amending process bore closer resemblance to that of Switzerland than to any other in Western Europe.[1]

SOME FEATURES OF THE CONSTITUTIONAL SYSTEM

Nation and States *(Länder)*. Among difficult questions debated at Weimar was that of whether the Republic, like the Empire, should have a federal form of government and, if so, whether all state boundaries and names as existing should be preserved intact. On the one hand, it was argued (1) that a federal system would be in keeping with all German traditions and experience, (2) that at least some of the states were so deeply rooted in history that they could not in fairness be simply blotted out, and (3) that if minor states had hitherto been irked by the preponderance of Prussia, they certainly would have nothing to gain from a unitary system opening the way for Prussianization of the entire country. Against these and other arguments, however, it was contended (1) that federalism meant division, conflict, and weakness, and on that account was losing favor throughout the world, (2) that under the Empire there not only had been much opinion favorable to greater consolidation, but significant actual tendencies in that direction; and (3) that postwar Germany could hope to maintain herself in the face of her victorious adversaries only if her people were marshalled under a single centralized government. Deeply involved was the further question of redrawing the political map of the country; and the nub of that question was the future of Prussia. Assuming that there were going to continue to be states (and there never was much actual doubt about that), should not the warmly resented Prussian dominance be forever ended by splitting the vast sprawling kingdom into half a dozen or more states, with the smallest non-Prussian states simultaneously combined into larger ones, yielding, in all, some 15 political areas

[1] Convenient English translations of the Weimar constitution will be found in H. L. McBain and L. Rogers, *The New Constitutions of Europe* (New York, 1922), 176-212, and H. Kraus, *The Crisis of German Democracy* (Princeton, 1932), 179-216; and a full analysis of the system of government for which it provided, in R. Brunet, *The New German Constitution* (New York, 1922).

approaching equality in size, strength, and importance? Many practical obstacles, however, appeared; and in the outcome the constitution's makers contented themselves with writing into the completed document an article leaving the states (thenceforth to be known as *Länder*) as they stood, but introducing a plan of "mobility of frontiers" under which in future new *Länder* might be created and boundaries changed, not only by constitutional amendment, but, if certain conditions were met, even by ordinary law. Prussia was never dismembered, and in fact later gained additional territory; some small states were eventually consolidated; and altogether the total, which under the Empire had been 25, fell to 17, where it stood until Hitlerian reconstructions began in 1933. The resulting system was popularly regarded as federal. Under any accurate definition of federalism it, however, fell somewhat short. Certainly we should not regard our American plan as federal if Connecticut or Colorado could be stripped of territory, or even joined with Massachusetts or Wyoming, by national action alone.[1]

Distribution of Legislative Functions. Under the Empire, the national government had exclusive legislative power over a few matters, *e.g.,* customs duties and the navy, and concurrent power with the states over a longer list. The bulk of legislation was, nevertheless, enacted and enforced by the states. Under the Weimar constitution, on the other hand, national legislative authority was carried about as far as was possible without depriving the *Länder* of all reason for having legislatures at all. First of all, the Reich had power to legislate exclusively on a wide range of subjects—foreign relations, colonial affairs, citizenship, immigration and emigration, national defense, currency, customs duties, and postal, telegraph, and telephone services. In the second place, it had unrestricted, although not exclusive, power to legislate on other vital matters such as civil rights and relations, criminal offenses, judicial procedure, poor relief, the press, the right of association and of assembly, public health, trade, industry, mining, insurance, railways, and the "socialization of natural resources and of economic undertakings." The *Länder* might legislate on these latter subjects so long as, and in so far as, the Reich did not do so; but Reich legislation, once enacted, took precedence; and it

[1] A. Brecht, *Federalism and Regionalism in Germany; The Division of Prussia* (New York, 1945).

may be added that most of the fields of concurrent action (especially those related to social welfare) were in practice rapidly preëmpted by the Reich. The Reich, too, was authorized to lay down "fundamental principles" on various subjects—taxation, land titles and distribution, education, religious associations, and others—for the guidance of subordinate legislative bodies. Finally, legislative supremacy for the Reich was clinched by a constitutional clause (strongly reminiscent of a similar clause in the constitution of the United States), tersely declaring national laws "superior" to the laws of the *Länder;* and whereas in our own country the question of how conflicts between national and state laws should be resolved was not answered in the constitution, the Weimar document explicitly provided for settlement by decision of a "superior judicial court"—in other words, by judicial review.

Arrangements for Administration. Under the Empire, national laws were enforced largely by state, rather than by imperial, authorities. The Weimar constitution continued the arrangement; indeed, by providing that national laws should be executed by the authorities of the states in so far as the laws did not themselves specify otherwise, it clearly set up a presumption in favor of state execution. All measures, nevertheless, on matters over which the Reich had *exclusive* control were now to be enforced by national authorities, and likewise national laws on financial matters, even though the legislative functions of the Reich in that domain were, of course, not exclusive. This made a good deal of difference, and the upshot was that the administrative activity—and consequently the administrative machinery—of the new national government became considerably more extensive than that of the old one.

Civil Liberties. In view of the wide field of authority left to the states and the narrow range of powers given the nation under the old imperial system, it was perhaps not unnatural that the constitution of the Empire should be virtually silent on the subject of civil liberties. One of the striking things which the Weimar instrument did, however, was to *nationalize* such liberties. The entire second part of the new constitution was, indeed, devoted to "fundamental rights and duties"—42 articles to what may be regarded as a bill of rights in the familiar sense, and 15 more to provisions on the special subject of "economic life." No other constitution anywhere in the world had

treated the subject so elaborately.[1] Moreover, there were not only guarantees of rights of the individual—equality before the law, liberty of travel and domicile, freedom of person, freedom of speech, on lines familiar in French and American declarations or bills of rights—but even more arresting enumerations of rights and freedoms of people in a lengthy series of provisions concerning "community life"; another concerning religion and religious associations; still another on the subject of education and schools. Intermingled with provisions in these sections concerning group interests and activities were further guarantees to the individual—freedom of petition and of political opinion, eligibility to public office, religious liberty. But the emphasis throughout was upon private rights as conditioned by the duty of the individual to subordinate his personal interests to the well-being of the collectivity; and *duties*—rendering personal services to the state and the municipality, contributing financially, and performing military service—were everywhere bracketed with *rights.* Some qualifications, to be sure, require mention. Many guarantees were promptly followed by clauses empowering the Reich, or even a state, to curtail or abrogate the right in question; Article 48 gave the president power, in time of emergency, to suspend as many as seven different articles guaranteeing rights; and the various articles were shot through with fine-sounding precepts and aphorisms which at best expressed only good intentions. Until, however, developments under the Hitler régime reduced this part of the constitution, as well as others, to a dead letter, Germany ranked well toward the top among countries in which civil rights were respected and enforced.

PARLIAMENTARY INSTITUTIONS—THE REICHSTAG

Reichstag and Reichsrat. When, with virtually a clean slate, the liberal elements in the Weimar Assembly set out to write a new German constitution, the easiest decision that they had to make was that the government of the future should be built around a great central democratic parliament which, on the one hand, should translate the will of the nation into law and, on the other, should, through ministerial responsibility, keep the processes of administration under suitable restraint; and from being merely tolerated as a "fifth wheel,"

[1] A later parallel was afforded by the first of two constitutions drawn up for the Fourth French Republic in 1945-46—a constitution, however, rejected by popular vote. See pp. 511-512 above.

the Reichstag was planned to become a flywheel, to which the entire mechanism of government was to be geared, and by which it was to be kept in balance. There was, however, the question of whether there should also be a second chamber. Some delegates, rejoicing in the collapse of the old Bundesrat, thought, with the British Labor party and various French radical groups, that one truly representative chamber is all that a democracy requires. The great majority, however, favored fitting into the new system a body perpetuating the traditional representation of states as such; and accordingly a Reichsrat was provided for, composed of delegations from the governments of the *Länder,* although so hedged about with restrictions that some people preferred to think of it as no true branch of a legislature at all, and therefore of the system as to all intents and purposes unicameral. Even the parliament that sits at Westminster would not be bicameral, however, if one were to insist upon constitutional parity for the two houses as a necessary condition.

The Reichstag—Election: 1. Suffrage. Throughout Central Europe, millions of men and women first became voters when a dozen or more new constitutions were adopted after World War I, and nowhere did the principle of democratic suffrage find more literal application than in Germany. Before the war, only men 25 years of age and over were Reichstag electors. For a generation, however, the Social Democrats had advocated universal suffrage at the age of 20; and in the Weimar Assembly (itself chosen on this basis) it was decided with no great amount of controversy that the Reichstag should thenceforth be elected by "universal, equal, direct, and secret ballot by men and women over 20 years of age." At a stroke, the electorate was considerably more than doubled.

2. Proportional Representation: (a) Single-Member Districts and Majority Elections under the Empire. Beyond defining the suffrage, fixing the term of Reichstag members at four years, and requiring that elections be held on Sundays or public holidays, the constitution left all regulation of the electoral system to later legislation, save in one very important particular: elections were in all cases to be conducted "according to the principles of proportional representation." In imperial days, Reichstag members had been chosen in single-member districts and by majority vote, safeguarded by provision that in any district where no candidate achieved a majority at the first balloting, the voters should go to the polls two

weeks later and select between the two who stood highest. Districts, too, with some 100,000 inhabitants each, had originally been approximately equal. Long before 1918, however, as population moved from declining rural areas to growing industrial centers, they had grown notoriously unequal, and with important political consequences. Chief sufferers were the Social Democrats, numerous only in the cities; and it is not strange that this party should long have clamored for a reapportionment of seats, or better yet, a new electoral system based on the proportional plan—or that in the Weimar Assembly its representatives should have seized opportunity to write such a plan into the new fundamental law, and not only for Reichstag elections, but for *Land* and local elections as well.

(b) The Novel Plan Adopted for the Republic. In one form or another, the proportional system had been experimented with not only in Belgium, Denmark, and Switzerland, but even in a few lesser German states; and when, in 1920, the Assembly (acting virtually as an interim parliament) decided upon the particular form to be employed in Reichstag elections, it simply took over a system lately installed in the southern *Land* of Baden—a system, as adapted for present purposes, differing sharply at many points from any that the world had yet seen, and therefore (contributing as it undoubtedly did, in spite of looking excellent on paper, to the Weimar régime's ultimate failure) deserving of some comment.

The salient features of the scheme can be indicated briefly. First of all, the country was divided into 35 electoral districts averaging around 1,700,000 population. No definite quota of seats, however, was allotted to each district, nor any number fixed for the Reichstag as a whole. Instead, after every election each district received seats, and likewise each party throughout the country as a whole, in accordance with the number of blocks of 60,000 votes each that were polled, with reapportionment of seats thus automatic. In each district, candidates were nominated by the various parties, in lists as lengthy as desired; and after the votes were cast and counted, the district list of each party was awarded one seat for every 60,000 votes polled for it. Obviously, there would be remainders after the respective party votes were divided by 60,000—remainders that theoretically might run as high as 59,999 votes. In addition, some lists would almost certainly not have attained the quota necessary for a seat. At this point appeared another distinctive feature of the sys-

tem: all such votes, instead of being discarded, were transferred to some other point where they would help determine the outcome. The point to which they would be transferred in the case of any given party list depended on whether the party managers had chosen, in accordance with an option offered by the electoral law, to associate the lists of two or three districts in a "union" list. If this had been done, the surpluses from these districts would be added together, and, if aggregating as many as 60,000 votes, would become the basis for awarding the party an additional seat. If, on the other hand, no union list had been formed, the district surplus would still not be lost, but instead would be carried to a national pool, consisting of all unused votes of a given party brought up from either the individual districts or the unions; and from this the party would receive still other seats, at the rate of one for every 60,000 votes (plus one for any final surplus of more than 30,000), such seats being allotted to a *Reichsliste* selected by the central party management in advance of the election, although nowhere appearing on the ballots.

(c) Its Advantages. For the system thus outlined, there was obviously a good deal to be said. In the first place, in sharp contrast with most electoral schemes, it ensured that substantially all votes cast would contribute *at some point* to determining electoral results. Ballots too meager to be effective at one point were simply carried to another where, combined with others, they would count. If the object sought in making up a legislative body is a faithful reflection of the varieties and proportions of opinion in a country, the system described should, it would seem, come as near to supplying it as any. A second advantage of the plan was that it obviated the entire vexatious problem of reapportioning legislative seats. Perhaps it would be more accurate to say that every election saw a reapportionment, but one that was automatic, on lines determined by the number and distribution of votes, with no changes of district boundaries, and therefore with no shunting off of voters into districts where they were not needed, after the fashion of gerrymandering operations in other countries. Not to be overlooked, too, is the saving resulting from the rule that, in case a member of the Reichstag died, resigned, or was expelled, the vacancy should be filled, not by means of a special election, but by the leaders of the party concerned, who were to select for the seat some person who was on the party list at the last election but failed to be chosen. Much was made by some writers,

also, of the alleged value of the national list, on the ground that it opened up a way by which able men who for personal—perchance financial—reasons would shrink from seeking election in the districts, or perhaps would have small chances of success at the polls, could nevertheless be brought into public life. There is something to the point; on one occasion, Stresemann himself obtained a seat only in this way. What more commonly happened, however, was that the principal party leaders placed their own names on the national list, with a view to assuring themselves safe berths and at the same time securing freedom to devote themselves during the campaign to the larger concerns of party generalship.

(d) Some Weaknesses. Notwithstanding its attractiveness from many points of view, the system was, however, open to criticism on several grounds; indeed, a decade of trial left it exposed to vigorous attack, not only from dissatisfied political groups, but from impartial students of electoral problems as well. To start with minor, and more remediable, faults: first, the flexible plan of allotting seats caused the Reichstag to become too large for the most effective performance of its work. The number of seats under the Empire was 397. Under the Republic, it started at 459 and ended at 661, after the second Reichstag election of 1933. The obvious remedy, *i.e,* to increase the electoral quota from 60,000 to a higher figure, was often proposed, but without result. A second shortcoming arose from the circumstance not only that in practice the device of the national list failed to bring into the Reichstag non-politicians of conspicuous ability, but that it led to the election and seating of large numbers of candidates (upwards of a fifth of the entire membership on one or two occasions) who had been before the voters only in the qualified sense that when the latter went to the polls they knew that if they supported a given party, such seats as might accrue to it from its national pool would be assigned by the leaders from the party's published national list. In the third place, notwithstanding provisions of the law designed to discourage the growth of *Splitterparteien,* or "splinter" parties,[1] the proportional system unquestionably contributed to "balkanizing" the political structure by leading the people to divide into considerably larger numbers of parties than existed under the Empire, or even at the beginning of the Republic. It would be fallacious to

[1] *E.g.,* a rule precluding a party from being allotted any seats at all unless it was strong enough to elect one or more candidates in the districts or unions.

attribute this unfortunate development exclusively to proportional representation. The same thing happened, however, in other Central European countries which simultaneously adopted the proportional plan, and the association of excessive numbers of parties with the plan is much too frequent to be accidental. As the matter worked out in Germany, the formation of cabinets grew almost impossible, and constitutional deadlock—the ideal preparation for dictatorship—became chronic.

Voting for Parties and Not for Men. Still further, and equally serious, difficulty lay in the impersonal character of the elections and the almost mechanical rôle assigned the voter. To begin with, in the matter of selecting candidates, the law started off by requiring that a party list in a district be put forward by not fewer than 500 electors, but ended weakly by allowing it to be entered by as few as 20 signers, provided "credible" evidence was furnished that as many as 500 electors were prepared to support it. The 20 signers were almost invariably party leaders, who alone decided who the candidates were to be and in what order their names should appear on the ballots. In the next place, the electoral campaign was directed entirely to persuading the voters to support the party; the candidates, as individuals, were nowhere featured. Still further, when the voter went to the polls, the ballot which he received carried, to be sure, all of the party names, duly numbered and in the order of the number of seats held by the respective parties in the last Reichstag, but, under each party name, not the full list of candidates, but only the names of the first four.[1] Finally, the elector must accept the list as it stood and vote a "straight ticket," voting indeed, not for individuals at all, but only for the "bound" list, or, to all intents and purposes, for the party. If he struck out a name or tried to indicate a different order of preference, his ballot was regarded as defective. To be sure, the voters in European countries generally—even in Great Britain—have relatively little to do with the selection of candidates; party managers, great or small, commonly attend to that. Even in the United States, complaint on similar lines is often heard, even where the direct primary ostensibly puts the matter in the people's hands. There is hardly another country, however (apart from those Communist-controlled) in which party managers frustrate electoral free-

[1] For a specimen ballot, see J. K. Pollock, *German Election Administration* (New York, 1934), 37.

dom on the part of the ordinary voter to such a degree as was experienced in republican Germany. Certainly there is none (with the same qualification) in which the voter has so little opportunity to make choices among individual candidates presented. It was at this point that the severest criticism of the system arose, both from Germans and from foreign observers; and to break the power of the machine and at the same time reëstablish some vital personal connection between candidate and voter, many thoughtful Germans were prepared to do away with the proportional system altogether and restore the single-member-district plan. Without going this far, something might have been gained by reducing the size of the districts and adopting some less restrictive proportional scheme. Most of those having to do with party management, however, stoutly opposed any such changes, even though, as one German leader conceded, "not parties, but men, is what the people want to see: men with whom they may argue and in whom they may believe.[1]

The Reichstag in Action. However far it fell short in practice, the Reichstag was designed to occupy a position of much prestige and power; if it could truly have fulfilled its intended function, all might have gone well with the Republic. It was the basic lawmaking body, subject to checks to be sure, yet with power ultimately to enact and make effective any legislation upon which it was sufficiently determined. In accordance with the familiar cabinet principle, chancellor and ministers were responsible to it; and as against them, it could always claim to be the direct spokesman of the electorate. Moreover, its working machinery and procedures compared favorably enough with those of such highly regarded parliamentary bodies as the British House of Commons. The constitution required it to be convoked in regular session every year, and special sessions could be convoked, not only by the president of the Republic, but also by one-third of its own members. It could adopt its own rules; and its sittings must be open to the public except when decreed otherwise by two-thirds majority. In lieu of a speaker, a president, elected by majority vote, served as moderator; and a full quota of standing committees

[1] R. von Kuhlmann, *Thoughts on Germany* (London, 1932), 152-153. The standard work on the electoral system of the Weimar period is G. Kaisenberg, *Die Wahl zum Reichstag* (4th ed., Berlin, 1930); but American readers will find a thoroughly satisfactory account of it in the booklet by Pollock mentioned above. A vigorous unfavorable discussion of proportional representation, with much reference to German experience, will be found in F. A. Hermens, *Democracy or Anarchy?; A Study of Proportional Representation* (Notre Dame, Ind., 1941).

(ultimately 15), chosen by the Reichstag as a whole on the basis of quotas nominated by the parties, served the recognized purposes of such instrumentalities in other legislative bodies. Bills might be introduced freely by members, and all were referred to one or another of the committees, which must report them back, favorably or unfavorably, and with or without amendments. Debate was expedited by a rule under which speeches were limited ordinarily to one hour, and might be further restricted by majority vote. Finally, there were rules under which ministers might be questioned, if not by individual members, at least by groups of 15 or 30 depending on the nature of the inquiry.

Limitations and Shortcomings. There were, however, limitations, and from first to last the body displayed serious elements of weakness. In the first place, there not only was an excessive number of party groups, but the dominance and discipline of party, so manifest at election time, carried over in full force into the chamber, frustrating all independence of speech and action on the part of individual members. Debate was wooden and stereotyped; all voting was strictly on party lines (for failure to vote with his party, a member could be expelled from it); proceedings resolved themselves largely into party maneuvers. Whether or not on this account, the body, in the second place, displayed little initiative and leadership. As is well known, it is customary enough under cabinet systems of government for most important legislative proposals to originate with, or at all events to be presented and sponsored by, the ministers; and that this was the experience of republican Germany is not of itself discreditable. When, however, it is observed (1) that the cabinet must there submit all of its legislative projects to the Reichsrat before taking them to the Reichstag, (2) that the Reichsrat might itself originate measures, and (3) that, in addition, measures might be initiated by the people themselves, or even by a National Economic Council, one will not be surprised to learn that the Reichstag early fell into the passive and complacent attitude of simply waiting for proposals to be brought to it and almost totally failed to achieve the stimulating experience of viewing national problems independently and independently projecting solutions for them. Constitutional limitations were operative also. One was the power of dissolution vested in the government—a power not only possessed but vigorously employed. Another was the extensive ordinance power of the executive, together

with the so-called dictatorial powers conferred in the constitution's Article 48.[1] A third (explained below) was the right of the Reichsrat to object to, if not finally to veto, measures as passed by the Reichstag. A fourth was the check imposed by the popular referendum. And a fifth, of at least potential significance, was judicial review. Under normal conditions, these checks and restrictions would not necessarily have interfered seriously with the Reichstag's intended preëminence. Under the circumstances existing especially after 1929, however, they (or certain of them) were taken advantage of to reduce it to impotence, and indeed to threaten its very existence.

PARLIAMENTARY INSTITUTIONS—THE REICHSRAT

1. Structural Aspects. Although otherwise widely different, the second chamber decided upon at Weimar bore close resemblance to the old Bundesrat structurally. As in the earlier body, each state, or *Land,* was assigned one vote, and more populous *Länder* additional ones, subject in the later instance to the restriction that no *Land* might have more than two-fifths of the total number. The original distribution of additional votes was on the basis of one for every 1,000,000 inhabitants, with another for any remaining fraction of 1,000,000 if equal to the population of the least populous *Land;* and on this basis Prussia received 25 votes, Bavaria 7, and other *Länder* lesser numbers, to a total of 63. As early as 1920, however, the merging of seven small *Länder* to form the new *Land* of Thuringia (with two votes) reduced the total of non-Prussian votes by five and brought down the Prussian quota to 22 in order to keep it within the two-fifths limit. In 1921, moreover, a constitutional amendment changed the quota entitling a state to an additional vote from 1,000,000 to 700,000 or major fraction thereof; and Prussia received 27, Bavaria 10, and so on down the list, to a total of 67. Certain minor changes later did not affect either the total or the Prussian quota.

As in the case of the old Bundesrat, each state was entitled to send as many delegates as it desired, up to its total quota of votes; and whereas formerly it was merely a matter of usage for delegates to be designated from among officials of the respective state governments, the Weimar constitution required that they be such officials in all instances except in Prussia, where one-half were named, not by the government of the *Land,* but by the several provincial administra-

[1] See pp. 651-654 below.

tions. This latter arrangement was designed to decentralize and lessen the power of Prussia in the Reichsrat, an end promoted also by the absence of any provision such as that of imperial days under which Prussia was able single-handedly to defeat any constitutional amendment in the Bundesrat. The Weimar constitution left the way open also for decentralization in voting; for whereas before 1918 all of a state's votes in the Bundesrat were required to be cast in an indivisible block, the new constitution contained no provision of the sort. Practically, however, the matter did not work out so differently, because state governments naturally fell into the habit of instructing their representatives as to how they should vote—except only that in the case of Prussia the government at Berlin could, of course, control the votes of only the delegates whom it appointed. Prussia actually had a larger proportion of the votes than in the old Bundesrat, *i.e.*, some 40 per cent as compared with 28. For the reasons given, however, her influence was less dominant than before.

2. Functions and Powers: (a) Amending the Constitution. It has been made clear that the Reichsrat was intended to be only a pale image of the supremely powerful Bundesrat. At best, the functions assigned it were mostly of a negative sort. Briefly, they fell into three main groups according as they had to do with amending the constitution, with legislation, and with issuing ordinances. As indicated earlier, (1) a constitutional amendment might be adopted by a two-thirds vote in both Reichstag and Reichsrat; (2) if the latter refused assent to a given proposal, and within two weeks demanded submission of it to the people, the amendment finally prevailed only if the ensuing referendum resulted favorably. The Reichsrat therefore had a suspensive veto, but nothing more.

(b) Legislation. In the domain of ordinary legislation, three features are significant. (1) The cabinet was required to submit all of its legislative projects first of all to the Reichsrat; and although it might carry them on to the Reichstag whether the Reichsrat had endorsed them or not, it must, in case of dissent, give the popular body the benefit of the other chamber's views. (2) The Reichsrat might itself initiate measures, which the cabinet, even though disapproving of them, must present to the Reichstag, along with its own opinions. (3) The Reichsrat might raise objection, within two weeks, to a bill passed by the Reichstag; whereupon the measure must go back to the popular chamber for reconsideration. If the latter chose

to stand its ground, and by a two-thirds majority, there was nothing farther that the Reichsrat could do; the president of the Republic must either proclaim the measure as law or submit it to a popular vote. If, however, the Reichstag adhered to its earlier decision by something less than a two-thirds majority, the measure was submitted to the people within three months if the president of the Republic so chose, or, in default of such action, simply perished. Without having power to frustrate any legislation whatsoever upon which the Reichstag was sufficiently determined, the Reichsrat could nevertheless impose checks and delays, compel reconsideration, and create situations calculated to bring into play direct action by the electorate. In practice, the Reichsrat's rôle in initiating legislation was commonly confined to requesting the cabinet to prepare and introduce a desired bill.

(c) Issuing Ordinances. A third phase of Reichsrat activity had to do with the executive and administrative work of the government. The ministers were, of course, not responsible to the Reichsrat in a political sense, but this did not prevent them from being questioned and interpellated in that chamber. Various kinds of ordinances could be issued only with the Reichsrat's consent, and the body itself had power to issue ordinances on certain aspects of taxation and finance in so far as they affected the mutual interests of the Reich and the *Länder*. In its character of essentially a council of states, it is not strange that the Reichsrat should, indeed, have acquired, whether by constitutional provision, by statute, or merely by usage, considerable consultative authority in all that pertained to Reich-*Länder* relations. In fact, one should not be misled by the secondary rôle ostensibly assigned it into underestimating the chamber's actual importance. In session virtually all of the time, composed of experienced ministers and other state officials, equipped with 11 active standing committees with which chancellor and ministers freely consulted, and often made by these officials the vantage point from which to announce major domestic and international policies, the body was—so long as it lasted—perhaps the most vigorous and successful of the many second chambers owing their creation to political changes after World War I.[1]

[1] A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), Chap. x.

PROVISIONS FOR DIRECT LEGISLATION

1. Why Adopted. To universal suffrage, proportional representation, responsible ministers, and other presumed guarantees of democratic government, the architects of several of Europe's new constitutions of the post-World War I period added the popular initiative and referendum. The classic land of these twin devices of direct democracy is Switzerland, where the referendum in its present form originated in the canton of St. Gall as early as 1830 and the initiative in that of Vaud 15 years later. Outside of Switzerland, the two principles were adopted most extensively for ordinary lawmaking, down to a generation ago, in the United States, where North Dakota (1898) and Utah (1900) became the first states so to employ them. In the era of constitution-making after World War I, however, virtually all Germanic states embraced them—not only the German Reich (which became the largest political unit ever to experiment with them), but all of the *Länder* within the Reich, Austria and some of its *Länder,* and the Free City of Danzig. In the assembly which formulated the Weimar constitution, there was sharp division on the desirability of the popular initiative; many feared a possible tendency to weaken parliamentary institutions, and in the end only the Social Democrats stood solidly for it. The referendum, however, was widely viewed, not as a competitive legislative instrumentality, but rather as a means of promoting true representative government and perfecting its techniques, and nearly all political elements joined in writing it into the fundamental law. When cabinet and Parliament could not agree, it would be an advantage—so it was argued—to have machinery by which the matter at issue could be sent to the people for settlement; resignations of cabinets would be averted, likewise parliamentary dissolutions, and greater stability of government attained. In the same way, deadlocks between the legislative chambers might be resolved, to the advantage of all concerned. To the more democratic elements the device appealed further as a means of educating the people politically through frequent participation in the work of government, and also of meeting part way those who had doubts about the desirability of a purely representative system.

In practical use, both initiative and referendum everywhere lend themselves to many variations, qualifications, and complications. The arrangements set up for the Reich can, however, be indicated briefly.

As for the initiative, the salient fact is that one-tenth of the qualified voters of the country might by petition bring forward, in fully drafted form, either a constitutional amendment or an ordinary bill, which, upon being laid before Parliament by the cabinet, became law if adopted in the regular manner in the form submitted, but otherwise must be referred to the electorate for final decision. As for the referendum, there were six more or less differing circumstances under which it might be brought into play. (1) At any time within a month after a bill had been passed by the Reichstag, the president of the Republic might, before promulgating it as law, order a referendum on it. (2) If a bill passed the Reichstag, but one-third of the members demanded postponement of promulgation for two months, and if the chambers did not declare the measure urgent, it must be submitted to a referendum if one-twentieth of the voters so requested. (3) A bill upon which the chambers could not agree was referred within three months if the president so decided. (4) As indicated above, a popularly initiated bill must be referred if the chambers failed to pass it in the form in which it was presented to them. (5) If the Reichstag adopted an amendment to the constitution and the Reichsrat did not concur, the latter might at any time within two weeks demand and obtain a referendum. (6) If the Reichstag by two-thirds majority suspended the president of the Republic from office, the question of his removal was to be decided by the people. In no case might a referendum annul an enactment of the Reichstag unless a majority of the qualified electors voted on the proposition; and measures relating to the budget, taxation, and salaries could under no circumstances be referred save by decision of the national executive.[1]

3. Practical Results. Despite rather general expectation to the contrary, two deductions that might have been drawn from the experience of Switzerland held generally true of the initiative and referendum in all of the Central European states adopting them in the period under review. The first is that they would be used sparingly; the second, that in so far as used at all, they would yield conservative rather than radical results. From the beginning of the Republic until Hitler's capture of power (1920-33), only seven national measures in all were started by popular initiative; only two of these ever

[1] On their part, all of the *Länder* provided in their constitutions for varying forms of the referendum, and all except Lübeck for some form of initiative.

reached a popular vote; and both were defeated. In the *Länder,* the record was even less impressive. Among principal impediments (in the national sphere, at all events) were the difficulty of obtaining the signatures of so large a proportion of the voters as one-tenth; the fact that the cost of securing such support must be borne by the petitioners; the ease with which, even when a petitioned measure was brought to a popular vote, the elements opposed to it could defeat it by instructing or persuading their supporters to stay away from the polls, thereby cutting the total vote to less than the required half of the entire electorate; and finally the probability that any popularly initiated measure would be opposed by the cabinet and chambers—the initiative being to ail intents and purposes a means of seeking action on lines which the government had itself refused to follow. The referendum fared but little better. Of the six modes by which referenda might arise, as enumerated above, four were never employed at all, and the others in but few instances and with no very significant results. Speaking broadly, experience was the same in the *Länder.* Whatever the reasons, direct legislation totally failed to attain the importance expected of it when the constitutions were made.[1]

[1] On systems of direct legislation in central Europe after World War I, see A. J. Zurcher, *The Experiment wiih Democracy in Central Europe,* Chap. vi, and A. Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1926), Chap. viii.

CHAPTER XXX



THE GOVERNMENT OF THE WEIMAR REPUBLIC—EXECUTIVE AND ADMINISTRATIVE

The Problem of a National Executive. The constitution-makers of Weimar found little difficulty in agreeing upon a bicameral parliament, but were for a good while puzzled—as undoubtedly the architects of any future German system will also be—about the form to be given the executive. The Reichstag of imperial days offered an obvious basis upon which to build a new and broader representative system, but the institutions of the Empire furnished little that could be turned to account in deciding upon an appropriate and safe custodian of executive power. For obvious reasons, neither Prussian kingship nor Hohenzollern emperorship could be taken as a pattern. The old chancellorship, incompatible with every principle of parliamentary government, was almost equally useless. Nor could those struggling with the problem find precisely what they wanted in any foreign country. They had no desire for a government of sharply separated powers like that of the United States. They did not want what Dr. Preuss [1] termed the "impure parliamentarism" of France. They did not want the plural executive of Switzerland. In the end, they did the inevitable thing; that is to say, they hammered into shape an executive establishment—built around a strong president and a group of responsible ministers—into which went French, English, and of course German contributions, without precisely reproducing the arrangements to be found in any particular country.

[1] Dr. Hugo Preuss, who will be mentioned several times in this chapter, was a professor of public law in the Berlin Handels-hochschule, a well-known writer on municipal government, and an accomplished student of constitutional matters.

How Should the President Be Chosen? Having decided that there should be a president, those planning the new constitution were confronted with the question of how he should be selected. Bent upon keeping parliament ultimately supreme, Poland, Latvia, Lithuania, Austria, Czechoslovakia, and other states which adopted new republican constitutions after World War I provided for the election of their chief executive after the French manner, *i.e.*, by the members of the two legislative houses convoked in national assembly. This method would not, however, have been compatible with the type of presidency planned for Germany; and although such men as Dr. Preuss fully recognized the danger that a chief executive chosen directly by the electorate, and drawing his authority from it equally with the legislature, might not fit perfectly into a parliamentary system, they preferred to run the risk of such ill adjustment rather than see the president relegated to the almost absurdly weak position occupied by the president of France. Accordingly, the constitution provided for direct election by "the whole German people." [1]

As to the manner in which popular election should be carried out, the constitution was silent, save to provide that details should be "regulated by a Reich law." This was not because the Assembly failed to appreciate the importance of the matter, but, on the contrary, because so much concern was felt about it that no agreement could be arrived at. The main point at issue was that of including provisions ensuring election by majority. One proposed plan was that if a first ballot failed to produce a majority for any candidate, the people should ballot again, at a "run-off" election, upon the two who had stood highest. To this it was objected that, on account of the inevitable multiplicity of parties, there would as a rule be many candidates, and that the popular vote would be so divided that even the highest two might easily have behind them only a minority of the electorate. A second plan ran on similar lines, with the difference that at the second balloting all candidates so desiring should be permitted to remain in the race, new ones might enter, and the competitor emerging with the largest number of votes should be declared elected, even though by mere plurality. A third plan, introducing the principle of alternative voting, provided that the voters

[1] More than once in the old days, direct popular election was advocated—as by President Millerand (1920-24)—as an indispensable means of strengthening the French presidency.

should in any case be called to the polls only once, but at that time should indicate second as well as first choices, in order that ballots might be transferred when first choices failed to yield a majority. A fourth scheme would have brushed the whole problem aside by providing simply for election by plurality on the first ballot.

The Method Adopted. Decision among these various proposals was arrived at in a national law of May 4, 1920, legalizing the "run-off" plan, *i.e.,* the first of the four enumerated above. Before this method could actually be tested, however, dissatisfaction with it led, in March, 1925, to substitution of the second scheme, as being, after all, a reasonable compromise between rigid insistence upon majority election and total disregard of the matter; and the two presidential elections actually held (exclusive of the original choice of President Ebert by the Weimar Assembly in 1919) were carried out in accordance with the revised law.[1]

Presidential Tenure: 1. Term. With a view to forestalling anything in the nature of a life presidency, the Social Democratic forces at Weimar urged a presidential term of five years, with possibility of reëlection not more than once. Believing it, however, for the good of the country that, as an offset to party turbulence, the office should have stability and continuity, the influential Dr. Preuss advocated a term of seven years, with indefinite reëligibility, on the French model; and in the end this plan prevailed. Furthermore, in order to discourage the rise of such extra-legal limitations as were once imposed by the no-second-term tradition in France and the no-third-term tradition in the United States, indefinite reëligibility was expressly affirmed in the constitution.

Americans will be interested to know that there was some thought at Weimar of providing for a vice-president. The Preuss commission, however, threw its influence against creating a "republican crown prince," and provisions for presidential disabilities and vacancies were finally agreed upon as follows: (1) the chancellor (by amendment of 1932, the president of the Supreme Court) should take the president's place during a brief interval of illness or other

[1] The first of these two elections took place in 1925, when, after a first balloting (on seven candidates) failed to yield a majority, Field Marshal Paul von Hindenburg entered the race and at the second balloting was elected over two competitors, although only by plurality. The second occurred in 1932, when Adolph Hitler made a bold bid for power as a candidate but Hindenburg was reëlected by clear majority. The standard work on the presidential election system is G. Kaisenberg, *Die Wahl des Reichspräsidenten* (Berlin, 1925).

incapacitation; (2) if a president were to lose his reason, be involved in impeachment proceedings, or otherwise become unable to exercise his functions over a considerable period of time, the situation should be dealt with by a national law; and (3) in case of resignation, impeachment, or death, another president should forthwith be chosen by the people for a full seven-year term.

2. Suspension and Removal. As already indicated, the presidency was intended to be strong. At the same time, it was not to be autocratic; and provision was significantly made for removal, not only by process of impeachment (the charges to be brought, on grounds of violation of the constitution or the laws, by the Reichstag, and the judgment to be rendered by a newly created tribunal, the *Staatsgerichtshof,* or High Court), but also by vote of the people—in other words, by popular recall. This latter procedure must be instituted by a two-thirds vote of the Reichstag suspending the president from office and putting to the electorate the question of whether he should be definitely ousted or permitted to resume his functions. A bare majority of the popular votes cast was sufficient to work the president's downfall. If, however, the proposal failed, the accused was so completely vindicated as to be regarded as having been reëlected for a full seven-year term; and the Reichstag, rebuffed, was to be dissolved automatically and another chosen in its place. The general principle that the titular head of the state in countries having cabinet systems is politically irresponsible, since all of his orders and decrees must be countersigned by a responsible minister, here found interesting exception. The orders and decrees of the German president must be countersigned as in other countries. But the unusual powers assigned him, together with the fact that he was elected coördinately with the Reichstag by direct popular vote, seemed to the framers of the constitution—as they seemed to many German jurists afterwards—to place him in a position such that it was logical and necessary to give the people opportunity as a court of last resort to decide between him and the Reichstag at times of fundamental conflict. No actual use of the procedure, however, was ever made.

Presidential Powers and Functions. Turning to the president's powers and functions, we encounter a difficult subject indeed. If he had been only the usual sort of titular head of a cabinet-governed state, it would suffice simply to note the powers conferred upon him

in the constitution, to point out that nearly all of these were in fact exercised in his name by a ministry responsible to the Reichstag, and to emphasize that his own share in the government depended in large degree upon the extent to which he showed aptitude for advising with and influencing those who spoke and acted for him. Even before the stormy period 1930-32, however, during which von Hindenburg lent himself to many dictatorial practices, the German president was far from being merely the usual sort of titular executive. Fitted, to be sure, into a cabinet system, and endowed with powers which in the main he was not intended to exercise as personal prerogatives, he was nevertheless designed to be, in the words of Dr. Preuss, "a definite center, an immovable pole," in the constitution; and the position which he occupied would be hard to characterize, not only because the times in which the Weimar system operated were abnormal and the only popularly elected president not a typical political figure, but because the office, created by grafting a strong executive on to a parliamentary system, was a unique device which, even by 1933, had not as yet revealed its full possibilities.

1. Executive. As head of the state, however, the president appointed and dismissed the chancellor, and on the latter's recommendation, the ministers; directly or indirectly appointed and dismissed all other national officers, civil and military, "unless otherwise provided by law"; served as commander-in-chief of the military and naval forces, both in war and in peace; called and presided over cabinet meetings; wielded the power of pardon, although not that of amnesty; and in the realm of foreign relations, received and accredited ambassadors and ministers, and concluded "alliances and other treaties" (subject to the restriction that such international agreements, if within the legislative competence of the Reichstag, required the consent of that body), although war could be declared and peace made only by "Reich law."

2. Legislative. In the domain of legislation, the president's powers, although circumscribed by many a constitutional provision, were nevertheless unusually extensive. A regular annual session of the Reichstag was provided for, but the president might cause special sessions to be convoked, and also might decree dissolutions. Having assured himself that they had been passed in due form, he promulgated all national laws by causing them to be published in the *Reichsgesetzblatt,* or National Law Gazette, with the qualification

(1) that he might order any measure submitted to a popular referendum before promulgating it, (2) that he *must* cause a measure to be so submitted if, promulgation having been postponed for two months on demand of one-third of the Reichstag, one-twentieth of the qualified voters of the Reich petitioned for a popular vote upon it; and (3) that he might, within three months, so submit a measure upon which the Reichstag and Reichsrat could not agree. In the case of a constitutional amendment, it was mandatory to order a popular vote—even though the Reichstag had given the proposal a two-thirds majority—if within two weeks the Reichsrat so demanded. From these various provisions the president manifestly derived no veto power of any absolute sort, although plenty of power of delay and suspension. Their object, it has been remarked, appears to have been "to furnish a possible corrective to hasty legislation, noisy minorities, ruthless majorities, popular interference in financial plans, and the like, by an elaborate system of alternative procedures over which the president (always advised by the cabinet) had a nominal control that theoretically removed a matter from . . . the legislature to the executive; or in the end left it to the final tribunal of public policy, the people." [1]

Article 48: 1. Federal Execution. Of special importance among presidential powers, as events proved, were two conferred in one of the constitution's most remarkable articles, *i.e.,* 48. The first of these, commonly known as the power or function of federal execution, came into play when a *Land* failed to discharge its obligations under the constitution or the laws, and involved authorization of the president to compel it to do so by such means, *e.g.,* negotiation, as he might choose, and, if need be, "with the help of the armed forces." Here was a power equivalent to that wielded by President Lincoln in the American Civil War, even though, by more or less of a legal fiction, the force of the national government was in that instance employed against, not states, but citizens regarded as in rebellion. Moreover, the German president's power of federal execution lay by no means unused, even before the troubled period of executive rule dating from around 1930. In 1920, it was employed against Thuringia and Gotha, and in 1923 against Saxony, the president on each

[1] F. F. Blachly and M. E. Oatman, *Government and Administration of Germany* (Baltimore, 1928), 68. It may be added that the president also had extensive power to issue decrees and ordinances.

of these occasions suspending the state authorities and appointing a national commissioner to act in their stead. Before 1918, the emperor could take action to compel a disaffected state to fulfill its "constitutional federal duties," but only with the assent of the Bundesrat. For taking similar action, the president of the Republic required no one's assent.

2. Emergency Powers. The second significant power bestowed in Article 48 was that of dealing with public disorder or other emergency situations. This is what the constitution said:

"The Reich president may, if the public safety and order in the German Reich are considerably disturbed or endangered, take such measures as are necessary to restore public safety and order. If necessary, he may intervene with the help of the armed forces. For this purpose he may temporarily suspend, either partially or wholly, the fundamental rights established in Articles 114 [personal liberty], 115 [inviolability of dwelling], 117 [secrecy of postal, telegraphic, and telephonic communications], 118 [freedom of speech and press], 123 [right of peaceful assembly], 124 [freedom of association], and 153 [guarantees of property rights].

"The Reich president shall inform the Reichstag without delay of all measures taken under Paragraph 1 [federal execution against the states] or Paragraph 2 [just quoted] of this Article. On demand by the Reichstag, the measures shall be repealed.

"In case of imminent danger, the government of any *Land* may take preliminary measures of the nature prescribed in Paragraph 2 for its own territory. The measures are to be revoked upon the demand of the Reich president or the Reichstag.

"Details will be regulated by a Reich law." [1]

(a) Nature and Extent. Here was a truly remarkable grant of power, opening the way and, significantly, *within the limits of the constitution*—for what might, and did, become tantamount to presidential dictatorship. The provision went even farther than any known to the Empire; for, whereas under the imperial constitution the emperor could declare martial law in any portion of the federal territory if public security was threatened, and follow up with emergency measures if Parliament was not in session (submitting them to that body for approval at the earliest opportunity), under the Weimar

[1] From the translation of the constitution by M. Wolff appended to H. Kraus, *The Crisis of German Democracy*. The explanatory material in brackets has been inserted by the present writer for purposes of clarity.

instrument the president could resort to emergency powers regardless of whether the Reichstag was in session. The Reichstag, to be sure, might demand revocation of his emergency measures, but in point of fact it did so on only two occasions—in 1921 and 1930. Experience in the latter of these instances was further instructive in that after the president had cancelled two emergency decrees at the Reichstag's request, the Reichstag was itself dissolved, the decrees were reissued, and the legality of the entire procedure was upheld by the *Reichsgericht,* or Supreme Court. The danger of dissension and disorder, menacing the very life of the Republic, was such when the constitution was adopted that special power of summary action on the part of the executive seemed imperative; and the object of the paragraphs of Article 48 here under consideration was to enable the president to suspend civil liberties and, in general, to take such action against individuals and groups as he thought necessary to meet any emergency arising. The grant of power was very broad. The rights guaranteed in as many as seven of the constitution's articles might be suspended in whole or in part. Not merely "rebellion or invasion" (which alone justify suspension of the writ of habeas corpus in the United States [1]), but any serious disturbance of, or even danger to, "public order and safety," could be made a basis for action. And the national law envisaged in the last paragraph of the article, which, if enacted, might have imposed limiting conditions and procedures, was never passed. Small wonder that, although no such term as "dictator" is to be found within the four corners of the constitution, the word rarely failed to be heard in even the most moderate and sympathetic discussions of the famous article from 1919 onwards!

(b) Restrictions. To be sure, the article plainly did not contemplate arbitrary or irresponsible action by the president and his advisers; indeed, it was written into the document expressly to prevent anything of that sort. In the first place, the power, although extraordinary, was derived only from the constitution, and was to be exercised within the bounds of that instrument—not as dictatorial powers were later exercised in various countries of contemporary Europe, among them Germany herself after 1933. In the next place, its purpose was limited and defined, *i.e.,* "to restore public safety and order"—nothing more. Third, its use was to be temporary; the specified articles were to be "suspended" only "for the time being."

[1] Constitution, Art. 1, § 9, cl. 2.

Fourth, the power was in no wise excepted from the requirement laid down elsewhere in the constitution that every presidential order or decree be countersigned by the chancellor or a competent minister. Fifth, every step taken must be reported to the Reichstag "without delay," and must be retraced if the Reichstag so demanded. Finally, the president himself was responsible for what happened under Article 48, in the sense that he could be suspended from office by the Reichstag and removed by vote of the people for acts performed under it as readily as for any others.

(c) Emergency Powers as Actually Used. The state of the country being what it was in 1919, those who voted to place Article 48 in the constitution probably expected it to prove something more than merely a gun behind the door. But hardly any one could have foreseen the rôle which it actually played during the next 14 years. Starting with seven emergency decrees issued even before the Reichstag was organized in 1920, the list lengthened until by September, 1932, it had reach the remarkable total of 233.[1] At first, the decrees were promulgated to meet actual or threatened public disorder. In time, dangers from this source subsided, and some people concluded that, having served its purpose, Article 48 would become little more than an historical curiosity. In 1928, only one decree was issued, and in 1929 none. Already, however, the idea had developed, both in government circles and outside, that the well-being of the state might be quite as seriously endangered by currency and other economic difficulties as by outbreaks of physical lawlessness, and as early as 1923 the world began to hear of executive decrees forbidding the sale of Reichsmarks abroad, revaluing tax payments in terms of gold, and suspending reparations payments in kind. Eventually, indeed, the government, confronted with multiplying economic and political troubles, fell back in even greater desperation upon the reserves of power contained in—or at all events read into —Article 48; and the last three years before Hitler's rise to power in 1933 saw it relying almost exclusively upon this resource.[2]

[1] For the complete list, see L. Rogers *et al.*, "German Political Institutions: II, Article 48," *Polit. Sci. Quar.*, Dec., 1932, pp. 583-594.

[2] See, in addition to the article cited in the foregoing note, F. F. Blachly and M. E. Oatman, *op. cit.*, 74-96; C. J. Friedrich, "Dictatorship in Germany?," *Foreign Affairs*, Oct., 1930, and "The Development of Executive Power in Germany," *Amer. Polit. Sci. Rev.*, Apr., 1933; H. J. Heneman, *The Growth of Executive Power in Germany; A Study of the German Presidency* (Minneapolis, 1934).

General Constitutional Restrictions upon the Powers of the President. The president was not intended, however, to become a monarch in disguise, and in the constitution he was hedged about with restrictions such that when full dictatorship finally developed, it was not of his making and he was not the dictator. The chief executive was to be strong, yet also titular head of a government operated on parliamentary principles. On the one hand, he was to have the exceedingly important independent power of selecting the chancellor and, on the latter's advice, the ministers, and also of dismissing these key officials if displeased with their measures and policies. On the other hand, he was placed under heavy restraint in that all orders and decrees issued over his signature must be countersigned by the chancellor or "the competent minister," who thereby assumed responsibility for them before the Reichstag; and also in that, whereas the president could, to be sure, of his own accord dismiss a chancellor and ministers who were unwilling to do his bidding, the Reichstag, on the other hand, could compel him to dismiss them, however acceptable they were to him, if it disapproved of their policies. Further limitations imposed upon the president included, as already mentioned, the Reichstag's power to suspend him by a two-thirds vote and the people's power to remove him from office altogether.

Von Hindenburg as President. When, in 1925, Field Marshal von Hindenburg attained the presidency, many people imagined that republican government in Germany was imminently doomed. The aged chief executive had throughout his life followed the profession of arms, had been a thoroughgoing monarchist, and was known to have lost none of his loyalty to his former chief, the deposed Kaiser. He was also, however, a man of his word, and once he had taken oath to "keep the constitution and the laws of the Reich," he so scrupulously performed his unaccustomed and unsought duties that his reelection in 1932 was viewed as a triumph for republicanism over the forces of reaction. Understanding (as had Ebert before him) that the presidency was meant to be a vital force in the government, he took advantage of chronic party confusion to follow to a great extent his own dictates in the selection of chancellors, and even directed chancellors-designate to form ministries from party groups which he himself specified. Departing still farther from British and French practice, he boldly made public his personal views on matters of legislation and policy, doing it in such a way, it is true, as not

openly to align himself with any particular party, yet under circumstances calculated to help turn the scales for or against important pending measures. Early in 1932, he forced Chancellor Brüning and his cabinet from office, even though the deposed chieftain had but lately contributed powerfully to Hindenburg's reëlection and at the time of his dismissal had at least a nominal majority in the Reichstag. Later in the same year, after heavy gains by the National Socialists in a Reichstag election, he invited Hitler to take a post in the von Papen cabinet, but flatly refused him the chancellorship —at the same time admonishing him to bear in mind his responsibility to the Fatherland and to the German people. Accepting the situation gracefully when, six months later, Hitler as chancellor had become inevitable, he lent cautious support to the new régime without being able to control it, and in later days was quite eclipsed by it; at his death, in 1934, the presidential office, indeed, disappeared altogether. His active rôle, however, in his first six or seven years indicates the inherent vigor of the German presidency, in the hands of a vigorous man to be sure, yet at that stage quite within the bounds of the constitution.[1]

Chancellor and Ministers: From Empire to Republic. In imperial days, the place filled in other European political systems by a responsible ministry or cabinet was, as we have seen, filled by a chancellor, responsible only to the emperor; while the ministers were merely non-political administrative heads, answerable to the chancellor, and through him to the emperor likewise. For two decades prior to 1914, a running battle was waged by liberal political elements in behalf of the principle of ministerial responsibility, with no immediate result, yet with increasing promise of ultimate success; and one of the major concessions of a hard-pressed régime as World War I drew toward a close was a promise that thenceforth the chancellor should hold office only so long as he enjoyed the confidence of the Reichstag. At Weimar in 1919, the problem of what to do with the chancellorship, and what kind of a ministry to create, was naturally one of prime importance. It was taken for granted that the center of gravity in the new system should lie in the Reichstag, and that ministers, of whatever number and kind, should be made re-

[1] G. Schultze-Pfallzer, *Hindenburg* (New York, 1932); E. Ludwig, *Hindenburg* (Philadelphia, 1935). On the presidency in general, see F. F. Blachly and M. E. Oatman, *op. cit.*, Chap. iv; H. J. Heneman, *op. cit.*, Chaps. iii-vi.

sponsible to that body. It was even decided, as we have seen, to make the titular chief executive, the president of the Republic, directly answerable to Reichstag and people. But should there be a ministry constructed on the principle of full collegiality, as in Great Britain and France—a ministry in which the chancellor (under that name or some other) should be only *primus inter pares,* and with all members participating equally in decisions and bearing equal responsibility for what was done? Or should the old chancellorship be continued, with appropriate curtailment of powers, yet remaining on a different footing from the ordinary ministerial posts, and with chancellor and ministers organized on cabinet lines under what may be termed a limited collegial plan? There were those who favored going the whole distance and adopting the British and French system. Most groups in the Assembly, however, opposed so complete a break with the past; from their viewpoint, the same practical considerations influencing the decision for a strong president argued for a chief minister who should be something more than the usual sort of premier—one who should be sufficiently preëminent and dominant to supply the leadership, coördination, and control that the country's future seemed likely to require.

Chancellor and Ministers under the Republic—Three Points of Distinction: 1. Mode of Appointment. A decision in favor of the limited collegial plan was arrived at with no great difficulty; and as the system took form in the constitution and in later practice, chancellor and ministers, while spoken of collectively as forming "the government," *i.e.,* the cabinet, were found to differ in three main respects. First, as already observed, the chancellor was appointed outright by the president of the Republic, the ministers by the president only on nomination of the incoming chancellor; and complete freedom in selecting the chancellor was designed to be one of the means by which the president could counterbalance the power of the Reichstag. As long as normal conditions lasted, the discretion enjoyed did not, however, prove materially greater than that of the French president in performing a similar function; in general, there was the same necessity for seeking the opinion and advice of party leaders, and for reaching decisions more or less plainly indicated by the political situation of the hour. No more did the chancellor normally have a free hand in the choice of persons to be nominated for appointment as ministers. As in France, no single party—so long

as constitutional government lasted—ever commanded a majority in the popular branch of parliament; all cabinets were of necessity coalitions; and the building of cabinet lists was accomplished not only by negotiation, but largely by nomination of quotas by the leaders of the parties participating at a given time.

2. Functions. A second, and more fundamental, difference between the chancellor and the ministers arose from a constitutional provision authorizing the former single-handedly to determine the "general course of policy," subject only to the responsibility which he bore to the Reichstag. In practice, as we have seen, the British prime minister, especially if a man of vigor, is a good deal more than simply *primus inter pares*. To be sure, the German chancellor, although presiding over the cabinet and casting a deciding vote in case of a tie, had under normal conditions less control over the ministers as a director of administration than did the prime minister of either Great Britain or France. "Each minister," says the Weimar constitution, "conducts the office entrusted to him independently [within the lines of policy laid down by the chancellor], and on his own responsibility to the Reichstag." But even before the chancellorship, in the hands of Hitler, became also a dictatorship, the chancellor had the supreme function of fixing the broad outlines of national policy, becoming thereby a commanding political figure, "the trusted agent, as it were, of the legislature for the determination of policies which involved not only legislation but also the main lines of administration." [1] In Great Britain, the supreme policy-framing authority is, not the prime minister (influential as he may be), but the cabinet in its collective capacity. In Germany, ordinary ministers were not policy-makers at all under the Empire. Hardly more were they intended to be such under the Republic; and at this point we behold one of the most striking tendencies of the old system to persist under the new. Truth requires it to be added that the plan did not work out altogether as intended. Under the Empire, the ministers had no collective aspect at all; they formed no cabinet, held no meetings, enjoyed no opportunity to concern themselves as a group with matters of policy. Transposed under the Republic into a cabinet which met and deliberated, they almost inevitably gained a substantial share in the consideration of policy; and one derives the impression that in actual practice what went on in meetings of chan-

[1] F. F. Blachly and M. E. Oatman, *op. cit.*, 122.

cellor and ministers was not notably different from the sort of thing habitual with cabinets at London and Paris.

3. Responsibility. As already intimated, a third distinction drawn by the constitution between chancellor and ministers had to do with responsibility. In Great Britain, ministerial solidarity is so genuine that, both in theory and in practice, responsibility is indivisible as between prime minister and other ministers; the group is responsible as a unit for whatever is done by one or all, and stands or falls together. Under the Weimar constitution, responsibility was intentionally divided. The chancellor was answerable for decisions and acts affecting the general course of policy, the ministers each for his administration of his own department; speaking broadly, the responsibility of one left off where that of the other began. Here again, however, notwithstanding that on several occasions individual ministers retired under fire without pulling their colleagues down with them,[1] the tendency was toward a community of responsibility on British lines. After all, it was not practicable to keep what the chancellor did and what the ministers did in air-tight compartments. By terms of the fundamental law, chancellor and ministers constituted "the government." Their functions inevitably gravitated into common channels, and, speaking broadly at all events, the officials themselves went up and down in unison.

Cabinets of the Period 1919-32. Nevertheless, it should not be inferred that even as it stood on the eve of the tempestuous events of 1932-33, the system had settled into the form made classic by the experience of other parliamentary governments. Far to the contrary, the oscillations of the cabinet between a popularly elected president and a popularly elected Reichstag, the frequent lack of dependable parliamentary majorities, and the extraordinary complexity of post-war problems, tended constantly to shunt the mechanism off on new tangents, and thus to accentuate the differences between the Weimar set-up and its foreign counterparts. If, indeed, the constitution's authors supposed that they had created a system in which forces making for stability had been properly compounded, they were doomed to be sadly disillusioned. German republican cabinets consistently enjoyed—or endured—short and

1 Of course this can, and once in a while does, happen in Britain also, although only in a rare situation in which a grievously offending minister is in effect thrown overboard by his colleagues.

stormy lives. In the 14 years from 1919 to the establishment of Hitler's dictatorship in 1933, there were no fewer than 20 cabinets, with an average life of but little more than eight months—only two months more than the average for the 25 French cabinets of the same period. The shortest-lived was the Stresemann seven-week cabinet of 1923; the longest, the Brüning cabinet of 1930-32, lasting (with at least one reorganization) two years and two months.[1] As would be surmised, some of the changes were more apparent than real, involving "a new deal of the same cards rather than a different deck." Thus the 225 posts, in all, in 19 cabinets between 1919 and 1932 were filled by only 79 different men, of whom only 32 held office but once, while one man held in rapid succession no fewer than 14 posts.[2] Practically all of the disadvantages accruing from ministerial instability in France were, however, in evidence on the opposite side of the Rhine. On a few occasions, cabinets fell because of a parliamentary vote of "no confidence," but far oftener they collapsed because of internal friction or the break-up of coalitions on which they were dependent for support.

Ministers and Departments. No attempt was made to list the executive departments in the constitution or to fix their number; mention was made of only two, *i.e.*, those of finance and post office. By national law of 1919, the president of the Republic was authorized to "call together a national ministry for the conduct of national administration," and under this measure, during ensuing years, ministries, or departments, were created, abolished, consolidated, and otherwise altered by the simple method of decree. In line with practice under the Empire, the tendency was to keep the number small, and in 1931, following the abolition of a ministry of occupied territories, but before extensive changes entailed by the extra-constitutional régime, the list stood at 10. Normally, too, every administrative commission, board, or other agency for which need arose was, as in France, attached to some one of the departments, rather than erected into an independent establishment after the common practice in the United States and to a less extent in Great Britain. To describe the internal structure of the departments would not be

[1] For a list of cabinets from 1919 to 1932, with useful statistical data, see L. Rogers *et al.*, "Aspects of German Political Institutions: President and Cabinet," *Polit. Sci. Quar.*, Sept., 1932, pp. 339-344.

[2] L. Rogers, *loc. cit.* Of the 79, only 44 were members of the Reichstag.

within our present purpose;[1] in general, the customary pyramidal form prevailed, although bureaus or officials with similar status and functions frequently bore widely dissimilar names. As in most other systems, too, a good deal of overlapping occurred, together with what appeared to be occasional illogical location of particular agencies.

Chancellor and ministers constituted the cabinet, and the general theory was that the ministers should be heads of departments, serving in their individual capacities as directors of the respective branches of administration and collectively (along with the chancellor) as "the government" of the Reich. Ministers without portfolio have been familiar enough in Great Britain, France, and other countries, and in republican Germany they were fairly numerous. On the other hand, there were sometimes fewer ministers than departments, a single minister acting as head of two, or even more, departments, although with never more than a single vote in the cabinet council. Unlike the British prime minister, the chancellor was not obliged to take a portfolio in order to be entitled to a salary; and as a rule, he did not do so. There were, however, a good many exceptions, as, for example, Stresemann, who was twice both chancellor and minister of foreign affairs, and Dr. Luther, who in 1925-26 was at the same time chancellor and acting head of the two ministries of food and economic affairs.

Cabinet Functions. From the foregoing account of executive organization, the functions that fell to the cabinet are perhaps reasonably apparent. A word of summary may, however, be in order. Half a dozen main phases are to be noted. 1. Under the conditions described above, the cabinet (the chancellor ostensibly, but in reality chancellor and ministers together) formulated the broad lines of national policy. This it did by discussion and vote, in meetings held privately, as in the case of the British cabinet, and with ordinarily no information given out as to the position taken by individual members of the group, and with, of course, no publication of minutes. 2. The orders, decrees, and other acts of the president of the Republic must be countersigned by the chancellor or an appropriate minister, and, as a matter of fact, usually comprised actions which the chancellor, a minister, or in important matters the cabinet as a whole, had initiated. 3. While the Reichstag might initiate legis-

[1] This is done in much detail in A. Brecht and C. Glaser, *The Art and Technique of Administration in German Ministries* (Cambridge, Mass., 1940)

lation, the cabinet was charged with formulating and introducing bills; and as a matter of practice, most legislation originated in this way. Any bill which an individual minister desired to present to the Reichstag or Reichsrat must first be submitted to the cabinet as a whole for consideration and decision, and, once endorsed, must be supported by the cabinet unanimously. 4. Acting either directly as a body or through authority delegated by it to individual members, the cabinet supervised the administration of the many national laws which, as we have seen, were, until 1932-33, enforced by the officials of the *Länder*. This it did, not only by issuing general instructions, but by sending commissioners to the *Länder* and by admonishing the *Land* authorities to remove obstacles or correct delinquencies reported. 5. The cabinet had an absolute veto upon *Land* legislation for the socialization of natural resources and economic undertakings, in so far as such laws could be regarded as affecting the welfare of the Reich as a whole. All told, cabinet powers, both as conferred in the fundamental law and as developed in practice, were ample.

CHAPTER XXXI



THE RISE AND CHARACTER OF THE NATIONAL SOCIALIST PARTY

Some General Aspects. During its earlier years, the National Socialist German Workers' Party (N.S.D.A.P.) was only one of several political parties functioning in Germany, and not even the most important until after a decade or more of somewhat unsteady growth. In 1933, however, it came into exclusive possession of the field; and from then until the country's military and political collapse in 1945, it dominated government, industry, business, education, and in fact every phase of the national life. The mechanism of the party, too, was so elaborate and all-embracing that an observer from the United States or Great Britain had nothing in his own country to serve as a counterpart. Indeed, it is probably correct to say that no other political organization in the world at the time had as extensive ramifications and as complete control over virtually everything, unless possibly the Communist party in Russia. Contrasting with parties in most democratic countries, too, was the rôle played by personalities; it would have been difficult to conceive of the party at all without Hitler as *Führer,* or even without such key figures as Hermann Goering, Rudolph Hess, Joseph Goebbels, Robert Ley, Wilhelm Frick, and others.

Legal Status—Relation of Party and State. One of the most difficult aspects of the Nazi régime for a foreigner to make out (and one may suspect for many a German as well) was the relationship existing between the National Socialist party and the state. At best, it was a relationship curiously combining elements of theory and

fact, and Nazis themselves took different views of it at different stages of the régime's development. To be sure, certain features of the party's legal position were clear enough. First, the party was the only one legally or actually in existence, and any effort to organize a different one was punishable by fine or in other ways. This at once put the party in a basically different position from any in a democratic country. Whereas in a democracy, parties representing divergent political wills compete for power, and even after attaining it, hold it only for a time, the German National Socialist party enjoyed a legal monopoly of power, and was promised it permanently. In the second place, notwithstanding Hitler's exultant assertion in 1933 that his party had now "become the state," and likewise the apparent implication of the title of a law of 1933 for "Safeguarding the Unity of Party and State," the party was, in law, distinct from the state, and was supported in that position by a formidable body both of legislation and of constitutional theory; indeed, some extremer adherents would have said that it not only was separate from, but also superior to, the state. Certainly it never was made legally an organ of the state, as was the Fascist party in Italy. On the other hand, not only was the monopoly of power which it won for itself confirmed by law, but the party was proclaimed a "corporation of public law," and, as such, given the same protection by provisions of the penal code, as to person, insignia, uniforms, and property, as the state itself; its property, for example, was tax exempt, and criticism of its officials a penal offense. More than this, it was inextricably linked to the state through extensive identification of its officials, presently to be mentioned, and those of the state.[1] Hitler's own explanation of the situation was that there was a "clear fixation of the proper spheres of party and state," that of the state embracing the continuation of "the historically developed and evolved administration of state agencies within the provisions of and by means of laws," and that of the party being the education of Germans in the National Socialist *Weltanschauung,* to the end that the best National Socialists should become "comrades" and the best party comrades take over the leadership of the state.[2]

[1] A table showing the positions in the government held by members of the party cabinet in 1938 appears in J. K. Pollock, *The Government of Greater Germany* (New York, 1938), 65.

[2] For a full discussion of this somewhat abstruse matter, see A. V. Boerner, "The Position of the NSDAP in the German Constitutional Order," *Amer. Polit. Sci. Rev.,* Dec., 1938.

EARLY DEVELOPMENT

Beginnings. The National Socialist party's beginnings are usually traced to 1919 and identified with a handful of more or less unknown men who persuaded Adolf Hitler to join their ranks as seventh member in what they called the German Workers' party.[1] At this time, as Hitler described it, "apart from a few leading principles, nothing existed; no party program, no leaflets, nothing in print at all, no membership cards, not even a miserable rubber stamp." [2] Although Hitler was uncertain about joining such a tiny organization and attended the first meeting after his unexpected invitation more or less out of curiosity, he soon became the moving spirit in the group. Later, he characterized his decision to join as "the most decisive of my life." [3] He developed considerable skill as a haranguer of the small numbers of curious idlers who attended the early meetings of the party and also devoted himself to the preparation of propaganda of divers sorts. Nevertheless, at the end of the first year the party could claim only 64 members—even though now taking the fuller name of National Socialist German Workers' party. A few months later, approximately 3,000 person had been recruited, largely as a result of Hitler's driving energy, and by 1923 there were more than 50,000 members. During this period, Hitler addressed as many as 50,000 people at a single meeting.

The Putsch of 1923. By 1923, the party had attained sufficient strength in the eyes of its leaders—and by this time Hitler overshadowed all others in the organization—to attempt something more impressive than mere meetings. So in November of that year it was decided to stage what has since become known as the "beer-hall putsch," and which consisted of holding a meeting of leaders in a Munich tavern at which a shot was fired and the aim of displacing the government by forceful means announced. The next morning, November 9, a public parade was scheduled in Munich; but, much to the surprise of Hitler, the police objected and fired shots into the marchers, which led to the death of 16 of the party members. Hitler wanted to have these dead comrades buried in a common grave,

[1] For a detailed history of the party, see K. Heiden, *A History of National Socialism* (2 vols., Zurich, 1936-1937). This study is very critical of the movement. A more sympathetic history is that by H. Fabricius, entitled *Geschichte der Nationalsozialistische Deutsche Arbeiterpartei* (2nd ed., Berlin, 1937).

[2] Adolf Hitler, *Mein Kampf* (2 vols., New York, 1939), I, 298.

[3] *Ibid.*, I, 301.

which he foresaw as a party shrine; but the authorities refused, and it was not until the party came into control of the government that this was done. The police were not content with dispersing the paraders and arrested a number of participants on a charge of treason. Hitler was sentenced to serve five years in prison; other leaders received somewhat milder penalties; while the party itself was ordered dissolved.

From 1923 to 1930. After less than a year of his prison term had elapsed, Hitler was released, and shortly thereafter his comrades also received their freedom. Almost at once he started with even greater drive to promote the party and on February 27, 1925, spoke in the same place where the *putsch* of 1923 had taken place. However, by 1926, he had not been able to regain the ground lost in 1923 and 1924 and could claim somewhat less than 50,000 members. The movement went slowly forward in 1927 and 1928, with about 25,000 members added each year. In 1928, the ban which had been placed on Hitler by several of the German states was finally removed, and in 1929 a net gain of something like 75,000 members was reported.

The Years 1930-32. The economic depression gave great assistance to the National Socialist organizers and increased the membership by more than 200,000 in 1930, enabling Hitler to place, much to the surprise of many observers, 107 followers in the Reichstag. From 1930 on, success was notable, with membership more than doubled in the single year 1931 and more than 1,000,000 members claimed by the end of 1932. Although the growth in membership was impressive, it does not tell the whole story; for after 1929 Hitler also began to attract the support of large numbers of people who did not take out formal membership in the party. In elections of July, 1932, the National Socialists won more seats in the Reichstag than any other party and, with 230 representatives, elected a prominent Nazi, Hermann Goering, as president of that body. Indeed, during the years following 1930 Hitler literally took Germany by storm, putting on a series of immense meetings, staging elaborate parades, deluging the country with printed literature, and all in all arousing the people to what without exaggeration may be characterized as a state of frenzy.[1]

[1] For a Nazi recital of these deeds, see G. Neese, *Die Nationalsozialistische Deutsche Arbeiterpartei* (Stuttgart, 1935).

The Victorious Party. Early in 1933, President von Hindenburg called Hitler to take over the post of chancellor of the Reich; and on July 14, a law forbidding the formation of any political parties other than the National Socialist party was promulgated, thus giving the Nazis exclusive status.[1] A second law, put into effect on December 1, 1933, declared the unity of the party and the state, asserting the National Socialist party to be the chief support of the government.[2] This law also gave the deputy leader of the party and the chief of staff of S.A. places in the Reich cabinet. A decree, dated December 20, 1934, unified party institutions and corresponding elements of the state. A law effective in September, 1935, made the party swastika the official flag of the German Reich.[3] Thus within a few months the National Socialist party had taken control of the government and ensconced itself in a position which it regarded as invulnerable. While President von Hindenburg lived, Hitler went through the form of consulting him on occasion, but it was increasingly apparent that actual control was in the hands of the Nazis. At von Hindenburg's death, Hitler apparently suppressed a testament which the deceased president had prepared by way of warning the German people against certain courses of action. And very shortly the office of president of the Reich was combined with that of chancellor, with Hitler filling both positions and thenceforth known as *Der Führer* and Reich chancellor. In 1939, the latter title was dropped and Hitler stood forth in might as simply *Der Führer.*

Party Membership. Since, originally at all events, the party was expected to embrace simply the *élite* of the nation, members were in earlier years received only sparingly, only by decision of the party group in the vicinity, and only (it was claimed) after strength of character, spirit of sacrifice, and firmness of purpose had been demonstrated. Later, membership was declared open to any "respectable" German citizen 18 years of age or over, if of pure German descent and not identified with any Masonic lodge or similar association. Eventually, after the Hitler *Jugend,* or youth organization, reached large proportions, party recruits were supposed to have come up through the training which that extraordinary organization imparted. All members received a card, and took an oath before the

[1] *Gesetz gegen die Neubildung von Parteien.*
[2] *Gesetz zur Sicherung der Einheit von Partei und Staat.*
[3] *Reichsflaggengesetz.*

swastika flag as follows: "I swear fidelity to my *Führer* Adolf Hitler. I promise to respect and obey him in all things. I promise the same respect and obedience to all leaders whom he may appoint." One might leave the party voluntarily; or he might be expelled for nonpayment of dues or other delinquency. After Hitler became chancellor, the party rolls more than doubled within the space of three months, and in April, 1933, there were something like 3,500,000 members—a number which remained fairly constant until 1937, when a drive for new recruits brought the total to approximately 7,000,000. Toward the end of World War II, the party began to disintegrate, and in the spring of 1945 it collapsed.

The Party Program: Twenty-Five Points. Before turning to the party's internal structure and machinery, a word may be said about what it had to offer the country in the way of a program. Interestingly enough, the program to which the party always adhered, and which in 1926 was declared unalterable, dated from as far back as 1920, although of course elaborated by a great deal of later interpretation, including that supplied by Hitler himself in *Mein Kampf*. This original program came from the pen of Hitler's early adviser on economic matters, Gottfried Feder, and was commonly known as the Twenty-five Points.[1] Without enumerating the long list of "We demand's" which it contained, the outstanding planks in the platform may be summarized as follows: (1) abrogation of the treaties of Versailles and St. Germain, refutation of war guilt, restoration of the lost colonies, and reëstablishment of full equality of Germany with all other nations; (2) unification of all Germans (including by implication those of Austria, Czechoslovakia, and other border countries) in a powerful and thoroughly nationalized "Great Germany," *i.e.*, the later "Third Reich";[2] (3) exclusion from the "German nation" of all persons not of German blood (in particular, Jews), with expulsion from the country of all non-Germans

[1] Its text will be found in F. Salomon, *Die deutschen Parteiprogramme* (Leipzig and Berlin, 1926), III, 73-88; and in English translation in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (2nd ed., Ann Arbor, Mich., 1934), 1-3; W. E. Rappard *et al.*, *Source Book*, Pt. iv, 9-13; N. L. Hill and H. W. Stoke, *op. cit.*, 398-401; and many other places.

[2] This term "Third Reich" was coined by Moeller van den Bruck in his *Das dritte Reich* (Hamburg, 1923), published later in English as *Germany's Third Empire* (London, 1934), and, aside from Hitler's *Mein Kampf*, the most important work in National Socialist literature. The Hohenstaufen Empire of the Middle Ages was reckoned as the "First Reich" and the Empire of Bismarck and William I as the "Second Reich."

who had entered it since the beginning of World War I on August 2, 1914; (4) substitution of a German common law for "materialistic" Roman law; (5) unqualified authority of a central political parliament over the entire Reich, bracketed with suppression of the existing "corrupting parliamentary system"; and (6) social and economic reforms embracing summary confiscation of all war profits, abolition of income acquired without work and of "slavery to interest," nationalization of all trusts, communalization of large department stores, prevention of speculation in land, and more adequate provisions for the care of the aged, protection of health, and education "for every hard-working and capable German." Implicit in the program, although not expressly mentioned, was the vigorous repression of communism, of Marxian socialism,[1] and of every doctrine or movement tinged with internationalism or pacifism. Many other objectives, indeed, were envisaged, or at all events were read into the document in commentaries upon it. Even so, notwithstanding startling clarity in numerous of its pronouncements, vagueness remained in spots, not only because of original incongruities and contradictions, but because of new twists imparted as the Nazi campaign proceeded in different parts of the country.

STRUCTURE OF THE PARTY ORGANIZATION

Führerprinzip. The underlying basis of the National Socialist organization was the leadership principle *(Führerprinzip).* According to this dogma, the *Führer* occupied a position at the apex of the pyramid, with the right to govern, administer, or decree, subject to no control and solely at his own discretion. The leadership principle also carried down through the party organization and made a single person at each level—*Gau, Kreis, Ortsgruppe, Zell,* and *Block*—the directing force. The leader could select a staff for purposes of administration, and he of course had to have numerous followers to make the organization function; but his authority was not derived from his adherents or shared with his staff members. It rather came to him from above, up to Hitler, and Hitler stood forth in supremacy as a demigod among mortals.

[1] The Hitler party was, indeed, by its name, a *Socialist* party. But, it was explained, its socialism was not at all the corrupt, international socialism of the Jew Marx, but a purified, Germanic socialism seeking, to be sure, to curb abuses of capitalism, yet recognizing and upholding the right of private initiative and of private ownership and use of property.

Reichsleiter. The highest level of officials in the National Socialist party, standing directly under Hitler himself, was known as the *Reichsleitung.* The composition of this group varied somewhat from time to time, depending upon the whim of *Der Führer,* yet during the years prior to 1944 it presented a considerable amount of stability. In 1943, there were 15 *Reichsleiter* administering important branches of the party. Perhaps the most influential of the number in party affairs was the deputy leader, who held an official position as chief of the party chancery. This position, held by Rudolf Hess and later by Martin Bormann, entitled its occupant to a seat in the Reich cabinet and in the Ministerial Council for the Defense of the Reich. It was within Bormann's province, in his day, to approve all senior civil service appointments, to participate in the preparation of all laws and decrees issued by the Reich, to approve laws and decrees of the states and their governors, and to handle all communications between the party and government unless within a single *Gau.*[1] Another highly important *Reichsleiter* filled the position of party treasurer.[2] This official acted for Hitler in all matters involving party finances and controlled the extensive property holdings of the party and its formations. He served as head of the party headquarters in Munich, maintained a file of some 14,000,000 index cards which contained data concerning the party members and certain of the party formations,[3] dealt with the financial administration of Winter Help and the Adolf Hitler Schools, and provided uniforms and equipment for party purposes.

A third outstanding *Reichsleiter* was the notorious Heinrich Himmler, who headed the S.S., served as chief of the police forces, ran the concentration camps, and directed the *Gestapo.* Toward the end of the Nazi régime, Himmler also became Reich Minister of the Interior and displaced Goering as No. 2 Nazi. Dr. Robert Ley, another *Reichsleiter,* also stood out. In 1943, he held a number of important posts, including that of Reich Leader of the Party Organization, which made him responsible for political education and the integration of the party formations and affiliated organizations. Dr. Ley also headed the personnel section of the party *(Hauptpersonalamt),* the Labor Front, and the Reich housing agency. Another

[1] Bormann was given greater authority than his predecessor Hess in these matters.
[2] In 1943, this position was held by Franz Xaver Schwarz.
[3] This index included the cards of the approximately 7,000,000 party members, the candidates for membership, and others of particular interest to the party.

Reichsleiter who seldom appeared in public, but exerted much influence in party affairs, was Max Amann, who served as head of the German press, president of the Reich Press Chamber *(Reichspressekammer),* and leader of the Party Publishing Company. Amann published the *Völkische Beobachter,* the official newspaper of the party,[1] several party periodicals,[2] most of the important party books, including *Mein Kampf,* and many other things. He also controlled all regional publishing houses of the party and headed *Deutscher Verlag,* the largest general publishing concern in Germany.[3]

The other *Reichsleiter* included: Philipp Bouhler, chief of the *Führer's* chancery; Dr. Otto Dietrich, press chief of the party; General Franz Ritter von Epp, governor of Bavaria and head of the colonial office; Karl Fiehler, leader of the Party Office for Municipal Policy and of the Union of Cities; Dr. Wilhelm Frick, Reich "Protector" of Bohemia and Moravia [4] and leader of the party in the Reichstag; Dr. Joseph Goebbels, Reich Minister of Propaganda and propaganda leader of the party; Konstantin Hierl, leader of the Labor Service; Alfred Rosenberg, leader of the Foreign Political Activity Office, supervisor of political and ideological education in the party and its affiliated organizations, and Reich Minister for Occupied Eastern Territories; Walter Buch, chief of Party Jurisdiction; and Baldur von Schirach, youth leader and governor of Vienna.[5]

Party Departments and Offices. The National Socialist party maintained an elaborate system of departments and offices on the national, regional, and local levels. In all party organizations from the *Reichsleitung* down to and including the *Ortsgruppe,* there were to be found the following departments: organization, education, personnel, finance, propaganda, and jurisdiction. At the top, or *Reichsleitung,* level, there were, in addition to the departments noted above, subdivisions dealing with foreign policy, foreign press, party censorship, party archives, colonial policy, the Nazi faction in the Reichstag, and the political and ideological education of the party.

[1] This newspaper was published in six editions throughout Germany and in 1939 had a total circulation exceeding 1,600,000, the largest in Germany.

[2] Including the *Illustrierte Beobachter, Das Schwarze Corps,* etc.

[3] He thus controlled about two-thirds of all daily papers, with a circulation of about 25,000,000.

[4] The term "protector" was ironically applied to the post of governor.

[5] Prior to 1943, R. Walther Darre, Minister of Agriculture, Dr. Hans Frank, governor general of Poland, Wilhelm Grimm, president of the Second Chamber of the Party Court, Adolf Hühnkin, leader of the N.S.K.K., Victor Lutze, Chief of S.A., and Fritz Todt, Minister of Armaments and Munitions, had been *Reichsleiter.*

Hardly to be distinguished from these departments in some instances, the national headquarters recognized certain offices *(Amter).* Among these may be mentioned: the *Aussenpolitisches Amt* (Foreign Politics Office), the *Reichsamt für das Landvolk* (Reich Office for the Rural People), the *Hauptamt für Volksgesundheit* (Head Office for Public Health), the *Hauptamt für Volkswohlfahrt* (Head Office for Public Welfare), the *Hauptamt für Technik* (Head Office for Technical Matters), the *Hauptamt für Kriegsopfer* (Head Office for War Victims), the *Hauptamt für Kommunalpolitik* (Head Office for Local Politics), the *Hauptamt für Volkstumsfragen* (Head Office for Population Problems), the *Rassenpolitisches Amt* (Racial Policy Office), the *Amt für Sippenforschung* (Office for Racial Protection), the *Hauptamt für Erzieher* (Head Office for Students), the *Hauptamt für Beamte* (Head Office for Public Employees), and the *Kolonialpolitisches Amt* (Colonial Politics Office). The party headquarters and the *Gaue* organizations maintained two departments dealing with the press—one given authority over the publishing side and the other the editorial side. Although there was no department of general management in the *Reichsleitung,* each *Gau, Kreis,* and *Ortsgruppe* had such a subdivision, known as the *Geschäftsführung.*

Territorial Divisions. The members of the party throughout Germany were organized into a powerful machine constructed on a geographical basis. First of all, there were the *Gaue,* or districts, which were headed by *Gauleiter,* or district leaders. The old Germany had 32 of these areas; Austria had seven, and provision was later made for Sudetenland and certain other territorial acquisitions. During the closing days of the Nazi régime, there were in all 43 *Gaue.* The district leaders held places of great importance in the system and were appointed by Hitler himself, although they worked with the national organizer and the deputy leader more intimately than with *Der Führer.* Each district was subdivided into *Kreise,* or counties, under the control of *Kreisleiter* recommended by the district leaders but receiving their appointments from Hitler. During the régime's later days, there were 920 of these party *Kreise.* For better control of the local members, there were approximately 30,000 *Ortsgruppe,* which were subdivisions of the *Kreise,* and finally, the *Ortsgruppe* were broken down into some 110,000 *Zellen,* or cells, and 550,000 *Blocke,* or blocks, made up of small groups of members in a rural district or city to the number of 50 or so. The entire

system was, at least on the surface, remarkably efficient. Responsibility was definitely fixed on the leader of each division and subdivision.[1]

From what has been said, it is apparent that the party had remarkable, and sometimes baffling, ramifications; and its nature from this viewpoint can best be shown by a further brief summary.

Organizations within or Associated with the Party: 1. Constituent Organizations. Seven organizations were integral units within the party, with their chiefs in all cases holding seats in the party cabinet.[2] Some of these constituent elements were well known the world over, while others were perhaps scarcely known to the rank and file of the party members themselves. The *Sturm-abteilungen* (S.A.), or Storm Troopers, the *Schutz-staffel* (S.S.), or Special Guards, and the Hitler *Jugend* (H.J.), or Youth Bands, were exceedingly prominent in party activities and received much publicity both within and without Germany; and these were the sections of the party which the ordinary visitor to Germany commonly saw on parade or engaged in other activities. The remaining four organizations were less in the limelight and included: a womens' league, or *N.S. Frauenschaft* (N.S.F.), a students' league, or *N.S. Deutscher Studentenbund* (N.S.D.St.B.), a university instructors' league, or *N.S. Dozentenbund* (N.S.Do.B), and a motor corps, or *N.S. Kraftfahr-korps* (N.S.K.K.). All members of these seven groups had to be members of the party except for the Hitler *Jugend,* whose leaders were members, with the youths themselves simply in training for membership.

2. Affiliated Groups. In addition to the basic elements of the party enumerated, there were affiliated or semi-autonomous groups which included certain party members, but also large numbers of non-members. Some of these organizations were of first-rate importance, with their chiefs holding seats in the party cabinet; others were less significant. But in all, of course, the last word was spoken by the National Socialist leaders. The best known of such affiliated

[1] For additional discussion of the territorial organization, the reader is referred to C. Haidn and L. Fischer, *Das Recht der NSDAP* (3rd ed., Munich, 1936), and to the numerous books cited at the end of this chapter.

[2] Further sources of information on the organization of NSDAP include C. Haidn and L. Fischer, *op. cit.; Nationalsocialistisches Jahrbuch;* and *Organizationsbuch der NSDAP* (4th ed., Munich, 1937)

agencies was the *Deutsche Arbeitsfront* (D.A.F.), or Labor Front,[1] headed by Ley, also national party organizer. Others included the *N. S. Lehrerbund* (Teachers' League),[2] the *N.S. Rechtswahrerbund* (Jurists' League), the *N.S.D. Ärztebund* (Physician's League), the *Reichsbund der Deutschen Beamten* (League of German Officials), the *N.S. Bund Deutscher Technik* (Technicians' League), the *Kriegsopferversorgung* (Organization for War Victims), and the *N.S. Volkswohlfahrt* (Public Welfare Organization.)

3. Supervised Nazi Organizations. Beyond the constituent and affiliated organizations, the party found it desirable to encourage other groups for various purposes, and in every case it demanded ultimate control. Some of the most important of the supervised organizations, known as *Betreute Organisationen,* were: the *Reichsbund Deutsche Familie* (League of German Families), the *Deutscher Gemeindetag* (Union of German Cities), the *Deutsche Studentenschaft* (German Student Fellowship), the *Altherrenbund der Deutschen Studenten* (League of Former German Students), the *Deutsches Frauenwerk* (German Women's Activities), and the *N.S. Reichsbund für Leibesübungen* (League for Physical Training). Through these organizations, the Nazis sought to control family life, local-government activities, all students whether of German citizenship or not, all former German students whether university, vocational school, or college, the varied activities of women throughout the Reich, and the physical training and sports of the German people.

4. Miscellaneous Organizations. For anyone not familiar with the amazing scope of the National Socialist program, it is difficult, indeed, to comprehend the full extent of the party's organizational activities; by direct action or under sponsorship, organizations were called into being for almost every conceivable purpose. After months of investigation, following the German defeat, by the staff of the German Country Unit of the Supreme Headquarters of the Allied Expeditionary Forces, new Nazi creations came to light almost daily. Only a few from the long list of miscellaneous organizations can be mentioned here. The *Reichsarbeitsdienst* (Labor Service) in-

[1] See T. Cole, "The Evolution of the German Labor Front," *Polit. Sci. Quar.,* Dec., 1937.

[2] This organization should not be confused with the *Dozentenbund,* which took in only university teachers. The *Lehrerbund* was intended for primary, secondary, and vocational teachers.

cluded German youth, both male and female, called at the age of 18 to perform national service for their country. The *Reichskriegerbund* (Ex-Servicemen's Organization) brought together veterans of all former wars, replacing other veterans' organizations active when the Nazis took over. The *Reichskolonialbund* (Colonial League) was intended to promote the campaign for German colonial possessions, and brought together Germans who had resided in the former German colonies and other Germans, particularly youth, interested in exploiting new colonies to be taken over by conquest. The *N.S. Flieger-Korps* (National Socialist Flying Corps) was formed in 1937 out of the air units of the S.S. and S.A. and the *Deutscher Luftfahrt-verband,* which was intended to disguise the secret formation of the *Luftwaffe* prior to 1935. It operated over 30 schools to train boys of 16 to 18 years of age for the *Luftwaffe* and to teach gliding, flying, construction of gliders, and aircraft repairs to reservists and others. The *Deutsches Rotes Kreuz* (German Red Cross), which had been active for some years as an organization performing services similar to those familiar in the United States, was taken over by the Nazis to furnish various types of military assistance in the preparation for world conquest. It was placed under the control of leading members of the S.A. and S.S. and staffed by men and women considered reliable. The *Volksbund für das Deutschtum im Ausland* (League for Germans Abroad) supplanted existing organizations such as the *Deutscher Schulverein,* founded in Vienna in 1880, which after 1918 became the *Verein für das Deutschtum im Ausland.* It collected large sums of money to promote German culture among people of German descent living throughout the world, financed German minority undergrounds in various countries such as Czechoslovakia, and later handled fifth-column activities abroad.

The Storm Troopers. It has already been pointed out that one of the constituent elements of the party was the organization known as the Storm Troopers (S.A.). While this organization lost much of its early importance after Hitler found it somewhat of a threat, it was always fairly active and exerted substantial influence. The S.A. was the oldest of the party organizations and was formed by Hitler in 1921 to bear the brunt of the Nazi forward drive. It enrolled both young and old, but tended to be a middle-aged group. By 1934, it became so powerful as to menace the complete control in party

affairs which Hitler demanded,[1] and consequently it came in for a purge.[2] Prior to the war, in 1939, it had from half to three-quarters of a million male members, equipped with brown uniforms worn particularly at party demonstrations. Although many of the troopers once carried arms of various sorts, they were, after 1934 and until the war, reduced to carrying back-breaking packs along with trench shovels and other clumsy equipment and lost much of their earlier prestige. Indeed they were primarily limited to sports and social activities. With the outbreak of the war, however, an effort was made to increase their number, and by 1943 from 1,500,000 to 2,000,000 members were claimed. During the war, the S.A. contributed more than 300 *Standarten* (regiments), or about 13,700 *Stürme* (companies).

The Élite Guards. Although a newer and smaller force, the Élite (S.S.) Guards rapidly came to the fore after 1933 and during the Nazi heyday wielded more power than the S.A., in some respects constituting the backbone of the party. They were a more select group to begin with; they had frequently had some army training; they belonged to a younger age level; their black uniforms were smarter than the somewhat slovenly uniforms of the Storm Troopers; and they were usually armed.[3] The S.S. was founded in 1925 and by 1929 had only 270 members. By January 30, 1933, there were 52,000 members; and on the eve of hostilities in 1939 approximately 250,000 regular S.S. men plus some 40,000 in a special group known as the *Waffen* S.S.[4] Some of the S.S. acted as a personal bodyguard to Hitler and other high Nazis; others administered the concentration camps; still others performed certain police functions; and a good many had military duties. The over-all responsibility of the S.S. was to safeguard the internal security of the Reich and the party. The head of the Élite Guards also acted as chief of the police forces throughout the Reich, and through his *Gestapo* brought terror to the

[1] In January, 1933, the S.A. had 300,000 members; but thereafter it increased rapidly until it probably reached 1,000,000 or more.

[2] Its leader, Röhm, was liquidated in June, 1934.

[3] During the period following 1934, the S.S. in general carried revolvers, but the *Waffen* S.S. was fully armed.

[4] The *Waffen* S.S. was a fully militarized section of the S.S. consisting of the *S.S. Vergügunstruppe* and the *S.S. Totenkopf-Verbände* (Death's-head units). The former was closely integrated with the *Wehrmacht;* the latter guarded the concentration camps. The personnel of both devoted their full time to S.S. duties.

hearts of many who for one reason or another were suspect. Certain of the shock troops on both the Russian and Western fronts were S.S. units, which fought with almost unparalleled savagery and perished almost to a man. On the whole, the S.S. was known for its fanatical devotion to the Nazi cause.

The Youth Bands. Perhaps the foreign visitor to prewar Germany brought home no more vivid impression than that of the bands of boys and girls who everywhere were to be seen leaving home early in the morning, marching along woodland trails during the day, or returning home at dusk in the evening.[1] Youth from 10 to 18 years of age were formed into such bands to undergo exercises producing strong bodies and to cultivate emotional support for the party;[2] under a law of 1936, indeed, all youth whatsoever were supposed to be so organized; and in later days entrance to the party was intended to come only through this gateway. In 1937, 6,930,000 members were receiving training as future leaders and supporters of the regime; and when the war started in 1939, the number was officially stated at 8,700,000.[3]

Party Courts. Political parties throughout the world usually do not go in for their own courts, but the National Socialist party had an elaborate system of such, playing an important rôle in the party's affairs. There was a supreme court in Munich, and there were lesser courts in the districts and counties and at times in the subordinate local units, with judges appointed by the chief judge, who was a member of the party cabinet. While these courts relieved the regular courts of some of their duties, they were primarily for the purpose of handling other matters. If a party member was suspected of lukewarmness, he could be brought before one of these tribunals for a lecture or for expulsion. Offenses against the party were punished by these courts, and disputes between members, in so far as not settled by the leaders, were handled in the same way. Employees attached to this department of the party had the status of spies or

[1] The best source of data relating to the Hitler Youth is Baldur von Schirach, *Die Hitler Jugend; Idee und Gestalt* (Berlin, 1934). The author of this book was National Youth leader under both the party and the government.

[2] For the ideas stressed in training the youth, see *The Nazi Primer; Official Handbook for Schooling Hitler Youth,* translated by H. L. Childs (New York, 1938).

[3] The H. J. was organized into the following divisions: *Jungfolk* (boys 10-14 years), *Hitlerjugend* (boys 14-18 years), *Jungmädel* (girls 10-14 years), *Bund Deutscher Mädel* (girls 14-18 years).

secret agents and went about constantly investigating the activities of members in order to prevent plotting and disloyalty.

The Party Congress. With one-man control so dear to the heart of Hitler, there was no room for a party convention such as is known in the United States. Despite that fact, however, the annual *Parteitag,* or congress, held each year in Nuremberg had much to interest the student of politics, being indeed by all odds the most colorful political spectacle at that time to be witnessed anywhere. District, and even county, congresses attracted some attention and helped sustain party vigor and morale. But it was the lavishly staged general congress, convoked each September—purposely at Nuremberg as being one of the country's most historic and most purely German cities—that conveyed the most vivid impression of the party's hold on the nation and of the reasons why that hold was acquired. On the wide plain surrounding the town had been constructed the world's largest stadium (seating 400,000) for accommodation of the masses of party officials, party members, and other people pouring into the venerable city for the several days of a congress; another, to seat the almost incredible number of 2,000,000 was projected, and also a Congress Hall seating 60,000 and larger by far than any other in the world.[1] To what Hitler termed "the great community festival of the nation" flocked each autumn half a million or more people; and there, amid dazzling pageantry, the *Führer* and lesser lights conducted or witnessed ceremonies and symbolic performances staged with consummate showmanship to stir emotion and whet party zeal. There, too, speeches were made, especially by the *Führer,* proudly recounting the party achievements of the year and announcing new policies or programs calculated to keep the enthusiasm of the party members at fever pitch and if possible generate even more impassioned excitement. There was, of course, no chance for deliberation or debate. That was not the object. Decisions had already been made when the congress met, and at all events, were not to be made by show of hands. The congress was rather a demonstration, a spectacle, conducted with psychological ends in view—for the impression of party invincibility which it might make upon not only the German people, but upon peoples and governments throughout the world, many of

[1] The exterior of this hall was virtually finished when the Allied occupation began in 1945, but work on the interior had been interrupted by the war.

them viewing the régime disapprovingly and anxiously watching for signs of its collapse.[1]

Party Headquarters. Some of the sections of the National Socialist set-up, *e.g.*, the Labor Front and the Hitler Youth, had their headquarters in Berlin, but the formal headquarters of the party as a whole remained in Munich because of the early associations with that city. The tomb of the victims of the police volley of 1923 had become a national shrine visited by millions of people every year. Near by was the famous Brown House which contained Hitler's own office,[2] the offices of several of the most important party officials, and an assembly hall where the leaders sometimes met. But the activities of the party were so far-flung that some 25 other extensive buildings were constructed or taken over to house the myriad offices and provide space for the thousands of employees; and it may be added that the equipment within the buildings was no less adequate than the structures themselves. A casual observer, beholding the provisions made for housing the party, might have supposed that he was viewing the public buildings of some important national government.[3]

[1] Each congress was given a slogan supposed to serve as a keynote: the gathering of 1933 was the "congress of victory," while others were labeled congresses of "freedom," "honor," and the like. Ironically, the congress scheduled for September 2-11, 1939, but cancelled as World War II started, was to have been the "congress of peace!" For this meeting, 650 members of the diplomatic corps had been called home and 500 special trains ordered. Official proceedings of these conferences were issued, the latest appearing as *Parteitag der Arbeit* (Munich, 1938). For a good article on the general subject, see T. Sinclair, "The Nazi Party Rally at Nuremberg," *Pub. Opinion Quar.*, Oct., 1938.

[2] Hitler's main office, however, was in Berlin, in a huge building specially constructed for his use. For a description of the Brown House, see A. Dresler, *Das Braune Haus* (2nd ed., Munich, 1937).

[3] For detailed studies of the Nazi party, see F. S. Neumann, *The Structure and Practice of National Socialism* (New York, 1942); F. L. Schuman, *Nazi Dictatorship* (rev. ed., New York, 1936); K. Loewenstein, *Hitler's Germany* (rev. ed., New York, 1940); W. Ebenstein, *The Nazi State* (New York, 1943); Fritz Morstein Marx, *Government in the Third Reich* (rev. ed., New York, 1937); R. A. Brady, *The Spirit and Structure of German Fascism* (New York, 1937); H. Rauschning, *The Revolution of Nihilism* (New York, 1939); S. H. Roberts, *The House That Hitler Built* (New York, 1938); F. Ermarth, *The New Germany; National Socialist Government in Theory and Practice* (Washington, 1936); J. K. Pollock, *The Government of Greater Germany* (New York, 1938); and H. R. Trevor-Roper, *The Last Days of Hitler* (New York, 1947), Chaps. i-iii. For a collection of statements by some of the party leaders, see *Germany Speaks*, by 21 leading members of party and state (London, 1938).

CHAPTER XXXII



THE NAZI RÉGIME AND ITS AFTERMATH

DER FÜHRER

The Legendary Hitler. It was not long after the Nazis came into power before Adolf Hitler became in many respects a legendary figure. His extraordinary rise from a place of insignificance to that of *Der Führer* of Greater Germany, resembling as it did some tale drawn from the pages of Andersen or Grimm, almost inevitably surrounded him with mystery and melodrama. The magazines, not only in Germany but in many foreign countries, featured articles dealing with his alleged deeds and attributes; the newspapers screamed his name from their headlines day after day and in their columns attempted to portray the man and his aims; while a number of writers devoted entire volumes to an analysis of his career.[1] If one accepted all of the statements made in these legions of articles, news reports, and books, the most amazing figure arose from their pages. It must be obvious to the most casual student of political affairs that much of what has been written about Hitler cannot possibly be true. The problem is to separate the truth from the fiction; and that is difficult indeed.

Claims and Counterclaims. Did Hitler die long before the collapse of the Third Reich? An article which appeared in a prominent magazine in the United States in 1939 and purporting to be written by one of his former bodyguards made such a statement and alleged that the little group of leaders of the National Socialist party had

[1] Among such books may be mentioned Wickham Steed, *Hitler; Whence and Whither* (New York, 1934); R. Olden, *Hitler* (New York, 1936); Emil Lengyel, *Hitler* (London, 1932); K. Heiden, *Adolf Hitler* (2 vols., Zurich, 1936-1937); and H. R. Trevor-Roper, *The Last Days of Hitler* (New York, 1947).

disguised a dummy to fool the people.[1] Was Hitler a homicidal maniac who derived his greatest satisfaction from the shedding of human blood? Judging from the printed page as well as from conversations overheard here and there, a fairly large number of people are convinced, to their own satisfaction at least, that Hitler was a madman. They point to the "blood purge" of 1934 which liquidated an unknown number of followers, to the massacres of Jews, and to the poison chambers and mass slaughter in such concentration camps as Dachau.

Genius or Fool? Was Hitler one of the great benefactors of all time who will rank in the pages of history with Confucius, Socrates, and other notables? There are those even now, both in Germany and outside, who consider his emphasis upon breaking down class lines, racial purity, strong bodies, and the mission of the Germans in the world so inspired as to have been almost if not quite divine. Was Hitler a military genius who belonged to the galaxy including Napoleon, Alexander the Great, and others? The conquest of Austria, Czechoslovakia, and Poland, the power of the German air force, and the *Blitzkrieg* which placed Western Europe under German occupation in a very short time once led large numbers of people to this belief. Was Hitler a master of diplomacy second to none? In the eyes of many, his achievement at Munich in 1938, his rôle in Italy and Spain, and especially his Russian pact in 1939, justified such a claim. Was Hitler the world's greatest wielder of mass propaganda and the keenest student of mass psychology? It was not difficult after a visit to Germany, particularly if a National Socialist celebration such as those held annually at Nuremberg was witnessed, to accept such a verdict. Did Hitler establish in Germany the most satisfactory politico-socio-economic system of all time? As late as 1947, according to public opinion polls conducted under Allied auspices, the majority of Germans, despite complete defeat at the hands of the Allies and the terrific bomb damage suffered, professed such a belief.

Difficulty of Finding the Real Hitler. But the extreme character of these claims, which run the gamut from the sage to the insane asylum, from a man of exemplary personal life to a pervert, from humanity to brute force, make it singularly difficult to discover the real Hitler. And as time passed it became increasingly hard to penetrate the mist which enshrouded the man; for the very complex-

[1] *Liberty Magazine.*

ity of events constantly added to the fog. The bodyguard with which he was constantly surrounded, his unwillingness to be interviewed, and the general attitude of the National Socialist officials, placed Hitler in a position remote from all but favored intimates. Despite the reports of the Russians and of British Intelligence pointing to Hitler's death during the last days before the utter collapse of Germany in 1945, there remains considerable uncertainty in the minds of many people as to whether *Der Führer* is alive or dead.[1]

Hitler's Early Life. In Mein Kampf, there is readily available a simple outline of Hitler's life before he started his fantastic rise to power. He was born April 20, 1889, in a little town, Braunau-on-the Inn, in Austria. His father, an illegitimate son, and of Bavarian extraction despite his Austrian nationality, spent his mature years as a petty government employee, while his mother, who was a third wife, apparently came from a very humble background also. The circumstances and viewpoints of the parents were such that young Adolf was placed in a school for the training of the masses in practical subjects rather than sent to the *Gymnasium* attended by the more select who expected to go on to the university. Although he did not find school particularly difficult and took part in many pranks which he later remembered with pride, his childhood was not a normal one nor a very happy one. The father wanted Adolf to enter the government service; but Adolf was obstinate enough to refuse to follow his father's wishes—scarcely the typical pattern of behavior in a German household. The mother seems to have been somewhat unconventional, if not mentally ill-adjusted, and trained Adolf to regard himself as different from other boys.

Life in Vienna. As Adolf was entering adolescence, his father died; and two years later, when he was but fifteen, his mother also died. Without means, parents, or substantial education, he decided that he would go to Vienna and become an artist. There, however, the director of the Academy of Painting refused to admit the youth, on the ground that his drawings were "clearly" an indication of lack of "painting ability" and advised him to study architecture.[2] However, the school of architecture also refused to admit him, because his educational background was so meager. For a number of years,

[1] For a report by an Oxford don who, as a British intelligence officer, investigated this matter, see H. R. Trevor-Roper, *The Last Days of Hitler* (New York, 1947), Chap. vii. The author concludes that Hitler is dead.

[2] *Mein Kampf* (unabridged ed., New York, 1939), I, 27.

Hitler remained in Vienna despite the fact that life was scarcely tolerable. During much of the period, he was so poverty-stricken that he lived in a refuge for homeless men and had no place to call his own beyond a few square feet in a ward.[1] For food he depended upon the charity of a monastery, except as he could earn a little by odd jobs, such as shoveling snow in winter, and from the sale of water colors and sketches which he hawked from place to place.

In the lower depths of poverty himself, young Hitler saw many evidences of the splendor and gaiety characterizing the years immediately before World War I in Vienna. Apparently the extravagant living of some of the Jews especially embittered him and laid a foundation for his subsequent hatred of Jews in general.[2] Very likely his later emphasis on breaking down class lines and providing entertainment and interesting vacation trips for the rank and file of the people also went back to this misery in Vienna.[3]

The Move from Vienna to Germany. In 1912, Hitler, utterly disgusted with the Jews, the social organization, the Social Democrats, and most of the policies of the Habsburgs, decided to leave Vienna and establish residence in Munich. Here life was apparently much more agreeable than in Austria, and Hitler later wrote: "This period before the War was the happiest and most satisfying time of my life." [4] He continued to paint, managed to sell enough of his work to keep his head above water, and spent many pleasant hours visiting the museums as well as frequenting the beer halls. He also became interested in current happenings of a political character, "especially those of foreign politics." [5]

Period of World War I. The assassination of the Austrian archduke in 1914 was at once greeted by Hitler as a sign of war which the whole German people as well as himself would welcome. It was not, he wrote, a case of Austria fighting to avenge herself against Serbia, "but Germany fighting for her existence, the German nation for its being or non-being, for freedom and future." [6] On August 3, Hitler asked for permission to enlist, and he later wrote that "my

[1] Hitler wrote: "Even now I shudder when I think of those pitiful dens, the shelters and lodging houses, these sinister pictures of dirt and repugnant filth, and worse still." *Ibid.*, I, 38.
[2] See *Mein Kampf*, I, 68 ff.
[3] *Ibid.*, I, 32 ff.
[4] *Ibid.*, I, 163.
[5] *Ibid.*, I, 164.
[6] *Ibid.*, I, 211.

joy and gratitude knew no end" when word arrived the next day that he was to be accepted in a Bavarian regiment.[1] The next six years in uniform, Hitler characterized as "the most unforgettable and the greatest period of my mortal life . . . which Fate had graciously permitted me to share.[2]

In the Trenches. Shortly, Hitler was sent to Flanders to take part in the front-line fighting, and at first he was "enthusiastic" and in a mood of "exuberant joy." This reaction, in turn, gave way to a period of conflict in which the instinct of self-preservation rose to the fore. Gradually, however, he was able to master this feeling, and by 1915-16 he had reached a state of mind in which he became "quiet and determined." During this period, he acquired a distaste for politics, particularly for the politics of those parliamentarians who spent their time talking in Berlin rather than fighting at the front. He later wrote: "I am still convinced today that even the most humble carter had done his fatherland more valuable services than the first, let us say, 'parliamentarian.' "[3] Hitler's bitterness against the Jews was deepened also during this period by his notion, largely erroneous, that the Jews remained at home to make huge war profits while the true Germans gave their lives at the front.

Wounds and Hospital Experience. In September, 1916, Hitler took part in the great battle of the Somme, and on October 7 he was wounded and sent to a hospital. After his discharge, he went to Berlin, where he almost hysterically maintained that he found the public offices largely held by Jews, "almost every clerk a Jew," and virtually all manufacturing under Jewish control.[4] More than that, he was amazed to find the defeatism and the anti-war propaganda that was pervading the people behind the front. After revisiting Munich, he rejoined his regiment in March, 1917, finding the spirit of the army greatly improved, and always afterwards believing that victory would have been won but for betrayal by the Jews, the Marxists, and the Social Democrats behind the lines.[5] In October, 1918, he was gassed and again sent to a hospital, where he lay with eye trouble when the armistice was signed. His anger at the Marxists and Jews, whom he blamed for the predicament in which Germany found herself, blazed

[1] *Ibid.*, I, 212.
[2] *Ibid.*, I, 212.
[3] *Ibid.*, I, 216.
[4] *Ibid.*, I, 251 ff.
[5] *Ibid.*, I, 254 ft.

out, and he "resolved now to become a politician" in order to extirpate both.[1] He ended the war as a corporal.

After the War. In November, 1918, Hitler had recovered sufficiently to permit him to join the reserve battalion of his regiment, and in March, 1919, he again found himself in Munich. The following month, he participated in activities which were interpreted as against the government and was threatened with arrest; but he confronted the three agents sent to get him with a rifle, and they went away. It was at this time that Hitler became associated with the six men who started the German Workers' party and finally after some reluctance decided to accept their invitation to become the seventh member.

Hitler's Legal Position in the Reich. One of the first acts after Hitler came into control of the Reichstag was the passage of the Enabling Act of 1933 which changed the government set-up by making the legislative branch a figurehead and conferring the power to run the government on the cabinet. In his capacity as chancellor of the Reich, Hitler presided over the cabinet, and as leader of the National Socialist party he practically became the cabinet so far as the final word was concerned, although the law did not recognize this position. After the death of President von Hindenberg, the office of president was merged with that of chancellor and Hitler became formal as well as actual head of Germany.

General Position in the Government. Although the law recognized Hitler as only the presiding officer of the cabinet and the formal head of the government, he was in reality far more than that. Having taken over the authority conferred by law on the cabinet, he had the power to make the laws which governed the German people. He was in control of the whole administrative branch of the government, and through his position in the party he managed the various local governments. The Reichstag met only on those infrequent occasions when Hitler summoned it to listen to his speeches. Although the army maintained a certain amount of independence for some time after Hitler assumed power, he finally, through purges and transfers of officers, brought it definitely under his thumb. Members of the armed forces swore an oath of allegiance to Hitler, and during World War II he actually directed military operations on the eastern front and elsewhere.

[1] *Ibid.*, I, 269.

Through his power of pardon, Hitler could set aside the sentences of ordinary courts; through his appointing power, he made his will felt in the operations of the courts; and finally, if he did not want to have matters handled by the courts, he could, as in the Röhm case and others in the "blood purge" of 1934, set himself up as the officer making arrest, as well as prosecutor, judge, and executor of the sentence.

Not only did Hitler nominally have all of these powers; he probably was actually the most powerful person in the world during his heyday, with the possible exception of Stalin. Others had the potential authority, but they did not wield it directly to the extent which Hitler did.

Hitler's Speeches. Perhaps no nead of a world power ever devoted more of his energy to speaking than did Adolf Hitler, despite the fact that as far as mere number of speeches was concerned, he ranked well below the average British prime minister or American president. But when *Der Führer* spoke, he consumed not a half-hour, but at least an hour and a half or two hours, unless the occasion was extraordinary. Moreover, he threw himself into his utterances in such a way as to make the average English or American speaker seem cold and colorless indeed. Not having to answer to a legislative body, and not desiring to appear at ordinary public functions, Hitler made his speeches full-dress affairs, planned very carefully with regard to setting, demonstrations, and audience. Some of the addresses were made before the Reichstag; others were timed to fall during party congresses at Nuremberg; while still others were scheduled as features of such events as the launching of an important addition to the navy. One could always depend upon certain items to come in for attention: (1) the injustices of the "dictate" of Versailles, (2) the plotting of Germany's foreign enemies, (3) the necessity of "living room" for the German people, (4) the viciousness of the Jews, (5) the degeneracy of the democracies, and (6) the importance of loyal support on the part of the German people. But above all, Hitler brought himself into these addresses: it was what *Der Führer* had done, was doing, and would do to carry forward the mission of the German people that perhaps most startled a foreign listener. It would seem that Hitler had built up within his mind an image of himself as the German Messiah.

Hitler's Type of Intellect. It is, of course, quite out of the question to analyze *Der Führer's* mind objectively. However, from reading *Mein Kampf*, listening to Hitler's addresses, and studying his program, certain conclusions appear justified. In the first place, his mind was not of the coldly analytical type, but belonged more to the artistic, emotional category.[1] Instead of going over matters in detail, he reacted swiftly to proposals and cut through red tape and technicalities to a decision. At times, he had hunches in regard to important matters and even based his course on advice from astrologers and other quacks. This variety of intellectual process had its advantages and disadvantages. It meant that Hitler could keep his fingers directly on public affairs; on the other hand, it meant that he made momentous decisions at the mountain châlet at Berchtesgaden, which he greatly liked and where he spent much of his time, notwithstanding that at the time he might be sadly out of touch with what was going on.

Hitler had violent likes and bitter hatreds and with these biases he coupled a great deal of stubbornness. This stubbornness, too, had its advantages and disadvantages. It meant, on the one hand, that Hitler for a time was almost like a body that could ignore the law of gravity; at all events, he charted a course which a few years earlier would have seemed beyond all possibility of realization, and steadfastly held himself on that course until he had actually overcome the most stupendous obstacles and achieved in large measure what he wanted. On the other hand, this way of doing things often led to highly unwise actions and finally resulted in the wrecking of the National Socialist system.

MEIN KAMPF

Origin. After the Munich *putsch* of 1923, Hitler was sentenced to a term of imprisonment in the fortress at Landsberg on the Lech. Instead of moping, he set himself to the writing of what was widely proclaimed, prior to 1939, as the most important book of the present century and as one of the great works of all time.[2] The German title

[1] See P. Schmidt, *Hitler's Interpreter* (New York, 1951); also A. Bullock, *Hitler: A Study in Tyranny* (London, 1952).

[2] A report from Munich in October, 1939, when the 494th edition was published, indicated that 5,750,000 copies of the book had been printed in German. To the same date, about 500,000 copies had appeared in foreign languages; and the author's royalties exceeded $3,000,000. See *New York Times*, Oct. 15, 1939.

is *Mein Kampf,* and it has been variously translated into English, but perhaps *My Struggle* is as satisfactory as any—the title, however, not being particularly indicative of the content. The work originally appeared in two volumes, and in its unexpurgated English translation fills almost one thousand printed pages of standard size. It was dedicated to the 16 Hitler comrades who were victims of the Munich *putsch.*

General Character. *Mein Kampf* starts out by reciting the details of Hitler's life from his birth until 1924, devoting somewhat less than a third of the entire space to that purpose. The remainder deals with the events of German political history following World War I, the formation of the National Socialist party, and the ideas that Hitler held in regard to a wide variety of matters. But even the autobiographical section is permeated with political convictions; the second paragraph of the first page begins: "German-Austria must return to the great German motherland . . . *Common Blood belongs in a common Reich.* As long as the German nation is unable to band together its own children in one common State, it has no moral right to think of colonization as one of its political aims. Only when the boundaries of the Reich include even the last German, only when it is no longer possible to assure him of daily bread inside them, does there arise, out of the distress of the nation, the moral right to acquire foreign soil and territory." [1] It has frequently been said that every act and policy of the Nazi government merely gave material expression to what was set down in *Mein Kampf.* Such a statement may be an exaggeration, but it can hardly be doubted that the importance of much of this book is such that it ranks as a state paper for the Germany of 1933-45—and indeed as a German constitutional document.

Difficulty of Appraising *Mein Kampf.* The nature of *Mein Kampf* is such that it is exceedingly difficult for the average foreign student to appraise its importance. To begin with, the book is not well organized and rambles on interminably. More than that, it is one of the most repetitious books to be found anywhere: sometimes many pages are devoted to saying the same thing in different forms and even in the same form. Finally, the tone is highly emotional, in contrast to the traditional state papers with which students are familiar [2]—at times it approaches ranting if it does not actually reach

[1] See the unabridged edition published by Reynal and Hitchcock in 1939, I, 3.
[2] At least if one excludes recent Russian official statements.

that level. Nevertheless, despite these attributes the political implications must not be underrated.

Position of the Jews. From the very first pages of *Mein Kampf* to the weary end, plenty of attention is given to the iniquities of the Jews. In the second chapter, the Jews are charged with the menace of Marxism, with perversion of the press of the world, with the widespread ramifications of prostitution in Europe, and with political radicalism, including democratic beliefs. The next chapter attributes the ills of the Habsburgs to the Jews. Chapter IV carries the attack further and holds the Jews responsible for the mistaken policy of Germany before World War I. Chapter VII lays at the door of the Jews the collapse of the German front in 1918 and the subsequent revolution. And so it goes on through the Republican period. The Treaty of Versailles, the Weimar constitution, reparations, everything that Hitler finds objectionable, is blamed on the Jews. Despite the charges sometimes made that it was assumed as a psychological device for welding the German people together and relieving them of their frustration and guilt, this hatred seems genuine. Doubtless Hitler realized the advantage of laying all evils at the door of the Jews in achieving his program; but the roots of this attitude went back to his youth when he had little personal means and was outraged by the prosperity of certain Jews in Vienna and later in Germany following 1918. Jew-baiting was so well established in the Nazi system that it must be assigned fundamental importance. Vicious and inexcusable as it was, this stratagem played a major rôle in overcoming an inferiority complex among the Germans.

Propaganda. Hitler devoted a great deal of attention in *Mein Kampf* to the importance of propaganda in government and after his rise to power became a past-master in exploiting this device. Although it may seem unjustifiable to include propaganda as a constitutional element, its direct rôle was so outstanding in Nazi Germany that it requires little stretching to give it that status. Chapter VI is devoted to the propaganda employed by the various countries during World War I, and Hitler concludes that Germany fell down at that time by making her propaganda too accurate and too objective and points to the greater skill of the English.[1] The purpose of propaganda, he sums up thus: "It has not to search into truth as far as this is favorable to others . . . but it has rather to serve its own truth

[1] See I, 237.

uninterruptedly. It was fundamentally wrong to discuss the war guilt from the point of view that not Germany alone could be made responsible for the outbreak of this catastrophe, but it would have been far better to burden the enemy entirely with this guilt, even if this had not been in accordance with the real facts, as was indeed the case." [1] Carrying out this principle, Hitler issued manifestoes, circulated bills, prepared posters, delivered speeches, set up a Nazi press which manufactured its own news, and established a department of propaganda in the government which ranked with the most important departments. It would be difficult to conceive of a more elaborate and effective propaganda machine than Hitler embodied in his system.

The Strong Man Is Mightiest Alone. One of the chapters in the second volume of *Mein Kampf* is entitled "The Strong Man Is Mightiest Alone." Here Hitler set forth his ideas concerning the rôle of a single leader in both a party group and a government. It is on the basis of these beliefs that the basic law which combined the presidency, chancellorship, and *Führer*ship into one position was drafted.

Emphasis upon Physical Fitness. Any casual tourist noticed the great amount of attention paid by the Nazis to the youth bands, the sports program, and the general physical fitness of the people. This went back to an idea developed at considerable length in *Mein Kampf*. Hitler did not regard intellectual development as particularly important, at all events on the part of the mass of the people. Consequently the number permitted to attend the universities in Nazi days was pruned in such a way as not to "overburden the brain," which Hitler regarded as dangerous.[2] Inasmuch as the people were to follow the leaders rather than to be independent individuals, it was logical that they should not develop their mental processes beyond a certain point. On the other hand, the state required able-bodied men and women in large numbers. The physical fitness of women was emphasized in order that they might bear numerous physically fine children in wedlock or outside. Girls were excluded for the most part from the universities because their place was in the home as mothers rather than in the laboratory or library. Strong-bodied men were needed to produce large crops, man the industrial

[1] See I, 237.
[2] See II, 626.

plants, stand the strain of a government which moved at lightning speed in the carrying out of its program, serve in the various military forces, and generally to fulfill the mission which Providence had ordained for Germany.[1]

The Classless Society. A strong government, according to Hitler, requires citizens who do not fritter away their energy in attempting to better their social positions at the expense of more important matters. Consequently, Hitler's Germany did a great deal in the way of breaking down class barriers, although it did not approach the matter directly as have the Russians. Under the Nazi régime, there were still remnants of the old *Junker* class as well as people of wealth; but the leaders for the most part were drawn from the ranks of those who had enjoyed little social position under the old system. Taxes were so heavy that the wealthy were to a considerable extent reduced to the common level, except in those few instances where they were great industrialists and could absorb the taxes and still make money. Every young man was required to spend a period at manual labor, and fairly large numbers of girls were sent out to farms to assist in performing various duties. Theatres which offered opera, symphonic music, and drama were placed within the reach of clerks and the host of other routine workers. Vacations involving steamer cruises and many other interesting diversions were provided for sizable numbers of low-salaried *Kraft durch Freude* members, although many people who once considered themselves above the rank and file of the masses could no longer avail themselves of such pleasures.[2]

The German Mission. There was something of the fanatic, or at least of the mystic, about Hitler which must be taken into account before one makes much headway in understanding his emphasis upon the mission of the German people. Of course he was not the originator of the concept; even before World War I, it was cherished by the German nation as a whole. But Hitler clung to the notion when most Germans had become disillusioned. According to his idea, the splendors of German culture, philosophy, and racial character were such that the Germans were destined to be the leaders of the world. As *Mein Kampf* put it: "The German Reich, as a State, should include all Germans, not only with the task of collecting from the people the most valuable stocks of racially primal elements and pre-

[1] See II, 604-620.

[2] For elaboration of this principle, see especially Chap. i. of Vol. II.

serving them, but also to lead them, gradually and safely, to a dominating position." [1] Only by keeping this idea in mind can the "living-room" (*Lebensraum*) cry that assumed such astonishing proportions be understood. Moreover, one cannot appreciate Hitler's contempt for small nations (as well as certain larger ones), or his almost insolent reference to the complete unimportance of the place of the Czechs, the Poles, and other peoples of Europe, unless this mission, which has been called a "Messianic concept," is taken into account.

Rôle of the State. Hitler's objective was the glorification of the German people and not the protection of individual liberties; for, he maintained, where individual rights are emphasized there usually is great degeneration. "The State is a means to an end," he wrote. "Its end is the preservation and the promotion of a community of physically and psychically equal living beings . . . The highest purpose of the folkish State is the care for the preservation of those racial primal elements which, supplying culture, create the beauty and dignity of a higher humanity." [2]

Foreign Relations. First and foremost, Hitler set himself to the correction of the injuries which he alleged Germany to have received under the Treaty of Versailles. But that effort, as well as his later *coups* in moving toward the East, came largely as a result of his belief that all Germans must be united under one government and that Germany had a mission to perform in the world. *Mein Kampf* did not indicate that the Nazis contemplated any military action against France, although certainly no particular admiration for that country or its people was expressed. The former German colonies came in for some attention, but less emphasis was placed on their rejoining the Reich than on other matters. Strangely enough, in *Mein Kampf* Hitler saw Germany's chief possible ally in Great Britain, for which he had some respect despite its form of government. Britain and France, he maintained, had little in common, and their ultimate goals were incompatible. Unlike France, he preferred to believe, Britain had no interest in crushing Germany, and hence at some future time might possibly be brought into a German alliance.[3] National frontiers, he contended, were only "man-made" and hence

[1] See II, 601.
[2] See II, 594-595.
[3] See II, 899-901.

subject to alteration "by man." [1] As far as *Mein Kampf* foretold, the region in which Germany was to expand was the East rather than the West, for Hitler ordained an "Eastern policy signifying the acquisition of the necessary soil for our German people." [2]

Attitude toward Russia. With the possible exception of Jew-baiting, Hitler made the extirpation of Communism his major objective, despite his complete about face when the pact with Moscow was concluded in August, 1939. In *Mein Kampf,* he wrote: "The former Russia . . . is, entirely aside from its new rulers' private plans, no ally for a struggle of the German nation for freedom. Considered purely militarily, in the event of a Germano-Russian war against Western Europe, which would probably, however, mean against the entire rest of the world, the relations would be simply catastrophic." [3] With respect to Russian foreign commitments, Hitler wrote: "The present rulers of Russia do not consider for a minute entering an alliance sincerely or keeping one." [4] Finally, Hitler characterized the Russian leaders in these devastating words: "We should never forget that the regents of present-day Russia are blood-stained, low criminals; that here is the scum of humanity, which, favored by conditions in a tragic hour, overran a great state, butchered and rooted out millions of its leading intellects with savage bloodthirstiness, and for nearly ten years has exercised the most frightful régime of tyranny of all time. Nor must we forget that these rulers belong to a nation which combines a rare mixture of bestial horror with an inconceivable gift of lying, and today more than ever before believes itself called upon to impose its bloody oppression on the whole world." [5]

IMPACT OF THE NAZIS ON THE POLITICAL AND SOCIAL STRUCTURE

Although, in a speech delivered in 1937, Hitler promised a new formal constitution based on National Socialist tenets, such a document never made its appearance. The actual constitutional system—if that term can be applied at all—consisted of a series of laws together with the platform which Hitler laid down in his treatise entitled *Mein Kampf.*

[1] See II, 949.
[2] See II, 965-966.
[3] See II, 957.
[4] See II, 959.
[5] See II, 959.

Basic Laws. There were some ten laws, codes, or series of laws which occupied important places as foundations for the Nazi régime.[1] First of all, there was the Enabling Act which brought the Nazis formally into control of the government. Then there were laws providing for the unity of the state and the National Socialist party, recasting the governmental structure, dealing with national defense, combining the positions of president, chancellor, and *Führer,* and providing for Reich governors. There were the three Nuremberg laws which set forth the Nazi concepts of non-Jewish race, citizenship, and flag. Finally, there were the municipal code and the civil service law.

Elections. While Hitler pointed with pride to the large turnout at the increasingly infrequent elections in contrast to the record in the democratic countries, elections in Germany under the Nazis lost virtually all of their meaning. Almost 100 per cent of the eligible voters might, and usually did, go to the polls; but they could only approve what had already been decided by Hitler and his associates. The National Socialist party alone could put up candidates, leaving the voters with no choice; unless they wanted to hand in a blank ballot, they had to vote for the hand-picked official nominees. Some voters were courageous enough not to put in an appearance at the polls or, if they did appear, to cast blank ballots; but, considering the pressure exerted and the high-handed methods employed in dealing with those who were suspect, neither of these courses of action was very safe.[2] Elections were held at the whim of Hitler.

The Reichstag. Although prior to 1933, the Reichstag was in session several months each year, under the Nazis it became hardly more than an empty shell. In the six years 1933-39, it met less than 20 times, and in every instance a session had to be measured in hours rather than days—one session held at Nuremberg had to be counted in minutes. Unlike other legislative bodies which regularly meet in the same chamber, the Reichstag under the Nazis met wherever Hitler decided was convenient—although for the most part still in Berlin. With the Reichstag building gutted by fire of mysterious origin, which the Nazis attributed to the Communists and the Hitler

[1] Translations of some of these basic laws are available in the *Source Book on European Governments,* Pt. iv. Another compilation is J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (Ann Arbor, 1934).

[2] Much additional information concerning elections will be found in J. K. Pollock, *German Election Administration* (New York, 1934).

critics to agents of Hitler himself, the Kroll Theatre just across from the Reichstag building was ordinarily used.[1] Under the electoral system employed, the Reichstag's membership became very large—in fact, well over 800. But this raised no particular problem of organization; for actually no organization into committees, steering groups, caucuses, and the like was required—all the members belonged to one party and all took their orders from Hitler without question or debate. Beyond a presiding officer—Goering held this position along with several other offices—and a few other nominal officials, the Reichstag had no more organization than a crowd of people at a theatre.

The Reichstag's Functions. There was a vast difference between the powers of the German Reichstag under the Nazis and the powers of legislative bodies in democratic governments. The latter may be subject to cabinet or presidential controls; they may have to pay a good deal of attention to pressure groups; but they nevertheless exercise a great deal of authority in their own name. In the Reichstag under the Nazis, it was impossible to conceive of any critical debate, to say nothing of any refusal to follow a prescribed course of action, even if opportunity were presented to act formally at all; except in rare instances, it was not even allowed a chance to display its complete loyalty by passing acts. In general, the Reichstag under Hitler existed as a meaningless form which could have been abolished without the slightest effect upon the actual operation of the government. Except for the fact that Hitler found it convenient to summon the Reichstag to serve as an audience for some of his addresses on public policies, it is doubtful whether the body would have been maintained at all. Nevertheless, the members were on the public payroll for approximately the equivalent of $3,000 a year—more than the hard-working M.P.'s of England received and almost double the allowances made to the deputies in France. The Reichstag was well described as "the highest paid male chorus in the world." [2]

Court Structure. For several months after he came into power, Hitler allowed the court system established under the Weimar constitution to remain more or less untouched, but early in 1935 he got

[1] For an account of the Reichstag fire, see D. Reed, *The Burning of the Reichstag* (New York, 1934).

[2] Quoted in J. K. Pollock, *The Government of Greater Germany*, 79.

around to a far-reaching reorganization of the judiciary.[1] On paper, the new system was not strikingly different from the old; nor was the actual routine functioning of the lower courts much changed. Undoubtedly the most important innovation lay in the unification of all courts in the country into a single system directed by a minister of justice. Under the earlier set-up, there had been national courts and state courts; but the reorganization of 1935 brought more than 60,000 judges and other legal officials under the direct and absolute control of the national government, and incidentally of course of the National Socialist party. Ostensibly, the courts were to act "in the name of the German people," but actually they were to serve as instrumentalities of National Socialism. "The party program," declared Minister of Justice Frank to judges assembled in conference in 1936, "is the line of evolution of German life. Every member of the legal profession must keep to this line of thought and action. Say to yourselves at every decision which you make: *How would the Führer decide in my place?* In every decision for which you are obliged, ask yourselves: Is this decision compatible with the National Socialist conscience of the German people?" [2]

Selection of Judicial Personnel. Under the new court system, all judges and other officials attached to the courts were appointed by the Ministry of Justice and held their positions at the pleasure of that ministry, which also had supervision over the training of lawyers and judges. Despite such concentration of control in a minister who of course was a prominent National Socialist and immediately responsible to Hitler, some judges retained a certain amount of independence, although the majority faithfully followed the party line as members of the party.

People's Court. Alongside the regular courts, the Nazis set up a People's Court *(Volksgerichtshof)* which had a notorious reputation because of the vigor with which it prosecuted purported enemies of the National Socialist party. Its functions were to investigate and to decide once and for all alleged cases of treason, which came to have a very broad definition in Nazi Germany. For example, a smuggler of marks was tried and convicted of treason by this agency and sentenced to have his head cut off by a pseudo medieval axeman

[1] For a general discussion of the administration of justice under the Nazis, see W. Liebmann, *Reichjustiz und Landeskompetenzgerichsbarkeit* (Leipzig, 1938).

[2] Quoted from C. H. Wilson, "The Separation of Powers under Democracy and Fascism," *Polit. Sci. Quar.*, Dec., 1937.

who in formal dress including white gloves was resurrected to chop off heads with a silver-plated axe. Nominally operated by a president, two senate presidents, six judges, and a number of lay judges ordinarily drawn from the police or the party organization, the tribunal made its own rules, being primarily concerned, however, not with niceties of procedure, but with grilling suspected persons. In this it proved singularly effective, developing an awesome reputation among people who had reason to fear its attentions.[1] If ordinary courts cleared those not favorably regarded by the Nazis, the People's Court could be depended on to handle the situation.

The Nazi Penal Code. One of the additions which the National Socialists made to Germany was a penal code, naturally grounded upon the distinctive Nazi philosophy. Casting aside the old concept that law embodies justice or is based on right and wrong, the new code substituted a novel basic principle which made "healthy public sentiment" and "the national sense of right and wrong" the determining factors. Of course, such sentiment was to be interpreted by Nazi leaders, and consequently varied from time to time and from place to place. However, in general, it made for what Professor Lowenstein incisively terms "destruction of the rule of law." [2] Especially as to offenses related to the National Socialist party, the new code in operation was likely to be savage in its insistence upon the ignoring of procedural rights and the inflicting of severe punishment.

The Police. One of the first steps taken by the Nazis was directed at the control of the police, which naturally became one of the main instruments of the party. German police organization had long been known for its extensive authority, and the Nazis made it even more powerful. Local policemen who performed routine functions in connection with traffic regulation, apprehension of thieves, and the general maintenance of order retained some of their old characteristics, since they were not regarded as key instruments. But the security police (*Sicherheitspolizei*) was welded into the party system by incorporation into the S.S.; and the Secret Police (*Geheims Staatspolizei*), commonly known as the *Gestapo,* became one of the chief Nazi instruments for ferreting out persons, either German or foreign, suspected of disloyalty.

[1] Cases were reported in *Entscheidunzen des Volksgerichtshofs.*
[2] See K. Lowenstein, "Law in the Third Reich," *Yale Law Journal,* Mar., 1936.

Reorganization of Local Government. Although embodying a considerable degree of centralization—more than to be found in the United States—the system of regional and local government prevailing in Germany in 1933 was not palatable to the Nazis.[1] They wanted a system which would enable them to exercise complete control over every inch of German territory. Consequently, very early in their régime they prepared a law which abolished the political autonomy of the states (*Länder*) and transferred all state authority to the central government; while the municipalities and other areas of strictly local government were brought into a unitary system by making their officials a part of the civil service of the Reich. Each district had a national governor (*Reichstatthalter*) who owed responsibility to the central government rather than to the local inhabitants. In the more important districts, the national governor wielded authority along with a cabinet made up of officials appointed by the central government. In smaller districts, the national governor was himself head of the local cabinet and exercised more or less sole authority for governing the area.[2] National governors, especially in the case of the more important states, ranked with the major officials of the Reich, being as a body somewhat below the ministers of the central government, yet with in certain instances a national governor actually wielding more authority than one of the lesser ministers. This situation was not so much legal as it was practical, and of course was closely tied up with the rôle of the national governors in the National Socialist party. Such officials were ordinarily leaders of the party in their districts, and could bring to their governmental positions a great deal of personal weight. Appointed directly by Hitler, and in certain cases his fairly intimate friends, in most instances they virtually dictated what went on in their districts. Incidentally, they often used their positions to indulge in graft, and especially to filch valuable property from Jews and other elements not favorably regarded.

Subdivisions of States: Districts. The various administrative areas were subdivided by the Nazis into administrative districts, placed in charge of district presidents appointed by the national governor and owing responsibility both to the national governor and to the central ministry of the interior. Ordinarily the presidents were

[1] A discussion of German municipal government before 1933 is to be found in R. H. Wells, *German Cities* (Princeton, 1932).

[2] A good discussion of the arrangements involved will be found in J. K. Pollock, *The Government of Greater Germany* (New York, 1938), Chap. vi.

career men, had had special training for their work, and could be transferred from district to district and even promoted from lesser positions or moved to more important services. Almost invariably, of course, they were intimately associated with the party organization, and frequently they served as district leaders, carrying out the orders of the party at the same time that they exercised general supervision over local administration.

The Municipal Code of 1935. An early action taken by the Nazis provided also for a reorganization of municipalities—accomplished in 1935 by the formulation of a new municipal code superseding the multiplicity of old laws and regulations having to do with city government. This new code covered all municipalities with the exception of Berlin, and brought a high degree of uniformity to an area previously somewhat confused. It would not be correct to assume that it started from the ground up, for even the Nazis could hardly throw overboard every detail of a system as firmly rooted in German history and in German life as that of municipal government. Nevertheless, the new code did provide for far-reaching changes in the government of German cities, placing municipalities under the control of the central government and omitting most if not all of the old provisions for popular control.[1]

Control of Communications Media. Perhaps no administrative department in Nazi Germany was more intriguing to a student of government than the ministry of propaganda under the direction of Dr. Goebbels.[2] Indeed, the ministry was so active that it was constantly taking over new duties and expanding its program, so that it became difficult to keep track of just what it was doing. However, it undoubtedly played a very significant rôle in making the National Socialist party all-powerful throughout Germany and along with the police stifled popular dissatisfaction with aspects of the Nazi program.[3] The ministry had virtually absolute control over everything that the German people read, saw, heard, and wrote. To begin with,

[1] A very useful translation of the salient provisions of this code has been made by Fritz Morstein Marx and is included in W. Anderson [ed.], *Local Government in Europe*, 277-303.

[2] For an illuminating discussion of propaganda in Germany, see F. Morstein Marx, "State Propaganda in Germany," in *Propaganda and Dictatorship* (Princeton, 1936), 11.

[3] Much pertinent information relating to this department will be found in Joseph Goebbels, *My Part in Germany's Fight* (London, 1935); and L. P. Lochner [ed.], *Goebbel's Diaries* (New York, 1948).

its press chamber coördinated all of the newspapers of the country by furnishing official reports of public happenings which they were expected to print, by contributing foreign news digests which they might use, and by wielding full power of censorship over what they printed. As a result, the German press became one great voice, and that voice was the voice of National Socialism. Radio facilities were coördinated with the same unity of purpose as in the case of the press. Not only was news edited for broadcasting, but many special addresses were put on the air with the sole purpose of stimulating enthusiastic popular support for the régime. Moreover, the propaganda ministry sent programs by short wave to South America, Central America, various parts of Asia and Africa, and other sections of the world with a view to improving sentiment toward Germany. Finally, the ministry furnished operatic and theatrical companies to visit Brazil and Argentina to demonstrate German culture; and it prepared and sent all over the world films, slides, and photographs illustrating Nazi Germany's achievements.

Control of Cultural Activities. A national culture chamber, which was a division of the ministry of propaganda, enrolled as a matter of compulsion every approved painter, singer, writer, sculptor, composer, and other type of artist in Germany, specifying who might engage in these activities, carefully excluding Jews, pacifists, and other suspected elements, and telling those permitted to function exactly what they might do. Inasmuch as Hitler considered most modern painting degenerate, he ordered large numbers of paintings in the great galleries at Dresden, Berlin, Munich, and other cities removed from the walls and attempted to inspire German painters to produce other more acceptable works to be substituted. However, this cultural program was far from an outstanding success—at least in the eyes of foreigners, who saw in almost every variety of German art a singular deterioration under the Nazis. Almost without exception, the writers, dramatists, producers, musicians, and composers who had made Germany outstanding during the 1920's were forced to leave the country.

Control of the Schools and Universities. Extending farther their theories relating to propaganda, the Nazis revamped the entire educational system of the country,[1] making it from top to bottom

[1] See *Mein Kampf*, II, Chap. ii.

very largely an agency for Nazi indoctrination. Children beginning school were drilled in patriotism and the preëminent rôle of the state in human affairs. Even in the professional schools of the universities, every student had to enroll every year in courses dealing with National Socialism. All textbooks were carefully prepared on the basis of the conviction of Hitler that not the objective truth but the political end to be attained should determine contents. Not only was the educational system geared to the Nazi program, but radical changes were effected in the direction of limiting enrollment in universities to persons who showed political promise. Furthermore, attention was given to abolishing such impractical faculties as many of those devoted to theology, and to the closing of the doors of higher education to most women.

Public Welfare. Although the Nazis wrought havoc in the field of art and brought the universities to so sad a state that Professor Pollock characterized them as a "melancholy subject to write about," [1] they continued most of the welfare program, while using it for their own purposes. In addition, the National Socialist party itself carried on certain welfare services. Children and older persons were recruited by the thousand to stand at street corners and to circulate about with coin boxes into which all passers-by were earnestly urged to drop contributions. One-dish meals were made compulsory, in order to afford a basis for weekly donations to the party coffers. Out of the large amount raised in these and other ways, help was given to aged people, widows, the poor, and other dependent classes—if they were friendly to the party. In 1938, Hitler reported to the Reichstag that about 11,000,000, or 16 per cent of all the German people, had received what was known as "winter help" from the National Socialist party during the preceding year, and that 408,000,000 Reichsmarks, or the equivalent of about $160,000,000 in American currency, had been raised and distributed for the purpose. Some of these welfare funds raised by popular subscription, however, apparently were diverted and used for providing elaborate club-houses for the party leaders as well as for furnishing expensive banquets. The entire social insurance system was reorganized by the Nazis, too, and staffed with persons regarded as deserving of favors without much regard to their professional training.

[1] J. K. Pollock, *The Government of Greater Germany* (New York, 1938), 169.

CHAPTER XXXIII



GERMANY UNDER OCCUPATION

Extent. The military occupation of a defeated country may be partial, as was the case in Germany after World War I when the Rhineland was placed under the administration of Allied forces, or it may be complete. After the capitulation of Germany in May, 1945, Allied forces, following decisions taken at the highest political level, proceeded to take over all German territory west of the Oder-Neisse line which had been tentatively fixed as the dividing line between post-war Germany and Poland. To begin with, this occupation followed no set plan, depending as it did on the advance of various armies into Germany. Thus the forces of the United States held Thüringia, the city of Leipzig, and other areas which had been allocated to the Russians under the plans drawn up by the European Advisory Commission and ratified by the United States, Britain, and the Soviet Union. Within a few weeks, however, troops were redeployed in such a fashion as to provide occupying forces for the four zones into which Germany had been subdivided. Russian armies occupied and controlled an eastern zone stretching from the Baltic to Bavaria and Czechoslovakia and from the Elbe River to the Oder-Neisse line. British military units held the northwestern section of Germany. French forces occupied the southwest; and American armies the south and certain central areas. No part of Germany remained unoccupied by Allied troops.

Duration. An occupation regime may be very brief in duration or it may be prolonged over a considerable period of time. Ordinarily it extends from the day territory is taken over by fighting forces until a treaty has been completed which provides for the permanent disposal

of the occupied area, perhaps turning it back to its former owners or possibly annexing it to the body of a victor. In the case of Germany the situation was greatly complicated by the tense relations between the Western allies and the Soviet Union. It soon became apparent that the objectives, techniques, ideas, and general point of view of the latter were hardly similar in any particular to those of the United States, Britain, and France, while in certain areas there was a great chasm separating the Western Allies from their erstwhile partner in the East. Consequently the possibility of agreeing on a treaty of peace between the Allies and Germany became increasingly remote. Under such conditions the occupation of Germany was bound to be an extended one. In the case of the Western Allies and Western Germany occupation extended from May, 1945, to the time of this writing in the spring of 1953. A contractual agreement which was laboriously negotiated during many months of 1951 and 1952 will, when finally ratified, terminate the occupation.[1] It should be noted that a treaty of peace between the Western Allies and Western Germany is not involved, in contrast to the case of Japan. The key position of the Soviet Union in Germany, the delicate position of the Western Allies in Berlin, and various other factors made even a limited peace treaty difficult if not impossible. In the case of the Russian Zone the situation is more complex, at least in non-Russian eyes. Despite the claims on the part of the Soviet Union that the German Democratic People's Republic manages its own affairs, few informed Westerners would take seriously any formal steps of the Russians toward ending occupation. Irrespective of proclamations, treaties, or any other agreements, it seems probable that the Russians will insist on control of affairs in Eastern Germany indefinitely. Under such circumstances occupation in spirit if not in letter will continue.

Two Phases in the West. The occupation covering the years 1945 through 1953 in Western Germany divides into two quite distinct periods which should be kept clearly in mind. From the capitulation of the Germans in 1945 until the fall of 1949 the Western Allies maintained military governors in their respective zones who also served as commanders of their military forces in Germany. This period is known as the era of military government. Although many civilians

[1] In early 1953 it had been ratified by the United States and Great Britain and approved by the Bundestag of West Germany; it still had to be ratified by France, Italy, Belgium, Netherlands, and Luxembourg and acted upon by the West German Bundesrat.

were employed in various subdivisions of the military governments set up by the British, French, and Americans in their respective zones, the general character of this phase of the occupation was distinctly military. The State Department and Foreign Offices had grave responsibilities in determining basic policy and deciding political questions, but the actual operations in Germany were handled by military persons. Under normal circumstances military government would probably have come to an end after a few months or at least within a year or two of the cessation of fighting, but the relations between the Western Allies and the Soviet Union were so strained that in the case of Germany military governments continued for more than four years. The high commission phase of occupation in Western Germany began in September, 1949, and continued for more than three years well into the year 1953. American, British, and French high commissioners succeeded national military governors in the three respective zones, and an Allied High Commission was set up to supervise and assist a West German Federal Government. The high commission phase will come to an end when the contractual agreement and a related undertaking to bring West German military forces into the Western European defense community are ratified and the Western Allies substitute ambassadors for their high commissioners. During the high commission phase of the occupation over-all responsibility passed from military commanders to civilian high commissioners who were directly responsible to their State Department or Foreign Office. Military forces were, of course, retained by the Western Allies in Germany to provide security.

THE PROBLEM OF POLICY

Early Lack of Attention. During the early years of World War II, little attention was given by the Allies to the drafting of a policy for the occupation of a defeated Germany; and the justification offered was that the job of winning the war was so pressing, and involved such enormous effort, that it was impossible to consider policy for the posthostility period. Planning must of course be done; but it must proceed as best it could, without direction, until the President and other Allied leaders could find time for the necessary policy decisions. Any fair-minded person has to give considerable weight to this explanation. The top authorities in Washington, London, and Moscow were sorely burdened, and frequently carried almost intoler-

able responsibilities. At the time, it was natural to give preparation for tactical operations precedence over everything else. The atmosphere was so tense that it would have been extremely difficult to give more than casual consideration to the intricate and almost insoluble problem of what was to come after. Nevertheless, this failure to give careful attention to the problem of a defeated Germany has had far-reaching repercussions. Some have maintained that the Western Allies won the war only to lose the peace because they were so poorly prepared to deal with postwar problems in Germany. While this may be an extreme point of view, it cannot be denied that much of the difficulty encountered by the Western Allies during the period following May, 1945, arose out of the inadequate consideration given to the postwar problems at an earlier period. The United States at least did not know what ought to be done in reëstablishing the German economy and failed to realize the high degree of dependence of other countries of Western Europe on German industry. By the time the United States came to an understanding of this basic relationship the situation in Germany had deteriorated so badly that it required herculean efforts in Germany and the Marshall Plan with its billions of dollars of assistance to put European economy on its feet.

The Quebec Conference of 1944. It was not until the second Quebec Conference in the latter part of 1944 that any pretense was made of getting at basic policy for postwar Germany. But the war was by no means won at that time, and emphasis still was focused on the more immediate and concrete aspects of the situation. When the decisions reached at Quebec were announced, it became apparent that President Roosevelt and Prime Minister Churchill had been convinced that the Morgenthau proposal to convert Germany to an agricultural economy after the war offered the greatest promise. The rather negative decisions reached at Quebec naturally reflected this viewpoint.[1]

The Yalta Conference of 1945. Some progress was made at the Yalta Conference early the next year. This was President Roosevelt's last Big Three meeting. The final defeat of Germany still overshadowed all other interests. The positions of the United States, Great Britain, and the Soviet Union remained about as diverse as before;

[1] The Soviet Union did not participate in the Quebec Conference. For further discussion of the Conference as related to Germany, see M. M. Knappen, *And Call It Peace* (Chicago, 1947), Chap. vii; H. Morgenthau, *The Morgenthau Plan* (New York, 1947); and *The Memoirs of Cordell Hull* (New York, 1948).

and the attention given to problems in a defeated Germany resulted in certain rather negative statements, but again with nothing forthcoming that could be called a clear-cut, positive policy.[1]

After V-E Day—The Potsdam Conference. With the fighting over in Europe, it was hoped that the Allied authorities would definitely get around to the job of laying down a basic policy for Germany. But the Japanese war was still to be won; the problem of reconversion to peace at home was beginning to loom; and as a result it was not until the Potsdam Conference in July, 1945, that the German question received any really detailed attention from top officials. This Conference arrived at a number of reasonably definite agreements on the subject.[2] Most important was the decision that no German central government should be set up until some undetermined time in the future, although skeleton central machinery was meanwhile to be created to deal with pressing problems of communications and transportation, and with certain aspects of food, trade, and industry; and all of the Allies were to have paramount responsibility for determining what steps should be taken by military government within their respective zones. The idea of converting Germany into a purely agricultural country was dropped, and sufficient industrialization to maintain a standard of living not above the European average exclusive of Russia and Great Britain was agreed upon. Political activity of a non-Nazi variety was to be permitted, with political parties again definitely authorized. But policy relating to denazification remained more or less vague, and the most pressing matter of all—that of the future of German economy—received a lot of space and many words but not too much clarification.[3] The Joint Chiefs of Staff of the United States issued a revised edition of their directive to the American commander and military governor in Germany, known as "JCS 1067," based on the Potsdam Agreement, and this served as the general American policy base for many months during 1945 and 1946.[4] While it

[1] For the text of the Yalta Agreement, see L. H. Laing and others, *Source Book in European Government* (New York, 1950), 344-348

[2] For the text of the Potsdam Agreement, see *ibid.*, 350-359.

[3] For additional material, including the text of the official agreement, see M. M. Knappen, *And Call It Peace,* Chap. xviii; Department of State, *Occupation of Germany; Policy and Progress, 1945-46,* Publication 2783, European Series 23, 6-43; J. K. Pollock and J. H. Meisel [eds.], *Germany Under Occupation,* 14-20; and H. Holborn, *American Military Government,* 195-204.

[4] JCS 1067 originally was apparently based on the Quebec Conference noted above, but the early editions were less significant than the one based on the Potsdam Agreement, for one thing, because Germany had not yet capitulated and occupation was on

contained some positive guides, much of it was based on the philosophy of the Morgenthau Plan and it was therefore to a considerable degree punitive and negative in tone.

The Interlude after Potsdam. As the months passed after the Potsdam meeting, certain further policy decisions were reached, but essentially piecemeal, frequently lacking correlation with other decisions, and usually involving so many compromises that they could hardly be regarded as clear-cut in character. Some, indeed, displayed so little familiarity with the actual situation in Germany that it proved difficult to implement them. There was a rather widespread feeling that they did not always represent the careful conclusions of the highest political authorities, and that they would turn out to be temporary expedients rather than dependable policies.

For many months, the lack of anything like an integrated, official set of policies made for much confusion, with headquarters staffs left up in the air, and even lack of confidence on the part of the field detachments. In the absence of anything of the kind, it was more or less up to individuals and agencies entrusted with occupation responsibilities to make their own interpretations. With one sizable group conceiving of American policy as limited to emergency operations, maintenance of law and order, demobilization of armed forces, and dismantling of munition plants, the clearing of main roads and streets, followed by withdrawal from the country at the earliest possible time (at the farthest within a few years); with another group urging punitive measures, the destruction of German industry, and reduction of the population to an agricultural economy; and with still another element emphasizing constructive efforts of a long-range character, it is not strange that the situation as far as the United States was concerned seemed chaotic. Despite the deadweight, however, of those who wanted to limit military government to immediate emergency problems and the active and determined opposition of the group aiming at revenge, American military government slowly but surely moved ahead after V-E day toward reasonably positive programs.[1]

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a small scale in the West. In making reference to JCS 1067 the exact edition, for example JCS 1067/7, should be noted unless confusion is to result. For texts of certain editions, see H. Holborn, *op. cit.*, 157-172; and J. K. Pollock and J. H. Meisel [eds.], *op. cit.*, 110-115.

[1] For a discussion of the development of American policy by the trial and error method, see H. Zink, "American Occupational Policies in Germany," *Rev. of Politics*, July, 1947.

The Stuttgart Speech by Secretary of State Byrnes. The first constructive official statement of American over-all policy in Germany was made by Secretary of State Byrnes at Stuttgart in September, 1946—some 16 months after V-E Day.[1] Possibly as a reply to an earlier Russian pronouncement which purported to favor a unified Germany despite the reluctance of the Soviet Union to cooperate in any preliminary steps in that direction, the speech was addressed not only to American military government officials, but to the German people; and while it contained little that was new, it was nevertheless significant as an official statement of American aims. The Morgenthau proposals were cast aside, as were also the ideas of those who wanted to bring American activities in Germany to a speedy conclusion. The United States would support a fairly elaborate German economy, and stood pledged to remain in Germany for an extended period. A unified Reich with a federal type of representative democracy was clearly espoused, with the establishment in the meantime, and as soon as possible, of central German administrative agencies in such fields as trade and industry, food, and transportation and communications. Stress was placed on giving German officials and the German people increasing responsibility for their own affairs, with complete responsibility as soon as experience warranted; and it was indicated that the United States did not regard the eastern boundaries of the Reich as necessarily permanently fixed.[2]

The Soviet Position. While the British [3] and American attitudes toward military government of Germany were similar so far as general policies were concerned, the Soviet Union, and to a lesser extent France, held divergent ideas. And as Potsdam receded into the past, the gulf between the British and American positions on the one hand and that of the Soviet Union on the other widened rather than narrowed. The Soviet Union and the French became increasingly unwilling to implement the provisions of the Potsdam Agreement relating to the setting up of German central administrative agencies, with the result that machinery to deal with the over-all problems of food, postal services, transportation, and economic reconstruction

[1] For the text of the address, see J. K. Pollock and J. H. Meisel [eds.], *op. cit.*, 250-256, and Department of State, *Germany, 1947-1949; The Story in Documents* (Washington, 1950), 3-8.

[2] Another American policy statement was issued in July, 1947, in the form of a directive to General Clay. For the full text, see *Germany, 1947-1949*, 33-41.

[3] For an official statement of the British views made by Foreign Secretary Bevin, see J. K. Pollock and J. H. Meisel [eds.], *op. cit.*, 246.

was not created. For German consumption, the Soviet Union asserted that it favored the establishment of a central German government with general authority over the Reich, and maintained that such a step was being blocked by the United States and Britain.[1] Yet Moscow refused to coöperate with the United States and Britain in a program which would have meant immediate steps in that direction. Indeed, at Foreign Ministers' Conferences held in London, Moscow, New York, and Paris during 1946-48, the Russians proved entirely unwilling to discuss the basic problems of Germany other than reparations, asserting that until the other Allies had met the Soviet demands on that subject there was no point to considering anything else.[2] When the United States and Britain proceeded with steps to deal with economic problems in their respective zones after the United States had invited all of the Allies to join in immediate action to save Germany from utter collapse, the Soviet Union sharply took them to task on the ground that they were violating the terms of the Potsdam Agreement. Moreover, Moscow continued to assert to the Germans that it desired to proceed with the setting up of a unified German government, but that the United States and Britain were determined to partition the country.

The French Position. Not having been invited to the Potsdam Conference in 1945, the French did not feel bound by its decisions. Therefore when they were admitted to a share in the occupation of Germany shortly thereafter, they refused to agree to the establishment of the central German administrative agencies provided for in the Potsdam Agreement. The French attitude has been one of pronounced fear of a revived nationalistic Germany which would again constitute a threat to the general security of Europe and especially France as well as to European and French economies.

[1] For statements by Molotov and Stalin, see J. K. Pollock and J. H. Meisel [eds.], *op. cit.*, 247-250.

[2] At Yalta, the Soviet Union demanded reparations from Germany amounting to the equivalent of ten billion dollars. Again at Potsdam, it put forth such a claim, maintaining that the other Allies had agreed at Yalta. The United States and Great Britain refused to subscribe to such a demand, not on the ground that the Soviet Union lacked some valid claim, but on the score that it actually had received many billions of dollars' worth of reparations from Germany in the form of territory largely given to Poland, but with much former Polish territory going to the Soviet Union, and, even more important, on the grounds that there is a level below which German economy cannot be reduced without serious injury to world economy, and that by admitting the Soviet claim the United States would in all probability be called on to pour funds into Germany which would actually flow out to the Soviet Union as reparations.

ALLIED CONTROL MACHINERY

The Allied Control Authority. An Allied Control Authority for Germany was set up in Berlin during the summer of 1945, but for various reasons it proved unable for some weeks to do much more than make preliminary arrangements.[1] And when finally it arrived at a point where it was organized to function in a reasonably adequate fashion, it unfortunately found itself to a considerable extent blocked; inasmuch as most of the pressing problems confronting the new Authority related to the establishment of central governmental agencies, if not of a central Reich government, it was more or less paralyzed by the French unwillingness to permit action. Nevertheless, despite the French veto, and the subsequent attitude of suspicion and unwillingness to coöperate except on its own terms on the part of the U.S.S.R., the Authority continued to hold formal meetings during the period 1945-48, and a good deal of progress in routine matters was made.[2] In 1948, however, inter-Allied dissension became such that the Allied Control Authority finally brought its virtually paralyzed operations to an end.[3]

The Allied Control Council. The Allied Control Authority was organized on three levels. At the top was the Allied Control Council, made up of the ranking representatives of the four Allies. At the outset, the four powers designated their top military commanders in Germany to the posts, although it was anticipated that civilians would replace them as the occupation proceeded, especially if a working arrangement could be achieved among the four powers. Each member of the Council was flanked by a political adviser designated by his State Department or Foreign Office to assist in handling intricate matters of a political character. Over-all policies were intended to be drafted by the four-member Council in so far as not laid down by Conferences of the Foreign Ministers or other higher political authorities; and general supervision over the Allied occupation was supposed to be exercised, although with the French veto and the Russian re-

[1] For the text of the proclamation setting up the Allied Control Council, see W. Friedmann, *The Allied Military Government of Germany* (London, 1947), 276.

[2] Several actions taken by the Allied Control Authority are included in J. K. Pollock and J. H. Meisel [eds.], *op. cit.*, 65 ff.

[3] The Russians delayed giving formal notice of their permanent withdrawal from the Allied Control Authority until the autumn of 1948. From spring until that time, the Authority's legal status remained somewhat uncertain, although the agency, of course, was not functioning.

luctance to brook what was considered interference in the administration of the Russian Zone, this proved impossible.[1]

The Coördinating Committee. Immediately below the Council was a Coördinating Committee, also with four members, but being in this case the deputy military governors rather than the ranking representatives of the Allied governments. This body gave its attention to the multifarious immediate problems arising out of the occupation but not involving the laying down of basic policies or the making of far-reaching decisions. Its members devoted a greater portion of their time to its work than in the case of the Council, and under ordinary circumstances sessions were more frequent and of longer duration. In fact, the day-to-day activities of the Allied occupation depended far more on the Coördinating Committee than on the higher body.

The Secretariat, Directorates, and Working Committees. Below the Council and the Coördinating Committee were the secretariat and various directorates or working committees. With representatives of the four Allied powers rotating as secretary-general, the secretariat had the varied jobs of house-keeping, preserving records, compiling reports, maintaining the headquarters building, recruiting staffs of interpreters and assistants, and preparing agenda for the Council and the Coördinating Committee. Twelve directorates performed the basic spadework upon which the Council and the Coördinating Committee depended in making their decisions. Here were agencies dealing with the various functional aspects of the occupation: military, naval, air, economic matters, finance, legal, manpower, internal affairs, communications, political affairs, prisoners of war and displaced persons, and reparations. To staff these directorates, each of the Allied powers designated representatives from its military government headquarters in Germany, normally drawn from the functional subdivisions of its headquarters, and at least supposedly having an expert knowledge of the German fields covered. The staffs carried on preliminary discussions, thrashed out differences of a detailed character, prepared reports recommending action to the Coördinating Committee, which in turn often sent the recommendations to the Council, and after decisions had been made, exercised

[1] For somewhat divergent estimates of what the Allied Control Authority had accomplished down to 1947, see K. Loewenstein, "Political Reconstruction in Germany," and J. K. Pollock, "Germany Under Military Occupation," in J. K. Pollock [ed.], *Change and Crisis in European Government.*

certain responsibilities for carrying out the provisions. If the Potsdam Agreement had been implemented by the setting up of central German administrative agencies to deal with food and agriculture, trade and industry, public finance, transportation, and communications, these Allied directorates would have had important supervisory functions. Under the directorates were approximately 60 working committees dealing with problems such as health, education, religious affairs, housing, courts, and sports.

Occupation Machinery in the Zones. At the outset, there seems to have been a feeling in certain quarters at least that the Allied Control Authority would assume the principal rôle, leaving the four national zones to serve as bases for maintaining security. However, with no Allied machinery operating [1] when the Allied armies occupied Germany, it was necessary to take immediate steps for the control of the several zones. And as the Allied Control Authority proved its ineffectiveness to deal with the over-all problems of occupation, the military government machinery set up in the national zones came into greater and greater prominence. The initial provisions made by the four Allied governments for their zones were naturally primarily military. The United States and Britain had taken considerable pains to set up elaborate military government organizations prior to the German defeat. One of the five general sections of the Supreme Headquarters of the Allied Expeditionary Forces (SHAEF) dealt with military government. Another special staff, the German Country Unit, gave its whole attention to Germany. Both the British and American forces also maintained military government sections at various levels.[2] The Russians apparently never got around to the establishment of any special organization for military government purposes, but rather depended upon their regular tactical personnel. The French were slow in getting a start in military government, but moved ahead rather rapidly once their country had been liberated. After V-E Day, an increasingly large number of Allied civilians were brought into the American, British, and French zonal agencies, until after a year or so the military became overshadowed. That is to say, the military lost numerical superiority, though as long as the occupation machinery remained under army control the influ-

[1] That is to say, no special military government machinery had been established for Germany. Of course there was the military organization known as "G-5 of SHAEF."

[2] These were known as "G-5," or "civil affairs," staffs.

ence of the military element remained at a high, if not a dominating, point. There was a considerable variation among the Allies in the size of the military government agencies built up after the occupation began. The British saw fit to create the most elaborate machinery and at the peak employed 20,000 or more British civilian and military personnel to handle the occupation program in their zone. The American zonal staff never reached a point where it was half the size of the British. The Russians probably used the smallest number of personnel for strictly military government purposes, although their occupational forces were the largest of any. From the beginning, they depended upon the Germans for most of the work involved in the military government of their zone, and consequently did not require an elaborate staff of their own. The French and British saw fit to pursue the opposite policy, and consequently had to provide large staffs to handle the various aspects of control.[1]

MILITARY GOVERNMENT IN THE AMERICAN ZONE

Space does not permit a detailed examination of the military government organizations created by the four Allies in their respective zones. However, it is important to know something of what was done to meet the situation, and this end may be served, to some extent at least, by a word of comment on the arrangements made in the American Zone. A good deal of what is said may be projected into the other zones; although, as has been indicated, the Russians particularly often proceeded along quite different lines.

Headquarters Organization. During the latter part of 1944 a US Group Control Council for Germany was set up in London to prepare for the military government of Germany as far as the United States had responsibility. Moved to Versailles in the spring of 1945, it entered Germany very shortly after the capitulation and operated near Frankfort until it transferred to Berlin in the late summer of 1945. Another headquarters organization was set up as the G-5 section of the United States Forces, European Theatre, and particularly after the move of the US Group CC to Berlin, this agency, located as it was at Frankfurt in the American Zone, regarded itself as primarily responsible for military government in that zone. Much energy was

[1] A good treatment of the similarities and differences among the four zones may be found in W. Friedmann, *The Allied Military Government of Germany*, especially Chap. iii. Also worth reading is J. P. Warburg, *Germany—Bridge or Battleground?* (New York, 1947), Chaps. vii-x.

wasted as a result of the competition between the two headquarters groups and it was finally decided to fuse the two together under the name of the Office of Military Government in Germany of the United States (OMGUS), located in Berlin. OMGUS was given general responsibility for the conduct of military government in the American Zone, and its members served not only as a staff of the military governor and his deputy but also as American representatives on the directorates, working committees, and the secretariat of the Allied Control Authority.

Regional Organization. During the early days of the occupation the G-5 staffs at the various military levels—army group, army, corps, and division—bore responsibility for regional military government activities. The American Zone was later divided into Eastern and Western military districts, and military government activities were centralized in the Third and Seventh Armies respectively. In 1946, the districts were abandoned and offices of military government were set up to control the three *Land* (state) governments in the American Zone. And when Bremen was made a fourth *Land* at a later period, an office of military government was established there. These state offices of military government were directly responsible to OMGUS and in turn supervised the military government field detachments which were the grass-root units.

Field Detachments. Several types of military government field detachments were planned and organized even before Germany was occupied. Identified by a letter, they underwent certain changes in designation and size as time proceeded; originally designated A, B, C, and D detachments, or teams, they were later broken down into five types and labeled E, F, G, H, and I detachments. The large A/E detachments were assigned to supervise military government activities in the *Länder* (states) and in certain instances in very large *Stadtkreise* (cities). The B/F detachments, somewhat smaller in size than the A/E detachments and also less specialized, were placed in charge of the *Regierungsbezirke* (districts) of Bavaria and cities less populous than those under A/E detachments though still quite large. The C/G detachments, which fell considerably below the detachments noted above in both size and specialization, were sent to medium-sized cities, smaller districts, and some of the larger *Landkreise* (counties). Finally, there were the D (later H and I) detachments which assumed responsibility for overseeing military government activities in the rank

and file of counties and some of the smaller cities. At times, it may be added, a single detachment might find itself in charge of several units of German government—a county and two small cities, two smaller counties, or a district and a city, for example.

To begin with, these field organizations exercised direct control over the German officials within their areas and in emergency situations actually performed certain services themselves. As conditions became more settled, military government personnel were instructed to work through the Germans, though this was not always found easy. Also it was decided after a few months had elapsed that it was not a sound practice to have local detachments below the state level give direct orders to the German officials, since these orders frequently conflicted with one another, and under such a system a vital district and regional structure of German government could hardly be expected. Consequently, after the early period, the field detachments observed what went on in their areas, reported to higher headquarters, discussed matters with German officials, and assisted in negotiating certain difficult problems, especially where the American tactical forces were involved with German officials; but the direct orders to the local German officials were transmitted from the state level, with the *Land* military government offices directing the German state governments to carry out specific orders, including their promulgation to district and local officials.[1]

Security and Liaison Teams. As the German governments demonstrated their ability to manage their own affairs and military government personnel was drained off as a result of the demobilization program, detachments were reduced in size and finally withdrawn from the *Landkreise* and the *Stadtkreise*. To take their places, Liaison and Security teams were installed in the key spots. Their responsibility consisted of maintaining as continuous contact as possible with developments in their areas, reporting various types of information desired by higher headquarters, negotiating under certain cir-

[1] Depending upon the area assigned to them, the *Land* military government detachments included experts on mining, forestry, oil refining, fisheries, and various technical fields, along with specialists on public safety, public health, government and administration, food, agriculture, public finance, banking, insurance, public works, public utilities, courts and legal system, education, religious affairs, intelligence, transportation, communications, monuments, fine arts and archives, and trade and industry. In the case of religious affairs, lack of adequate recognition usually made necessary a side-line assignment to the education officer. Monuments, fine arts, and archives also did not receive the attention merited, largely because comparatively few experts in that field had been recruited.

cumstances with local German officials, and in every case maintaining liaison with them, acting as a go-between in matters involving American military forces and the German authorities, and directing various American programs.

THE ALLIED HIGH COMMISSION

With the mounting tension between the East and the West and the breakdown of the Allied Control Authority in 1948, it became increasingly apparent that some provision would have to be made at least on a temporary basis for occupation machinery above the zone level in Western Germany. As early as 1946 it was clearly to be seen that certain far-reaching problems, including industrial reconstruction, food supply, and transportation and communications, could not be effectively dealt with on a zonal basis. Since the Russians refused to coöperate with the Western Allies in providing such coördinated machinery, the latter would be compelled to do what they could alone. The first steps were taken in this direction in the setting up of bizonal agencies in the British and American Zones to deal with the complicated economic situation. When the Russians withdrew from the Allied Control Authority in 1948, the time seemed ripe to go ahead with a counterpart agency embracing the three western zones and to set up central government machinery in Western Germany. Many meetings were held in Germany by the American, British, and French military governors to discuss the situation. Discussion also went on between representatives of the three governments, including their foreign ministers. The net result was a decision to create an Allied High Commission, operating under a High Commission Charter,[1] to join the three western zones under a Trizonal Fusion Agreement,[2] and to authorize the Germans to proceed with the drafting of a constitution for a West German Federal Republic. An Occupation Statute also had to be agreed upon by the French, British, and American governments which would set forth the powers to be exercised by the new German government and the authority to be reserved by the Allies.[3] In these negotiations it was also decided that the time had arrived to bring to an end the strictly military occupation and to substitute an Allied

[1] For the text of the High Commission Charter, see Department of State, *Germany, 1947-1949; The Story in Documents,* 92-97.

[2] For the text of the Trizonal Fusion Agreement, see *ibid.,* 91-92.

[3] For the text of the Occupation Statute, see *ibid.,* 89-90; also L. H. Laing and others, *Source Book in European Government,* 380-383.

High Commission and three national civilian high commissioners directly responsible to their State Department or Foreign Offices.[1] The Allied High Commission for Germany actually came into existence in September, 1949, as the newborn West German Federal government began to function.

The Allied High Commission Council. The Allied High Commission was headed by a Council made up of the three American, British, and French high commissioners. Meetings were ordinarily held three times each month at the Petersberg overlooking the Rhine and Bonn from a height of several hundred feet. The high commissioners were attended by their political, legal, and economic directors as well as by executive secretaries, administrative officers, and others who might be needed. Sessions ordinarily lasted for two hours or more and were devoted to the discussion of various matters of greater or less importance, usually involving some action of the West German Federal government or one or more of the *Land* governments. Preceding such discussion detailed consideration had almost invariably been given to these matters by the national staffs of the high commissioners and by one or more of the committees made up of representatives of the three occupying powers. In a good many instances instructions had been received from the State Department or Foreign Offices as to the position to be taken by a particular high commissioner. Voting in general, in contrast to the procedure in the Allied Control Council, was by majority, though in a few exceptional instances unanimous agreement was specified.[2]

In certain cases there was naturally disagreement among the high commissioners, but the remarkable point to be noted in examining the three-year record of the Allied High Commission Council was the small use of formal voting and the measure of unanimity achieved.[3] A high commissioner could appeal to his home government under procedure stipulated if the decision went against him, but this was rarely resorted to.[4] Another notable aspect of the record of the Allied High

[1] A great deal of information relating to the events leading up to the establishment of the Allied High Commission as well as the organization and functions of this agency will be found in E. Plischke, *History of the Allied High Commission for Germany* (1951). This monograph belongs to a series of studies prepared by the Historical Division of the Office of the United States High Commissioner for Germany.

[2] Amendments to the Bonn Basic Law required unanimous approval.

[3] During the first year of its operation only eight formal votes were taken. See Plischke, *op. cit.*, 57.

[4] Only three cases of such appeal were involved during the first year. See *ibid.*, 57.

Commission Council may be emphasized: a constructive as opposed to a negative attitude displayed toward the German governments in Western Germany. Under the Occupation Statute the Allied High Commission was given authority to set aside certain actions of the federal government and the several state governments. There were numerous instances of disagreement between the Allies and the German authorities, and it would have been not at all surprising had the Allied High Commission made extensive use of its veto power. Actually there was a great deal of discussion of controversies, both within the Allied High Commission and between the high commissioners or tripartite committees and German officials from Chancellor Adenauer down; emotions not infrequently reached a high point; threats were sometimes made; but in the last analysis a compromise was almost always arrived at and very few vetoes were imposed. Some criticism to the effect that the Allied High Commission lacked decisiveness resulted from this record; while from other quarters it was at times alleged that the German officials displayed so little independence as to be the creatures of the Allies. Neither of these charges seems too well founded in fact, though it is possible that in specific instances the Allied High Commission leaned over backward in giving the Germans the benefit of a doubt. On both sides there was a realization of the gravity of the European situation, and both Allied representatives and Germans sought to build up a strong German governmental structure.

Tripartite Committees. To a casual observer the Allied High Commission seemed to be more or less synonymous with the Council noted above. In reality the former could have operated only with great difficulty if at all without the tripartite committees which sifted the great mass of business arising out of the occupation. The Allied Council was given authority under the High Commission Charter to set up committees, subcommittees, working parties, and other agencies as it saw fit in addition to six main committees provided by the Charter.[1] In 1950, there were nine main committees made up of representatives of the three Allies, some 30 subunits under the main committees, and various working parties.[2] The main committees ordi-

[1] The High Commission Charter provided for the following committees: political affairs, foreign trade and exchange, economics, finance, law, and military security.

[2] In addition to the six committees specified by the High Commission Charter, the Council created a general committee, a review committee, and a labor affairs committee.

dinarily met every week and frequently devoted several hours to their accumulated business.[1] The General Committee, made up of the three deputy high commissioners, performed important functions, though it did not review all matters coming to the Council as was done by the Coördinating Committee of the Allied Control Authority. Possessing final authority on items referred to it by the Council when it could reach an agreement, it also dealt with routine administrative business.[2] The Review Committee had the arduous task of examining federal and state German laws to see if they conflicted with the Occupation Statute.[3] The Military Security Board, which was established under military government to check the revival of militarism in Germany, was fitted into the Allied High Commission as a main committee. The other principal committees gave their attention to political, economic, legal, finance, labor affairs, and foreign trade and exchange items. Numerous subcommittees assisted the main committees, while *ad hoc* working parties were set up to deal with specific problems. The committees relied heavily on the Allied General Secretariat which furnished expert secretarial assistance, interpreters and translators, archives and other basic services.

National Offices. In addition to the Council, the various committees, and the secretariat, the Allied High Commission organization in Germany included British, French, and American national offices staffed by several thousand persons. Located to begin with in their respective zones and growing out of the military government headquarters, the Offices of the American, British, and French High Commissioners eventually moved in large measure to Bonn and its environs, though subordinate offices were maintained at the various state capitals. Headed by a high commissioner who represented his government on the Council, the national offices were rather elaborately organized into political affairs, economic affairs, public affairs, legal affairs, administrative and other main subdivisions, which in turn were broken down into divisions, branches, and sections dealing with foreign trade, education, public relations, German courts and prisons, and so forth. It was from these staffs that personnel was drawn to serve on the tripartite committees noted above. Since the high commissioners exercised important authority over the *Land* (state) gov-

[1] During the first year the main committees, not including the Military Security Board, met 337 times and the subcommittees 957 times.

[2] For further discussion, see Plischke, *op. cit.*, 66-67.

[3] For additional discussion, see *ibid.*, 70-71.

ernments within their zones, many of their staff members devoted themselves to maintaining contact with various state ministries. Resident officers stationed in most of the *Kreise* (counties) kept in touch with the local German officials, attempted to handle their relations with the Allied military forces, and promoted various cultural programs.[1] The requirements were such that in the Office of the U. S. High Commissioner particularly it was necessary to employ several thousand Germans to furnish both secretarial and professional services.[2]

ALLIED OCCUPATION PROGRAMS IN GERMANY

It has been pointed out earlier in this chapter how difficult it was for the Allies and especially the United States to formulate a policy for the occupation of Germany. The punitive character of the earlier decisions and the frequent shifts in position on certain matters complicated the drafting of definite occupation programs. It is consequently far from easy to obtain a clear picture of what was done by the Allies in Germany during the period 1945-52. Without pretending to cover the elaborate ramifications in the brief space available here, some attempt must be made to summarize the main efforts of the Allies in the occupation of Germany if recent developments are to be understood. For this purpose it may be helpful to center the discussion around three major categories as follows: (1) demilitarization and denazification, (2) economic reconstruction, and (3) democratization.

Demilitarization. Perhaps the simplest, certainly the least controversial, Allied program in Germany was that relating to demilitarization. With the German surrender in hand, it was to be expected that immediate steps would be taken to demobilize the German armed forces, to destroy supplies of poisonous gases and ammunition, to blow up fortifications, and to take steps which would prevent military recovery in the future. The Allies proceeded expeditiously with most of these tasks and within a few months they had been more or less completed. In the case of preventing military recovery, more difficulty

[1] For official documents relating to the organization at the *Land* and *Kreis* levels, see G. A. Lee [ed.], *Documents on Field Organization of the Office of the U. S. High Commissioner for Germany, 1949–1951* (1952) in the series of monographs prepared by the Historical Division of the Office of the U. S. High Commissioner for Germany.

[2] The British and French found it feasible to use their own nationals to a larger extent than the Americans, since the distances involved were much less and salary scales more attractive to their people.

was encountered because of the difference of opinion as to what constitutes military potential in this age of so-called "total war." In general, the Allied attitude to begin with was that in case of doubt the decision should be against any steps which would restore the airplane works, the shipyards, certain chemical plants, and the like. But as time passed and pressures developed to put German economy back on its feet, it became increasingly difficult to maintain such a stand. Somewhat related to this program was the dismantling of industrial plants which was authorized in connection with reparations. Being unable to agree to the Russian demands for the equivalent of ten billion dollars in reparations, the Western Allies gave their consent to the dismantling of various steel, chemical, and other industrial plants which were regarded as surplus under a nonmilitary setup. Many such plants were actually torn down and shipped to the Soviet Union and Western European countries, though the breakdown of East-West relations finally put an end to the final stages of the undertaking.

Denazification. If one had to select the single activity of the Allies in Germany which involved the greatest controversy, it is probable that denazification would be named. The Nazis had managed to permeate virtually every element of German life, political, economic, and social, and the result was that there were very few Germans who remained free from some measure of Nazi contamination, whether they were formally members of the party or not. The Allies blamed the Nazis for the war and this in itself naturally made them unwilling to continue the Nazi leaders in positions of influence either in the government or in the industrial and social life of Germany. The early plans drafted by the German Country Unit of SHAEF stipulated the arrest of some thousands of what were regarded as the most dangerous Nazis, but this was not considered sufficient by American public opinion, which remembered the atrocities against the Jews, the horrors of the concentration camps [1] and the Gestapo, the barbarous treatment accorded captured Allied airmen by the S.S., and various other offenses for which the Nazis were held responsible. The force of such public opinion was so powerful in Washington that the administration rejected the denazification plans of the German Country Unit, and the Joint Chiefs of Staff formulated directives to the commander of American forces in Germany ordering first of all the

[1] For an authoritative work dealing with these camps, see E. Kogon, *The Theory and Practice of Hell* (London, 1950).

elimination of all Nazis from public positions and, after this proved impracticable, all *active* Nazis from places of more than routine responsibilities.[1] During the early period of the occupation a very large portion of the energies of the military government staff both at headquarters and in the field had to be devoted to the job of carrying on the denazification program. "Special Branches" were organized in the field offices of military government and these rapidly collected hundreds of thousands of *Fragebogen* (questionnaires) from public employees and candidates for public positions.[2] By early 1946 it was apparent that an almost insuperable task had been taken over by American military government in connection with denazification—not only was most of the effort being expended on this one activity but the decision as to guilt or innocence and particularly the degree of guilt involved factors with which Americans were not prepared to deal. The German minister-presidents of the American Zone were therefore called upon to approve a "Law for the Liberation of National Socialism or Militarism" under which the responsibility for denazification was largely shifted to the Germans.[3]

German Efforts at Denazification. Under the law noted above five categories were specified: (1) major offenders, (2) offenders, (3) lesser offenders, (4) followers, and (5) nonoffenders and exonerated after trial.[4] Several hundred local denazification tribunals were set up in the American Zone to investigate and try cases; appellate tribunals were provided to hear appeals. Ministers of Denazification were appointed in the *Länder* to supervise the entire program. Millions of persons were charged with Nazi contamination—the field being considerably widened when the purge was extended to the economic life of Germany. The entire process became so enormous in its ramifications that it was estimated that many years would be consumed before the millions of cases could be disposed of. However, various amnesties and other rulings by the American military govern-

[1] See the various versions of JCS 1067 for these directives.

[2] Up to June 1, 1946, when the German tribunals took over, 1,613,000 denazification cases were reported in the American Zone and 373,762 persons rejected or removed. See *Report* of American Military Governor, June, 1946.

[3] For the text of this law, see J. K. Pollock and J. H. Meisel [eds.], *Germany Under Occupation*, 179–196.

[4] German tribunals were set up in the Russian, British, and French Zones at a later date under American pressure. Allied Control Directive 38 which was issued on Oct. 12, 1946, authorized such tribunals throughout the four zones. For the text of this directive, see Department of State, *Occupation of Germany: Policy and Progress, 1945–46*, 122–133.

ment removed large numbers of youth and persons of low income from the tribunals and the work was for the most part wound up in 1948.

Diverse Denazification Results. The results obtained under denazification varied widely not only from zone to zone but within a single zone. The Russians started out with a dynamic effort in this field and ruthlessly liquidated numerous Germans whom they regarded as dangerous. But they were never interested in elaborate denazification machinery and in the last analysis judged even leading Nazis on the basis of what if any contribution they could make to the Russian cause—if they decided that a prominent Nazi would prove a valuable Communist convert they did not hesitate to forget his past. To the French all Germans were either Nazis or equally guilty of offenses against humanity, and consequently there was little justification for attempting to push a denazification program, though they did go through the motions. The British had suffered grievously from German bombing and atrocities, but, unlike the Americans, they took such treatment more or less philosophically and never developed the strong public emotion which has been noted above in the United States. Consequently it was the British position that the Nazi leaders should be punished while the rank and file of Germans who were pawns in the game should be not exactly excused but at least not actively proceeded against under denazification programs.[1] The concentration of American military government on purging Germany of Nazism is understandable to anyone who is familiar with political processes in the United States, but the program can hardly be regarded as a success despite certain claims which have been made. Too much was attempted and the result was that the program could not be carried through—this lost respect for the United States in many quarters. By casting the net so widely a good many very bad Nazis were able to escape. The fact that those guilty of grave offenses went free while the little man was punished obviously did not redound to the credit of

[1] An idea of the comparative records may be obtained from figures covering the period September 6, 1946, to May 31, 1947. During this time, the American Zone tried 169,282 as members of Nazi organizations, convicting 144,139. In the Russian Zone, 18,328 were tried and 18,061 convicted. In the French Zone, 17,353 were tried and 17,033 convicted. In the British Zone, only 2,296 persons were tried. The internment record is more even, with 34,500 in the British Zone, 51,006 in the American Zone, 59,965 in the Russian Zone, and 10,923 in the French one, as of Jan. 1, 1947. In the case of persons removed or excluded from office for Nazi activities or connections, the several zone records were also more nearly equal. See W. Friedmann, *The Allied Military Government of Germany*, 332.

the United States. The device resorted to by American military government in mid-1946, when the burden became too heavy to be borne, under which the responsibility was shifted to the Germans, was not regarded favorably in many quarters. An examination of the record of the German denazification tribunals in the American Zone reveals considerable unevenness. Some did their jobs reasonably well; others allowed personal factors to influence their actions and even became involved in scandals. At one time General Clay felt it necessary to threaten severe steps unless the work were done more effectively.[1]

War Crimes Trials. In addition to the denazification program, the Allies sought to deal with cases in which specific offenses committed by Nazi leaders and other Germans were involved. An international tribunal devoted more than 250 days, beginning in November, 1945, and concluding in October, 1946, to hearing charges brought against the top leaders of the defeated régime. Field Marshal Goering, Rudolph Hess, Frick, Ley, Schacht, Speer, Von Papen, and a sizable group of others were given a joint trial at Nuremberg by a court whose judges were drawn from among British, Russian, French, and American jurists. Most of the defendants received a sentence of death by hanging, while others were given long prison sentences; Schacht, the reputed financial wizard, was acquitted.[2] Russian, American, British, and French tribunals likewise tried fairly large numbers of lesser offenders in their respective zones on various charges arising out of the war. Former military leaders were in some cases convicted of illegal treatment of Allied prisoners; S. S. officers were sentenced on account of their fanatical behavior in carrying out the Nazi program; a group of medical men were executed for using Jews, anti-Nazis, and Allied prisoners as guinea pigs in conducting experiments. Trials involving German industrial heads, including the masters of the Krupp and I. G. Farben concerns, were less successful. In all modern history, there is probably no instance in which as much has been done to search out and punish the leaders of a defeated régime.

[1] For additional discussion of denazification, see M. M. Knappen, *And Call It Peace* (Chicago, 1947), Chap. xiii; Department of State, *Occupation of Germany: Policy and Progress*, 1945–46, 16–20, 111–133; W. Friedmann, *The Allied Military Government of Germany*, Chap. vii; and H. Zink, *American Military Government in Germany* (New York, 1947), Chap. xi.

[2] For the official report of these international trials, see the International Military Tribunal, *Trial of the Major War Criminals Before the International Military Tribunal* (37 vols., Nuremberg, Germany, 1948). A brief summary of the trials may be found in P. Calvocoressi, *Nuremberg: The Facts, the Law, and the Consequences* (New York, 1948).

Economic Reconstruction. The Morgenthau group, which greatly influenced the policy of the Allies as set forth at the second Quebec Conference, at Yalta, and at Potsdam, envisioned a postwar Germany which would have little or no heavy industry, a reasonable amount of light industry, and a preponderance of agriculture and pastoral economy. The early program of the Allies in the economic field was consequently almost entirely a negative one, with prohibitions on certain types of economic reconstruction and a severe limitation on others such as steel. When the Germans surrendered, it is estimated that no more than 5 per cent of the industrial plants were operating; by the end of 1945 industrial production was hardly more than 10 per cent of the prewar level. As the months passed and the Germans were kept from starving only by the distribution of huge quantities of Allied military stores, it was evident that the negative policy which had been set did not suffice. Military commanders who had shortly before breathed fiery anathemas at the very mention of doing anything to help the Germans now informed their superior headquarters that they could not be responsible for maintaining order in Germany unless steps were taken to deal with the appalling local food shortages.[1] And it was not many months before it became increasingly apparent that the economies of France, the Low Countries, Denmark, Norway, and other European countries were so intimately dependent upon German economy that there was little chance of economic revival in those countries as long as German industry remained prostrate. But by the time such a realization percolated to the highest political levels which were responsible for making decisions, the situation in Germany had become so desperate that it was difficult to know what steps to take. At the surrender in 1945 German workmen were among the best nourished in Europe and there were available supplies of fuel and raw materials to operate many of the industrial plants. But when the Allies realized that their economic policy was a mistaken one and that vigorous efforts must be made to get German economy back on its feet, the fuel and raw materials had largely disappeared, and the coal miners and other basic workers were so weak from starvation that they could do little in producing.

Economic Reconstruction Before Currency Reform. Down to the currency reform which was finally undertaken in the spring of

[1] Even after huge quantities of Allied military stores had been made available, the per calory food ration for months hovered around 1,000 per day—or about that of the Nazi concentration camps where thousands perished from starvation.

1948, German industrial recovery was very slow despite the large-scale assistance furnished by the Allies and the heavy emphasis which increasingly became centered on economic reconstruction rather than on denazification. It soon became clear that the division of Germany into four zones served as a serious obstacle to economic recovery. In 1946, the American military governor called upon the other Allies to join their zones with the American Zone for purposes of economic reconstruction. The Russians, busy exploiting their zone which for some months reported by far the best economic production, gave little attention to such an appeal, while the French, still consumed by the fear of a revived German economy, held back. However, the British agreed to the proposal and steps were taken to set up bizonal economic machinery in the American and British Zones. But progress was slow and the early results proved disappointing. British and American military government officials had lost the mutual understanding which had characterized their early relations and there was suspicion and distrust on both sides. Under such circumstances it was hardly to be expected that bizonal arrangements would progress rapidly and prove very effective. The net result was that despite all of the efforts made by the United States, Britain, and their Allies, the achievements in the economic field were discouraging—to get production much above half of the prewar level seemed impossible. And this was not enough.

Currency Reform and After. After long-drawn-out discussions it was finally decided in the spring of 1948 to proceed with currency reform. Hitherto the old paper marks which had been largely made worthless by the inflation of the war and the defeat had been retained, though it was perfectly obvious that they could not serve as a base of an adequate monetary system. Had the relations between the West and the East been on a working basis, earlier currency reform would probably have been undertaken; the Western Allies were reluctant to proceed independently and furthermore there was the question as to what the shock of currency reform might do to a German economy which was so feeble. Even the most optimistic advocates of currency reform had not anticipated the impetus which such a step would give to economic recovery. Instead of being shocked by the calling in of the old currency, the freezing of bank deposits, and other moves incident to currency reform, the rank and file of Germans were relieved to have the operation over, and business confidence soared.

Shops which had had bare shelves almost overnight displayed an amazing array of goods. New businesses were started and old businesses developed rapidly. Industrial production soon shot up to a point where it equalled the prewar record. The extension of Marshall aid to Germany added important new stimulus to industrial recovery and carried the production level well above the 1936-1938 record. Indeed by 1952 the industrial production of Western Germany was at least 140 per cent of prewar, and claims as high as 150 per cent were made. The fusion of the three western zones in 1949 had of course helped and the establishment of a West German Federal Republic had played a significant rôle. The Contractual Agreement negotiated in 1952 providing for internal sovereignty on the part of the West German Federal Republic removed the restrictions on steel production and permitted industrial activity in the field of civil aviation and other hitherto prohibited areas. The United States alone expended more than three billion dollars in assisting a vanquished foe to rebuild its economy. In 1952, no one could deny the outstanding success achieved in the economic field after a very slow start—indeed the question in the minds of some was whether too powerful an industrial Germany had not been created.

Democratization. The third program of the Allies in Germany is not as easily described as denazification and demilitarization and economic reconstruction. To begin with, democratization is variously defined and to the Russians has a meaning far different from that which Americans associate with the term. Even among the Western Allies there is evidence of a difference in emphasis if not in absolute definition of the term. The situation is further complicated by the insistence of certain persons who speak with some authority that the very use of the term in an occupied country is absurd—it is maintained that the development of a democratic society can only be undertaken by the people of a country, never imposed from without. But whatever one may conclude about the exact nature of democratization or about its feasibility in a conquered country, it is important that some understanding of the elaborate Allied activities aimed at democratizing the Germans be acquired. In the case of the Russians this has meant the introduction of many if not all of the elements of Communism, and one has only to refer to the later chapters dealing with the Soviet Union to discover the details.[1] The discussion which

[1] See Chaps. xxxvi–xli.

follows will therefore be concerned with democratization activities of the Western Allies and particularly of the United States, since it has been the latter which has expended the largest amount of energy in this field and displayed the greatest degree of optimism even when the French and British have wavered.

Political Democratization. In the political field democratization efforts have sought various goals. Perhaps the most publicized has been a federal system of government. Though the British have perhaps been reluctant to push a system of government in Germany which is quite different from that which they have so notably developed at home, they have at least formally joined with the Americans and the French in supporting a federal setup under which authority is divided between a central government at Bonn and strong *Land* governments. All of the Allies, including the Russians, have favored the liquidation of Prussia, a step which should have been taken much earlier during the Weimar Republic period; and one of the notable actions of the ill-fated Allied Control Authority provided for the breakup of Prussia. The Western Allies have desired strong political parties which would represent the German people, and they have lent their support to such organizations between the Communists on the extreme left and the neo-Nazi and other groups on the extreme right. Universal suffrage, civil liberties, a reformed civil service, the barring of civil servants as members of legislative bodies, legislative reference services, public administration clearing houses, a less condescending attitude on the part of public officials toward the people—all of these and other items have received the attention of the Western Allies. The United States has also sponsored town meetings, forums, and so forth for the training of Germans as active participants in public affairs.

Economic Democratization. In the economic sphere the Western Allies attempted to broaden the opportunities of the German people to carry on the sort of business or occupation which they desired by seeking the abolition or at least modification of the old system of licensing and permits. Free trade unions were encouraged and by 1952 actually claimed more than seven million members. However, the Western Allies did not support, though they did not actively oppose, codetermination, the pet scheme of the German trade unions which looks to an equal voice in the management of German business enterprises. The giant banking concerns were reorganized under Allied auspices in such a manner as to lessen their control over German

economic and political life. Much attention was given to decartelization and deconcentration of German industry, though the difficulties in the way were great—the Farben combine was actually broken up into a number of separate concerns and the coal industry was impelled to abandon its monopolistic central sales agency. While perhaps not an integral part of the democratization program, the Ruhr coal industry was placed under the International Authority of the Ruhr as far as coal allocation was concerned, and both the German coal and steel industries were later brought into the Schuman Plan organization.

Educational Democratization. To begin with, the Allies gave attention to purging the schools of teachers contaminated by Nazism, eliminating Nazi texts, and reorganizing the curricula so as to get rid of the National Socialist indoctrination. As time passed, encouragement was given, particularly in the American Zone, to a reform of the entire school system below the university level in such a fashion as to make opportunities less dependent upon social position. Projects involving the writing of new textbooks were encouraged and subsidized; teachers were sent to the United States and the Western European democracies to observe methods; visitors were brought from democratic countries to counsel with German educators; educational workshops were set up; education service centers were organized to provide library and research facilities for German school staffs; and German youth were sent under exchange programs to study in other countries. At the university level Allied officials were maintained to give whatever assistance they could; numerous visiting professors were brought in; collections of books were given to build up libraries; research institutes in political science were subsidized; many German professors were sent to observe developments in other countries; and German students were given the opportunity to spend a year in a university in the United States, Britain, France, Switzerland, and other democratic countries.

The Information Program. One of the most important sections of the democratization program took the form of an elaborate public information setup.[1] Daily newspapers, such as *Die Neue Zeitung*, were published to bring to German readers news from the outside; literary monthlies and illustrated weeklies of the *Life* variety were sponsored; translations of foreign books into German were undertaken.

[1] For a brief, objective evaluation of this program, see A. Norman, *Our German Policy: Propaganda and Culture* (New York, 1951).

A widely circulated weekly news film was produced and large numbers of documentary films provided for exhibition to schools and rural groups. Libraries stocked with foreign books and periodicals were maintained in the larger cities and bookmobiles operated to bring such facilities to smaller places. Radio stations, such as RIAS in Berlin, were intended to provide serious discussion of political problems as well as general entertainment to German listeners both in the Western Zones and the Eastern Zone. The purpose of the information program was not so much indoctrination—indeed, this aim was eschewed—as it was to keep Germans in contact with what was going on in democratic countries of the West.

Democratization Evaluated. Even among serious students of German affairs widely diverse estimates of the significance of the democratization program are to be encountered. Some are of the opinion that great success has been achieved, and go so far as to maintain that a permanent change of far-reaching character has already been brought about. At the opposite extreme are those who regard the democratization program as a complete failure, representing the waste of vast sums of money and little or no constructive accomplishments. Perhaps the majority of those who have given attention to this program are to be found somewhere between these two extremes: they recognize the great amount of serious effort expended by the Allies and can find certain indications of lasting effect, but at the same time they admit that mistakes have been made, inadequate persons have been employed to carry on various activities, and money has been wasted. A final evaluation is impossible at this time; indeed, it is likely to require at least a decade or two before the net effect of the democratization program can be determined.[1]

[1] For further discussion of various occupation problems, see *The Annals* for Nov., 1948, the entire number being devoted to "Postwar Reconstruction in Western Germany"; H. Price and C. E. Schorske, *The Problem of Germany* (New York, 1947); *The Annals*, Jan., 1950; L. D. Clay, *Decision in Germany* (Garden City, N. Y., 1950). A great deal of pertinent material will be found in the series of monographs prepared by the Historical Division of the Office of the U. S. High Commissioner for Germany; see particularly H. P. Pilgert, *The History of the Development of Information Services through Information Centers and Documentary Films* (1951); *ibid., The Exchange of Persons Program in Western Germany* (1951); *ibid., The West German Educational System* (1952); *ibid., Community and Group Life in West Germany* (1952); *ibid., Women in West Germany* (1952); Rodney Loehr, *The West German Banking System* (1952); J. F. J. Gillen, *Labor Problems in Western Germany* (1952); H. G. Schmidt, *Food and Agricultural Programs in West Germany* (1952); B. R. McClaskey, *The History of U. S. Policy and Program in the Field of Religious Affairs under the Office of the U. S. High Commissioner for Germany* (1951).

CHAPTER XXXIV

THE POSTWAR GOVERNMENT OF GERMANY

THE PROBLEM OF REËSTABLISHING GERMAN GOVERNMENT FROM THE GRASS-ROOTS

Original Allied Plans. The preliminary plans made by the Allies called for the taking over of an existing system of German government. Of course, it was realized that there might be instances where local governments would have been destroyed. But on the basis of past experience it was assumed that the central government, and indeed the governmental structure generally, would be more or less intact after defeat, and that the machinery would simply be surrendered to the Allies. But the planners reckoned without allowing for the fanaticism of the Nazis.[1]

The Nazi Plan for Dismantling the Central Government. As defeat became inevitable, the Nazis resolved to hold out to the last bitter moment. At length, however, the end came; and just before it did so they sought to scatter the personnel and records of the Reich ministries over more or less the entire area of Germany, in every case dividing a single agency into two sections, with one dispatched toward the north and the other toward the south. Even if these officials and records had reached their intended destinations, it is doubtful whether there would have been anything like a going central government to take over. As it was, the trains and motor vehicles used for transport ordinarily were stalled before their arrival; and Allied representatives found the remains of the central government scattered here and there throughout the country.

[1] In the case of Japan, a similar assumption proved valid. See p. 971 below.

Effect of Military Activities on Local Governments. In the case of the regional and local governments, the disintegration was almost as complete. More important regional governments had been headed by Nazi leaders, who, when the Allied forces appeared, commonly took to their heels, hoping to save their own skins. The bombing of cities had contributed to the dispersing of local populations, and operations of land forces had added to the confusion. The net result was that by the time the Allies completed occupation, German government from top to bottom had almost if not entirely ceased to exist. Public officials remaining behind frequently were lost in the chaotic masses of people and had no desire to make their identities known. In many instances, public buildings had been destroyed and, even where they remained standing, their offices were seldom manned by German officials and civil servants.

A Unique Situation. Perhaps never before in modern history have victorious invaders been faced with such a problem as confronted the Allies in Germany. War must always be expected to produce confusion and some breakdown, but a complete disintegration of government in a major nation seems to be something new under the sun. The enormous job to be done in building a new German governmental structure can hardly be appreciated unless one is aware of the details of what was involved. Those who have compared postwar developments in Japan with those in Germany frequently have failed to recognize the basic difference between the two situations, and hence often have gone far afield in their judgments. An established Japanese government surrendered to the Allies, and that government was then made use of to control the country. The Doenitz government which made the final surrender in Germany was only an improvised paper affair, of absolutely no utility to the Allies once the surrender had been effected.

Emergency Aspect. The problems facing the Allies in Germany not only were difficult, but they bore an emergency aspect. Some things, of course, could be and were handled directly by the military government officials but these were few and relatively minor. There was no possibility of dealing at all adequately with such problems as finance, trade and industry, food rationing and production, and eduaction until a system of genuine government for the country could be organized. Aside from combat duties, therefore, the first thing to be

undertaken by military government was to get more or less stabilized German governments started.

Local Governments the First Step. Inasmuch as chaos was so complete and needs so pressing, it was wisely decided to bend every effort initially to the establishment of local governments, leaving regional governments to receive attention later. Within a day or two, or at most a very few days, of their arrival, military government detachments usually had started the framework of new *Kreis* (county) governments, both of the rural and the urban variety. Their first job was to find some German with experience, and in so far as possible an anti-Nazi political record, qualifying him for designation as *Landrat* (county head) or *Bürgermeister* (mayor). With his assistance, they then proceeded to select a few heads of major administrative departments. As time went on, they recruited Germans to work in these key offices and departments and added other less important departments. Within a matter of a week or two, they usually had a skeletal sort of German government functioning in a more or less feeble way. Weeks, and even months, however, were usually required to nourish such a set-up, starting with the merest spark of life, to a point where it could be regarded as anything like a full-fledged government.[1]

The Nazi Handicap. Under any circumstances at all, it would have been difficult to get such local governments in Germany going. But the environment of physical destruction, human shock, paralyzed transportation and communications systems, financial insolvency, and abject military defeat made the task particularly difficult. Even so, however, the Allies would have found the undertaking reasonably manageable save for the Nazi contamination. Not only was it necessary to discover some German with the know-how, the physical and mental vigor, the willingness to risk his future reputation by coöperating with the Allies, and a capacity for leadership—hardly an easy task in the midst of the widespread confusion—but that person had to be, or at least was supposed to be, free from Nazi taint. So, in turn, were those chosen to be associated with him.

Pressure to Set Up Regional Governments. Although it had been planned to permit some time to elapse between the setting up

[1] For further discussion of the task of rebuilding German local government, see H. Zink, *American Military Government in Germany* (New York, 1947), Chap. viii.

of German governments at the *Gemeinde* (village), *Landkreis* (county), and *Stadtkreis* (city) level and the establishment of district and state governments, a combination of circumstances led to a somewhat different course. Military government detachments earmarked to take over *Regierungsbezirke* (districts) and *Länder* (states) had been organized by the United States and Britain months before V-E Day. Some of these had been given other tasks, pending entrance upon their intended ones; but in most cases they were ready to start work as soon as Germany surrendered. Frequently, too, their officers had cooled their heels so long as to be eager to start their primary assignments. And the very availability of these detachments, with their sizable staffs, set up substantial pressure to organize German regional governments at an early date, irrespective of the plans of higher headquarters.

In addition, it soon became apparent that many problems arising out of the occupation were too complicated to be dealt with at the local level. The rationing of food, for example, demanded more in the way of facilities than the German local governments could possibly offer. Certain financial problems had to be met from the beginning; yet these depended on the existence of governments above the *Kreis*. Finally, despite all difficulties encountered, military government detachments, borne along by fresh zeal and enthusiasm, often progressed within a few weeks of their arrival in a German *Kreis* to a point well beyond what had been expected. This is not to say that they had always given the detailed attention to local problems that might have been desirable; but at all events, whatever one might think about it, they had soon reached a stage where, to them, the next step seemed necessary. And in point of fact, *Regierungsbezirk* (district) and *Land* (state) governments were widely organized by the end of May, 1945, and in some instances earlier.

American Zone Experience. While all of the zones presented problems, the construction of German governments above the local level in the Western district of the American Zone was particularly complicated. Indeed it was as fraught with pitfalls and difficulties as one could easily imagine. On the basis of military necessity and political exigencies, the highest political and military authorities had decided to carve up this portion of Germany in such a manner that there were only miscellaneous legs, arms, and other bits of anatomy with which to work. Political lines and administrative organization

were ruthlessly broken through, economic factors largely ignored, and cultural patterns treated as irrelevant and unimportant. Certainly military government has never been called upon to perform a more grotesque and complicated task than to organize effective governments out of such remnants.

The Council of States. Inasmuch as no Reich government was in immediate prospect and even the central German administrative agencies contemplated in the Potsdam Agreement could not be organized because of the French veto, an experiment was launched in the American Zone in the fall of 1945 which provided for a Council of States, with offices in Stuttgart.[1] There were certain important matters which could not be handled on a state basis and required a national administration. But with no central German agencies operating, it seemed that a zone organization would at least afford more effective facilities than the states; and the *Länderrat* (Council of States) mentioned, staffed by Germans under American supervision, was introduced to meet the need. A monthly meeting of the three minister-presidents, or heads of states, was scheduled for the purpose of going over common problems and working out uniform policies as far as seemed desirable; a *Länderrat* Directorate was organized at Stuttgart, composed of one special delegate from each of the three states, a plenipotentiary from each state, and a secretary-general; and weekly meetings were held to canvass and decide matters not involving basic principles. As the *Länderrat* got under way, various administrative and advisory bodies also came into being to give attention to specific problems. A Commission for Food and Agriculture was created to provide a uniform system of food rationing throughout the American Zone. Senior directorates were authorized to handle transport and posts and communications. During the first year, some 14 committees and 46 subcommittees were set up to give attention to such matters as housing, labor supply, welfare, and education. The significance of the Council of States became increasingly apparent as the months passed. Certain problems were of such a character that they could be dealt with in anything like an adequate manner only on a Reich basis; in the economic field this was especially the case. However, there can be little doubt that the Council of States served a very

[1] For official documents relating to the Council of States, see J. K. Pollock and J. H. Meisel [eds.], *op. cit.*, 126–135; and for an explanation of the Council's work, J. K. Pollock, "Germany Under Military Occupation," in J. K. Pollock [ed.], *Change and Crisis in European Government*, Chap. iv.

useful purpose in coördinating the military government program within the American Zone. By late 1946, a great deal of the confusion which sometimes seemed almost to reach chaos during the early months of military government had been cleared away; and much of the credit must be given to the *Länderrat* and its American supervisors.

Summary. By the fall of 1945, a large measure of progress had been made in constructing German governments from the bottom up and through the state level. Denazification was still far from complete and caused a considerable turnover in German personnel. Changes in key personnel had to be made from time to time for various other reasons also. Much remained to be done in filling in details. The establishment of an adequate German civil service depended on training programs, the right kind of traditions and standards, and other improvements requiring years to bring to fruition; and modifications in administrative structure were necessary in order to meet new problems as they arose.[1]

THE NEW LÄNDER AND THEIR CONSTITUTIONS

The Reorganization of States. In planning for a new set-up of *Länder*, it was the opinion that the new states should be more uniform in size and population than the older states, even with Prussia excluded. It seemed obvious that traditions ought to be taken into account as far as possible; yet states such as Schaumburg-Lippe with just over 50,000 inhabitants in 1939, Lippe with less than 200,000, and even Anhalt, Brunswick, and Oldenburg with approximately half a million each, seemed too small to function in an adequate manner under modern conditions. The American military government proceeded rapidly to organize its zone into three, and eventually four, *Länder* or states. The other Allies found it desirable to move with less speed; yet within a comparatively brief period the whole of that part of Germany which had not been alienated to Poland, France, or the Soviet Union had been divided into a total of 16 *Länder*. In the British Zone, there were four: Schleswig-Holstein, North Rhine-Westphalia, Lower Saxony, and Hamburg. The Soviet Union set up five: Mecklenburg, Brandenburg, Saxony-Anhalt, Thüringia, and Saxony. The French had three: Baden, Württemberg-Hohenzollern, and the Rhine-

[1] See C. J. Friedrich and associates, *American Experiences in Military Government in World War II* (New York, 1948), Pt. 3.

land-Palatinate.[1] And the American Zone embraced Bavaria, Hesse, Württemberg-Baden, and Bremen. A plebiscite authorized by the West German Federal government in 1951 led to the establishment of a Southwest state made up of Württemberg-Baden, Baden, and Württemberg-Hohenzollern, thus reducing the number of states in the West by two. And in 1952, the states in the Russian Zone were abandoned entirely, giving way to 14 districts.

Population and Area of the New States. These new states did not meet the specifications which some would have stipulated, but they at any rate could claim a greater degree of populational and geographical uniformity than the pre-war *Länder*. Except for Bremen in the American Zone, every state had a population exceeding 1,000,000.[2] The most populous state, North Rhine-Westphalia, numbered some 12,000,000 inhabitants, while Bavaria and Saxony both exceeded 5,000,000. The remaining states ranged from slightly over 1,000,000 to more than 4,000,000. Several states still remained unduly small for administrative purposes, and in some quarters North Rhine-Westphalia and Bavaria were regarded as too populous. But the new arrangement certainly marked an advance over the old.

Weaknesses in the New System of *Länder*. The most serious weakness in the reorganization of the states was undoubtedly that which grew out of ignoring natural boundaries. Despite their other failings, the Russians, to be sure, did organize their zone on the basis of reasonably logical considerations. Saxony [3] and Thüringia [4] were based on the old *Länder* bearing the same names; Brandenburg [5] and Mecklenburg [6] took in important Prussian provinces; Saxony-Anhalt represented a union of the former Prussian province of Saxony and the old state of Anhalt. The British did more in the way of joining small states together to form large ones, since the British Zone included several of the old *Länder*, such as Lippe, Oldenburg, Schaumburg-Lippe, and Brunswick, with small populations. Nevertheless, the British in general paid careful attention to boundary lines based on economic and cultural considerations. But in the French and American Zones, results were less satisfactory. In the American Zone, only

[1] Before the incorporation of the Saar into France, the number was four.
[2] Bremen had a population of 491,600 in 1946.
[3] The small part of Lower Silesia left to Germany was included in *Land* Saxony.
[4] *Land* Thüringia included a small amount of former Prussian territory.
[5] Some of the old province of Brandenburg went to Poland.
[6] That part of Pomerania not given to the Poles was put in *Land* Mecklenburg.

Bavaria could be regarded as economically cohesive, and its large size prompted some observers to question its desirability as a new state. Württemberg-Baden and Hesse were made up of an amazing assortment of odds and ends, almost totally ignoring basic economic and social factors. These highly artificial entities resulted from decisions made on the basis of military and political policies which paid little or no attention to the administrative angle. The decision to set up a Southwest state in 1951 went far toward correcting this situation. Schleswig-Holstein and Lower Saxony, never too prosperous, have found the influx of refugees a very heavy burden, and despite federal financial assistance have not fared well. Consequently there has been some talk of joining them with the more flourishing and highly industrialized Hamburg to form a single *Land*. There are some who look unfavorably upon the retention of the old Hanseatic cities of Bremen and Hamburg as states. Hamburg, with a population of approximately 1,500,000, is more substantial and self-sufficient than Bremen, with something like one-third as many inhabitants. But there is room for question whether either is particularly well fitted for statehood, at all events if the states are to be given very important rôles.

***Land* Constitutions.** With the setting up of new *Länder*, the problem of state constitutions arose. In the American Zone, the policy was to favor early drafting of such documents, and in February, 1946, the respective minister-presidents were authorized to appoint preparatory constitutional commissions to undertake the task.[1] State constitutional assemblies were elected in June, and started their work during the following month; the resulting proposed constitutions were approved by American military government in October; and before the end of the same month, all were formally adopted by the assemblies. Furthermore, submitted to popular vote during November and December, all were ratified by substantial majorities.[2] The Soviet Union took a little more time than the United States, but it too favored proceeding without delay. *Landtage* (state legislative bodies), elected in the Soviet Zone in October, 1946, gave prompt attention to the work of constitution-making; and after submission to Soviet authorities, the five constitutions were promulgated at various times

[1] The Bremen constitution came later, inasmuch as *Land* Bremen was not set up until January, 1947. The Bremen constitution was adopted in September, 1947.

[2] More than 70 per cent of the registered voters participated in the plebiscites in the three *Länder*. Of those voting, 68.6 per cent favored the proposed constitution in Württemberg-Baden, 67.1 per cent in Hesse, and 65.7 per cent in Bavaria.

during the period December, 1946, to February, 1947. In the French Zone, consultative assemblies convened in November, 1946, and soon started the work of preparing *Land* constitutions. Their proposals were reviewed and approved by the French High Command and voted upon by the electorates in May, 1947.[1] The British saw fit to follow a more deliberate policy, maintaining that little or no advantage was to be gained by attempting to draft *Land* constitutions while conditions were so unsettled and the German people unable to give anything like full attention to such luxuries as constitutions; and in lieu of constitutions, British military government, toward the end of 1946, merely issued an ordinance setting forth the provisional powers of the *Länder* in the British Zone.[2] It was not until a West German Federal government had been set up in 1949 that constitutions were finally drafted for states in the British Zone.

Constitutions in the American Zone. The American emphasis on giving the Germans early responsibility for the conduct of their government naturally led to a more or less hands-off policy on the part of the military government authorities in the drafting of the *Land* constitutions, and it is not surprising to find that the resulting constitutions in the American Zone present a diverse picture. All of the American-Zone constitutions, however, bear a fairly close resemblance to the Weimar constitution, and indeed often go so far as to repeat exact provisions of that historic document and of the accompanying *Land* constitutions adopted during the years 1919-1923.[3] All include lengthy enumerations of rights and liberties guaranteed to individuals and groups. To be sure, considering the situation existing in Germany, it may seem rather absurd to specify in such detailed fashion political, social, and economic rights and liberties, manifestly resting on a decidedly precarious basis. Nevertheless, the psychological value of such recognition was of some importance, and those rights which could not be given immediate enforcement might be considered as goals.

[1] Members of the *Landtage* were chosen at the same time. In Rhineland-Palatinate, the constitution narrowly missed rejection.

[2] For the text of this ordinance, see W. Friedmann, *The Allied Military Government of Germany,* Appendix 280–282.

[3] A synopsis of the three most important constitutions will be found in J. K. Pollock [ed.], *Change and Crisis in European Government,* Appendix I. The full texts of all of the constitutions in the American Zone, in both German and English, may be found in *Constitutions of the German Länder,* an official document issued by the Office of Military Government (US) in 1948.

In all of the states except Bavaria, provision is made for a unicameral legislature; in Bavaria, there is provision for a senate as well as a lower house, based on 10 different functional groups and having the right to initiate legislation and give advice on bills presented by the government. All of the constitutions provide for a cabinet system of government, with executive authority lodged in a minister-president and cabinet responsible to the legislative body. All of the constitutions authorize the initiative and referendum. An independent system of courts is provided for in all, and authority is given the courts, under certain conditions, to declare acts of the legislature unconstitutional. In every instance, the constitution recognizes the desirability of some measure of state socialism, with the Hesse constitution going much farther than the others.[1] In every case, participation by the workers in the management of economic enterprises is authorized. The Hesse constitution expressly prohibits any form of dictatorship and specifies that no amendments involving any change in the basic democratic character of the government may be considered. The Bavarian constitution recognizes a separate Bavarian nationality. In general, it seems proper to say that the constitutions in the American Zone embody a considerable degree of democracy and therefore represent a substantial achievement on the part of the Germans concerned under circumstances of distinct difficulty.[2]

Constitutions in the Russian Zone. The five *Land* constitutions which were in effect in the Russian Zone down to the abolition of the states in 1952 were notable for their uniformity—as a matter of fact, they were virtually identical in their provisions and at times identical in their phraseology.[3] Considering the rôle of the Soviet-controlled Socialist Unity party (S.E.D.) in drafting the documents, it is hardly surprising that this should have been the case. In every *Land*, provision was made for the unicameral legislative body elected by universal

[1] See Art. 41 of Hesse constitution, which was subjected to a separate popular referendum.

[2] Professor W. Friedmann, a British political scientist who has had extensive experience in military government in Germany, recognizes the "genuinely democratic foundation" of the constitutions in the American Zone. However, he is of the opinion that American influences were strongly exerted in the direction of seeing that the American concept of democracy was recognized and that economic planning and related proposals were frowned down. See his *The Allied Military Government of Germany*, 82–83.

[3] A convenient collection of German and English texts of the *Land* constitutions in the Russian Zone is the compilation undertaken by the Office of Military Government (US) entitled *Constitutions of the German Länder* (Berlin, 1948), 97–161.

suffrage on the basis of proportional representation; and these *Landtage* enjoyed extensive authority over a wide variety of matters, including administrative agencies and courts. The cabinet system of government was at least nominally brought in, with the minister-president chosen by and responsible to the legislature and the members of the cabinet selected by the minister-president, subject to approval by the legislature, to which all were individually responsible. Following a well-known principle of judicial administration in the Soviet Union, the courts were to be presided over by both professional and lay judges. Ordinary courts were not permitted to declare legislative acts unconstitutional; instead, a special committee consisting of members of the legislative presidium, representatives of the highest courts, and representatives of law faculties of universities, exercised the function. All of the constitutions barred monopolistic private enterprises, recognized the socialization of industry, and specified public planning and the distribution of large landed estates among the peasants. On the other hand, religious freedom was guaranteed, and religious bodies were recognized as public corporations to be supported out of public funds. Education was stressed as an instrument of the state. Nothing was said about a single Soviet-sponsored political party, and one might assume from reading the texts of the five constitutions that complete freedom of political action was permitted. Actually, the Communist program and techniques have been made the fundamental basis of state government in the Russian Zone.[1]

BIZONIA

It became increasingly apparent in the West that something above the zone unit was essential. American efforts, for example, found it possible to bring trade in the American Zone to slightly over 40 per cent of the 1938 level; but after that, an impasse developed which at times resulted in deterioration below the level named. The situation in the British Zone soon became even more critical than in the other Western zones because of the high degree of dependence of that zone on interzone and foreign trade and the inability of the British to pour unlimited amounts of money into subsidization of the economy. When the Control Council proved unable to proceed with

[1] For additional discussion of the provisions of the new state constitutions, see R. G. Neumann, "New Constitutions in Germany," *Amer. Polit. Sci. Rev.*, June, 1948; and H. O. Lewis, *New Constitutions in Occupied Germany*, Foundation Pamphlet No. 6 (Washington, D. C., 1948).

the setting up of central German agencies to deal with such major problems as food, transport, and trade, the United States, as pointed out earlier, called on any and all other Allies to join it in a general attack on the problem of economic paralysis. The Soviet Union and France ignored the invitation. But Great Britain agreed to join her zone with the American Zone for economic purposes.

The 1946 Agreements. Toward the end of 1946, the British and American authorities therefore signed a series of agreements covering the fields of economics, food and agriculture, transport, and finance; [1] and as a result it was decided to set up three administrations at Minden in the British Zone, with staffs drawn from German and British-American sources. Immediately, however, serious difficulties arose to delay the operation of this bi-zonal plan. Some of the Germans disagreed with certain aspects of the program; while the Americans and British found themselves also with somewhat divergent views as to what was desirable when it came to applying principles. The location of the bi-zonal offices in Minden was a serious source of weakness, since the place was neither readily accessible nor by any means a center of important industrial concentration. In the meantime, weeks and months passed, and the machinery did not run smoothly. More important, the economic situation, instead of improving as 1947 got under way, actually seemed in many respects to deteriorate.

The Revision of 1947. In June, 1947, the serious weaknesses of the original bi-zonal set-up, made manifest by the almost chaotic condition of the German economy, led to a revision of the British-American agreement.[2] The new agreement did not attempt to have the Germans undertake formal responsibility for approving the bi-zonal program, but limited itself to an understanding between the American and British military governments. Nevertheless, it went farther in recognizing the necessity of a democratic basis for any such organization by providing for an Economic Council, to be selected by the *Land* parliaments in proportion to population and party strength; and this Council was given the task of directing the reconstruction of the economy of the two zones and to that end

[1] The text of the general agreement signed by James F. Byrnes and Ernest Bevin on December 2, 1946, is available in J. K. Pollock and J. H. Meisel [eds.], *Germany Under Occupation,* 240–243.

[2] The text of this revised agreement may be found in W. Friedmann, *op. cit.,* 289–293

authorized to enact ordinances dealing with a considerable variety of specified matters related to the work of five administrations charged with such things as transport, trade, food and agriculture, and finance. An Anglo-American Bipartite Board, too, was provided to exercise a veto power over the Economic Council, and in general to assist the German officials in promoting the new machinery's success. The arrangement was marked by greater vigor than the early one and achieved some results, although the economic situation in Western Germany remained precarious.

The Revision of 1948. As the split between the Western and Eastern parts of Germany became more and more fixed and the United States found it necessary to take on an increasing share of the financial burden of keeping German economy afloat, it became desirable early in 1948 to undertake a further overhauling of the bi-zonal organization. It was still not thought wise to set up a full political government in the West, both because such a step would recognize the hopelessness of achieving a united Germany and because the French were still not prepared to enter into such a fusion. Nevertheless, by providing a qualified political government the new bi-zonal machinery went substantially farther than had the preceding arrangement. While many Germans expressed deep regret over the necessity of going ahead with a Bizonia rather than a unified Germany, they nevertheless realized that the plight of the West was such as to require such a step and consequently agreed to accept responsibility. The 1948 bi-zonal set-up included a bicameral legislative branch, comprising an Economic Council and a Council of States. The Economic Council was made up of 104 members elected by the parliaments of the *Länder* on the basis of population and political distribution. The Council of States, consisting of two representatives from each *Land* (16 members in all), was to approve, amend, or veto acts of the other branch. The Economic Council was given authority over the following fields: transport, patents and copyrights, postoffice and communications (except radio-broadcasting), customs and excise taxes, civil service management, production and distribution of goods, raw materials, gas, water, electricity, foreign and internal trade, price control, food production and distribution, and labor priorities. It also received responsibility for making budgets, levying and allocating taxes, and borrowing money. An Executive Committee of at least six members was set up to serve

as an executive body, and a High Court for the Combined Economic Area, with 10 members, was provided to handle judicial matters. To deal with financial problems, a Credit Bank was also established. In contrast with the older arrangement under which the *Länder* had full right to hold up acts of the bi-zonal authority, the ordinances of the new agency became binding on all of the states. Finally, Frankfurt was vacated by American military government to furnish a capital for the new Bizonia. By late 1948, industrial production had been stepped up to more than 70 per cent of the 1936 level—a truly remarkable achievement considering the existing circumstances. Moreover, the French increasingly integrated their zone with Bizonia, indicating the eventual unification of all Western Germany.

Six-Power London Conference on Western Germany. In the early summer of 1948, a conference was held in London to discuss the difficult problems relating to Western Germany; and instead of being limited to the United States, Great Britain, and France, the Benelux countries [1] also were invited to participate because of their vital interest in the situation. A communiqué issued in June [2] was characterized by Secretary of State Marshall as representing "a major step toward a comprehensive solution of German problems." [3] Reaffirming their intention to remain in Germany, the United States, Britain, and France, joined by the Benelux countries, declared that it was not possible to wait longer on Soviet coöperation in pushing forward the reconstruction and self-government of Germany as contemplated in the Potsdam Agreement. At the conference, it was agreed that the rôle of German economy in European recovery was very significant and that the position of the Ruhr was peculiarly vital; consequently steps should be taken toward the reconstruction of German economy and the economic control of the Ruhr by an international authority. The conference also authorized the convening of a constituent assembly to draft a constitution for Western Germany, and likewise a Military Security Board to "ensure the maintenance of disarmament and demilitarization."

The Ruhr Statute. Despite the agreement regarding international economic control of the Ruhr, United States and British military governments proceeded to promulgate Law No. 75 turning over to

[1] Belgium, the Netherlands, and Luxembourg.
[2] For the text, see *New York Times*, June 8, 1948.
[3] *New York Times*, June 10, 1948.

German trustees the administration of the coal, iron, and steel industries of the area, pending the establishment of a German government which could determine the ownership of the properties.[1] To this, France objected violently; and the upshot was another six-power conference in London at the very end of 1948, out of which came the Ruhr Statute, an elaborate document of 35 articles providing for the establishment of an International Authority for the Ruhr, with the six powers as immediate members and Germany as an ultimate member.[2] Voting rights in the Authority were distributed as follows: the United States, Great Britain, and France, three votes each; Belgium, the Netherlands, and Luxembourg, one vote each; and Germany, when authorized to participate, three votes—eight votes being declared sufficient for the transaction of ordinary business. Legal ownership of the Ruhr industrial properties was not taken over by the new Authority, nor was it given political control. But its power to determine the allocations of coal gave it considerable importance after 1950, though it started out in a rather feeble way when coal was in surplus supply for a brief period in Europe. The International Authority of the Ruhr came to an end in 1952 when the Schuman Plan organization began to function.

CONSTITUTION-MAKING ON THE NATIONAL LEVEL

The Bonn Parliamentary Council. Carrying out the provisions of the Six-Power Agreement reached in London in June, 1948, the military governors and minister-presidents of the *Länder* in the Western zones arranged for a Parliamentary Council to meet in Bonn in the late summer of 1948 to draft a constitution for a Western German government; although German psychology discouraged use of the terms "constituent assembly" or "constitutional convention," and dictated the substitution of "basic law" for "constitution." Exclusive of delegates from Berlin, who were invited to attend but whose status was not entirely clear, the Parliamentary Council was made up of 65 members from the 11 *Länder* in the three Western zones, with the Christian Democratic party and the Social Democratic party each having 27 delegates, the Free Democratic party five delegates, and the

[1] For a statement by Secretary of State Marshall on this law, see *New York Times*, Nov. 25, 1948.

[2] The full text will be found in L. H. Laing and others, *Source Book in European Government*, 371–379.

Centrist, German, and Communist parties, two each. Lest the Council stray unduly from its intended path, the military governors decided in November to add to the somewhat vague and elastic stipulations of the Six-Power communiqué by specifying that the system to be adopted must follow a federal rather than a strongly centralized pattern. After some eight months of discussion, misunderstanding, recrimination, hesitation, interim adjournment, and party dissension, the Council finally produced an elaborate draft of a constitution in May, 1949—in the end adopting it with only 11 dissenting or abstaining votes. Duly reported to the military governors, the instrument was turned over by them to the *Land* governments for consideration; and after further delay was finally approved by all except Bavaria, becoming effective in September, 1949.[1]

The Western German Basic Law. Consisting of 146 articles organized in a preamble and 11 sections, the basic law for Western Germany bears considerable resemblance to the Weimar constitution.[2] Asserting that the Bonn Council acted "on behalf of those Germans [i.e., in the Russian Zone] to whom participation was denied," as well as of the people of Western Germany, the preamble indicates as the document's purpose "to give a new order to political life for a transitional period" for a federal republic of Germany; and the concluding article provides: "This basic law shall become invalid on the day when a constitution adopted in a new decision by the German people comes into force." The elaborate first section is devoted to "basic rights," and in 16 lengthy articles specifies the political, economic, family, religious, and social rights and privileges to which the people are to be entitled. Other sections relate to the federation and the *Länder*, the central government, legislation, execution of the laws and general administration, administration of justice, and finance. To meet the desires of the French and the Americans, the basic law provides a large measure of federalism, retaining to the states fundamental powers and giving the central government less

[1] For additional sources of information relating to the drafting of this constitution, see Office of Military Government for Germany (U.S.), *Documents on the Creation of the German Federal Constitution* (1949); C. J. Friedrich, "Rebuilding the German Constitution," *Amer. Polit. Sci. Rev.*, June and Aug., 1949; A. Brecht, "The New German Constitution," *Social Research*, Dec., 1949.

[2] For the text, see Department of State, *Germany 1947–1949; The Story in Documents*, 283–305; *The Bonn Constitution: Basic Law for the Federal Constitution of Germany*, Pub. 3526 (1949); also L. H. Laing and others, *Source Book in European Government*, 383–415.

extensive authority than the Germans of their own accord would have provided. Article 73 enumerates the powers to be exercised by the federal government and these include foreign affairs, federal citizenship, immigration, monetary system, foreign trade and exchange, federal railways and air traffic, communications, customs, and the like. Article 74 specifies 23 fields in which the federal government and the states have concurrent authority and here one finds such matters as public welfare, refugees, courts, economic activities, labor relations, agriculture and forestry, highways, and ocean and inland water shipping.[1]

Counter Efforts from the Soviet Zone. While these steps were being taken in the Western zones, the Soviet Zone was, of course, not inactive. A People's Council, purporting to represent all of Germany, was set up under Soviet auspices to push vigorously for a unified Germany which could be used for the purposes of the Soviet Union; and during the fall of 1948 a draft of a constitution for a unified German state was completed by U.S.S.R. officials (or at least so inspired), and presented by a chairman of the Socialist Unity party to a meeting of the People's Council held in Berlin. At one time, it seemed that this constitution would be promulgated at about the beginning of 1949 and a government set up in Berlin, or elsewhere in the Soviet Zone, claiming to be the government of a unified Germany. However, on further thought it was apparently decided to delay such a step, pending developments in the Western zones. Meanwhile, on March 19, 1949, the People's Council approved the proposed constitution, with, however, some 52 changes. Of course, it need hardly be added that the document embodies the typical political patterns of the Soviet Union, with a full assortment of people's courts, economic bodies, councils, and the like, more or less disguised with a list of rights intended to beguile as many gullible Germans in the Western zones as possible. It was decided at the March meeting of the People's Council to authorize the election of a People's Congress to ratify the new constitution, but after the selection of such a Congress in May, 1949, plans for "democratic confirmation" were abandoned. After the establishment of the Western German Federal Republic the People's Council designated itself a

[1] For comments on the general character of the Basic Law, see A. J. Zurcher [ed.], *Constitutions and Constitutional Trends since World War II* (New York, 1951).

"Provisional People's Chamber" and declared the constitution in effect as of October 7, 1949.[1]

THE WEST GERMAN FEDERAL REPUBLIC

General Characteristics. The government set up under the Bonn Basic Law in the latter part of 1949, after elections held in August, presents both old and new features, with the old perhaps predominating. Despite the aspersions cast at the Weimar Republic, even a casual analysis of the new governmental structure will indicate how heavily the West German Federal Republic has borrowed from the earlier system. At the same time it would be a serious mistake to assume that the architects of the new government did not profit from the experience of a generation which followed World War I. Perhaps the most striking feature of the new republic is its federal character—the fact that the word "federal" appears in its title is significant. Earlier German governments had embodied certain of the principles of federalism and one could hardly regard federalism as entirely new in Germany, but it is not too much to say that the new republic represents one of the most studied attempts to apply federalism in all political history. Powers have been divided in such a manner that both the central government and the states have far-reaching authority and neither can claim overwhelming preponderance. A second outstanding characteristic is the close integration of the executive and legislative departments under a parliamentary or cabinet system at both the federal and the state levels. Authority was divided between the central government and the states, but when it came to the matter of the exercise of power within these governments, it was decided to follow the union-of-powers pattern rather than the separation of powers so familiar in the United States. A third feature which is less notable than the two mentioned above is the provision for judicial review. It is too early to judge what use the courts under the West German Federal Republic may actually make of judicial review. The Federal Constitutional Court was not set up until a period of two years had elapsed, and it was not until late 1951 that it actually began to function. Early

[1] For further discussion of this constitution and the government set up under it, see H. B. Cox, "Establishment of Soviet-Sponsored East-German Republic," Dept. of State *Bulletin*, Nov. 21, 1949; J. P. Nettl, *The Eastern Zone and Soviet Policy in Germany, 1945–1950* (New York, 1951); Office of U.S. High Commissioner for Germany, *Soviet Zone Constitution and Electoral Law* (1951).

cases involving the Southwest state and the federal ban on the Socialist Reich party would seem to indicate that judicial review may be at least fairly important.

PARLIAMENT

Bicameral Character. Considering the important place occupied by second chambers in German political history, to say nothing of the strengthened states under the much emphasized postwar federalism, it is not surprising that provision was made in the Basic Law for a bicameral parliament composed of a Bundestag and a Bundesrat. In keeping with recent democratic practice, the Bundestag which represents the people received the primary legislative responsibility—it is to this body that the cabinet reports. Nevertheless, the Bundesrat was by no means neglected, and its actual influence in the government exceeds that of the Council of the Republic in France or the House of Lords in Britain.

The Bundestag. The Basic Law provides for a Bundestag and specifies its powers, but it leaves the details relating to composition and election to an Electoral Law which was promulgated by the *Land* governments of the western zones in June, 1949.[1]

1. Membership. The first Bundestag elected in 1949 was made up of 402 members whose seats were apportioned among the states on the basis of population. In addition to the 402 members, Berlin sends delegates who have seats but do not vote.[2] All have terms of four years and are elected at the same time. The size of the Bundestag is somewhat smaller than its counterpart under the Weimar Republic at its peak, but it must be remembered that only the people of Western Germany are represented.

2. Election: (a) The Suffrage. The Basic Law stipulates that the members of the Bundestag shall be elected "by the people in universal, free, equal, direct, and secret elections" and adds that they shall be "representatives of the whole people."[3] It also states that "any person who has reached the age of 21 years shall be eligible to vote" for members of the Bundestag.[4] The electoral law noted above contains the details relating to voting and excludes various categories,

[1] For the text of this law, see State Department, *Germany 1947–1949; The Story in Documents*, 310.

[2] Berlin started out with eight delegates, but in 1952 increased the number to 19.

[3] Art. 38.

[4] Art. 38.

such as persons under supervision on account of mental deficiency, those who have been deprived of civil rights by a court judgment, and those who have been denied suffrage as a result of denazification proceedings.[1]

(b) The Dual System. Members of the Bundestag are elected under a dual system which combines single-member constituencies with proportional representation. Under the terms of the Electoral Law of 1949 state governments are directed to divide the seats apportioned to them into two categories in "an approximate proportion" of 60 to 40. The largest number of seats are then filled by ordinary election in single-member districts. The attachment of the Social Democrats and other left-wing parties to proportional representation, going back to their experience in an earlier period when they received a smaller number of legislative seats than their popular vote would have indicated, made it necessary to supplement the single-member election system. The 40 per cent of the seats filled under such an arrangement are allocated to those political parties polling at least 5 per cent of the votes in proportion to their relative strength in the election, under a plan which takes into account the seats won in the single-member constituencies.[2] Each political party compiles lists of candidates from which seats allocated are filled. The 5 per cent requirement is of course intended to discourage splinter parties.[3]

The Bundesrat. In contrast to the popularly elected Bundestag, the Bundesrat is made up of representatives of the various states in Western Germany. Each state is allotted a specific number of seats, depending to some extent upon its population. The most populous *Länder* send five of their officials, usually ministers or state secretaries, to represent them in the Bundesrat; the less populous states are entitled to three or four seats each; and Berlin has four non-voting seats. To begin with, the Bundesrat was made up of 43 voting members plus the four representatives of Berlin. With the creation of the Southwest state, the size was reduced from 43 to 38. Bundesrat members are selected by the state governments whom they represent and may be recalled by them at any time; they are not therefore chosen by direct election or for fixed terms. All members from a single state vote *en bloc* on the basis of instructions received from their state

[1] Art. 2.
[2] Arts. 8-10 of the Electoral Law of 1949.
[3] For further discussion, see O. Kirchheimer, "The Composition of the German Bundestag," *West. Polit. Quart.*, Dec., 1950.

government rather than as individuals. States maintain lists of alternates from which names may be drawn when their regular representatives are too busy to attend the Bundesrat, ill, or otherwise incapacitated.

Officers. Each chamber elects its own officers—in the case of the Bundestag for an indefinite term usually the duration of a Bundestag. Bundestag officers consist of a president, two vice-presidents, and various secretaries and subordinate officials. The Bundesrat chooses a president for a one-year term. In both cases the presidents are members of their bodies and occupy positions of considerable importance. Like the presidents of French chambers, the president of the Bundestag stands somewhere between the neutral speaker of the British House of Commons and the party-leader speaker of the House of Representatives of the United States.

Committees. Although the attendance at sessions of both chambers is more regular than is to be observed in American and British legislative bodies, and participation in debate and other proceedings on the floor is general, the Bundestag and the Bundesrat make considerable use of committees. In the Bundestag a Council of Elders (*Ältestenrat*) occupies a position somewhat similar to that of the powerful Committee on Rules of the American House of Representatives. Altogether some three dozen functional committees are maintained by the Bundestag; these are made up of from seven to 27 members each, selected from the various parties on the basis of their strength in the lower chamber. The Bundesrat, with its smaller membership, naturally finds a less elaborate committee system adequate, but, nevertheless, much of its work is handled by committees, of which there have been some 13, made up of a voting member from each state and an observer from Berlin.[1]

Powers and Functions: 1. The Bundestag. The Bundestag is without question the primary legislative agency of the West German Federal Republic, though it does not occupy as predominant a position as the National Assembly of the Fourth French Republic. The Basic Law states: "Federal laws shall be passed by the Bundestag. After their adoption, they shall, without delay, be submitted to the Bundesrat." [2] It is to the Bundestag that the chancellor and his col-

[1] For additional discussion of the composition and organization of the Bundestag and Bundesrat, see E. Plischke, *The West German Federal Government*, Chap. iii, in the Historical Series of the Office of the U. S. High Commissioner for Germany.

[2] Art. 77.

leagues in the cabinet report; the leadership in legislative matters is furnished by the Bundestag, with the Bundesrat serving as a check and exercising a veto. With the Bundesrat using the bloc system of voting on the basis of state representation, there is little opportunity for political parties to display much activity in that body, whereas in the Bundestag the committees, including the 15-man Council of Elders, are based on party strength, and political parties have wide scope for their action.

2. The Bundesrat. Government bills are first submitted to the Bundesrat for a statement of opinion and then sent to the Bundestag. After the Bundestag has passed favorably on a measure, it must go to the Bundesrat for final consideration. Hence the Bundesrat has an opportunity to give attention to legislative matters at an early stage and again before enactment takes place. In the preliminary submission the Bundesrat indicates to the Bundestag what its reaction to a legislative proposal is, and this may influence action taken. However, if the lower chamber persists in a course which is not acceptable to the Bundesrat, the latter may impose a veto. In certain specified types of legislation, the Basic Law provides that the veto of the Bundesrat shall be absolute, but in cases where ordinary laws are involved the veto is qualified. Before the veto is imposed, the Bundesrat may, and if the matter is one where only the qualified veto applies must, submit its objections to a Joint Conference Committee made up of representatives of both legislative bodies; and if this committee proposes a change in the controversial bill the Bundestag must reconsider. If the Bundesrat vetoes by a majority vote, the Bundestag may reject the veto by an ordinary majority; if the veto has been imposed by a two-thirds vote of the Bundesrat the Bundestag must muster a two-thirds vote to reject.[1] There are certain fields in which approval of the Bundesrat is not required, but there is some difference of opinion as to the exact scope of these fields, and the Bundesrat seems to be jealous of its prerogatives and consequently increasingly inclined to insist that measures be submitted to it. The fact that the Bundesrat is made up of major officials of the state governments means that it considers measures in light of their practical effect, particularly when the authority of the states might be jeopardized. No one who observes the Bundesrat in session can doubt its vitality or seriousness of purpose.

[1] See Art. 77 of the Basic Law for the provisions relating to the veto.

THE EXECUTIVE—PRESIDENT AND MINISTERS

German political history reveals a tendency toward strong executives and somewhat lifeless legislative branches irrespective of formal constitutional provisions. The parliament of the West German Federal Republic is far from a rubber stamp, and its sessions are not cut-and-dried affairs, but it has to be on constant guard against executive encroachments and not infrequently feels that it is being neglected by the chancellor. Thus while the executive branch may be less dominant than in the past, it continues to display elements of notable strength.

The President. The federal president is selected by a federal convention made up of the members of the Bundestag and an equal number of persons chosen by the state legislatures under a system of proportional representation. Election is by majority vote of the more than 800 members of the convention, but if no candidate receives a majority on the first two ballots, the person with the highest vote on the third ballot is declared the choice. The term is five years, and one reëlection for a consecutive term is permitted. Incumbents of the office must be at least 40 years of age, German citizens, and residents of the federal territory at least three months prior to election. Removal is provided under an impeachment process initiated by the Bundestag or Bundesrat and handled by the Federal Constitutional Court. The public position of the president is impressive—he is the symbol of the state; he receives representatives of foreign governments; he signs various public documents; and he participates in numerous public functions. But in exercising more than formal authority the president, as in France, must have the written approval of the chancellor or an appropriate minister. Perhaps a man of great ambition and personal influence could bring to the office outstanding authority, as President Hindenburg did under the Weimar Republic. The first incumbent of the new presidency, Dr. Theodor Heuss, is a man of more than ordinary distinction who served as director of the *Hochschule für Politik* in Berlin, member of the Reichstag, and journalist in the pre-Hitler days; he spent some time in a Nazi concentration camp, and, as a minister in Württemberg-Baden and leader in the Free Democratic party, occupied a place of prominence in the postwar period. Shortly after his election as president he made an address in which he indicated that his concept of the office was one reaching considerably

beyond the formal headship of the state. Actually, however, although he has been regarded with high respect and has brought honor to the position, his participation in the conduct of the government has been hardly more than nominal.

The Chancellor. Under the terms of the Basic Law, the chancellor is "elected, without discussion, by the Bundestag on the proposal of the Federal President." [1] After selection by a majority vote in the Bundestag he is appointed to the chief executive office by the president. If the Bundestag is unwilling to accept the nomination of the president it may proceed within 14 days to choose a chancellor by vote of more than half of its members. If no election is made under the above provisions the person receiving the highest number of votes in the Bundestag is designated. The president must within seven days appoint the person selected if a majority of the votes of the Bundestag favored him; if a majority vote has not been recorded, the president must appoint within seven days or dissolve the Bundestag.[2] The actual process is somewhat different, since the chancellor must be someone who can control the action of the Bundestag. With a multiple-party system in operation, it is not always clear which party leader should be proposed by the president, but it is obvious that he must be one of a small number of persons. Consequently, the president may have some leeway in making his selection, though if a single party is as powerful in the Bundestag as the Christian Democrats have been in the first parliament, the picking of a person to be proposed as chancellor is hardly more than a rubber-stamping. The ministers who together with the chancellor make up the "federal government" under the terms of the Basic Law are appointed and dismissed upon the proposal of the chancellor; in reality it is the latter who selects them after negotiating with the leaders of the political parties which have entered into a coalition. The constitutional position of the chancellor seems to be somewhat stronger than that of the prime minister in Britain, since the Basic Law provides that he "shall determine and assume responsibility for general policy." [3] The chancellor must of course work closely with the Bundestag, which may terminate his services by electing a successor by majority vote and requesting the president to dismiss the incumbent.[4] In such cases the president has

[1] Art. 63.
[2] Art. 63.
[3] Art. 65.
[4] Art. 67.

no choice but to comply. It is too early to judge the full character of the office of chancellor, but it is apparent that, when held by a strong leader such as Dr. Konrad Adenauer, the first chancellor under the new republic, the position is an outstanding one. Under a weaker person and with a man of the Hindenburg type as president, the chancellorship would doubtless be less commanding despite its impressive constitutional foundation. Under the terms of the Basic Law, all laws passed by the Legislative branch must be signed by the chancellor or his deputy; also orders and decrees of the president require the signature of the chancellor or a minister before becoming effective.

The Cabinet. During these early years of the West German Federal Republic, a cabinet of some 30 members has assisted the chancellor. Made up of ministers, state secretaries, the chief of the office of president, the personal aide to the chancellor, the secretary of the cabinet, and the head of the press and information office, the cabinet holds frequent meetings at the pleasure of the chancellor. The state secretaries who are the top civil servants in the ministries do not, by the way, have a vote, and indeed the chancellor may stipulate that only ministers may attend a particular cabinet meeting. The exact rôle of the cabinet is difficult to estimate—apparently the chancellor has considerable discretion as to what will be brought to it. Chancellor Adenauer seems to have taken important actions without consulting the cabinet; on the other hand, this course has caused criticism, and it is probable that the members of the cabinet expect to participate in decisions reached on important public business. Provision is made that matters relating to the Ministries of Finance, Justice, and the Interior must receive the approval of the chancellor if their heads do not vote with the majority in the cabinet sessions.

Ministers. The Basic Law stipulates that each minister within the limits of general policy laid down by the chancellor "shall direct his department individually and on his own responsibility." [1] There has been some feeling that rather weak persons have been selected as ministers by Dr. Adenauer because he does not want to be interfered with, but some of the early ministers at least compared favorably with their counterparts in Britain and other countries operating under parliamentary government. In 1952, there were 14 ministries as follows: foreign affairs, interior, finance, justice, economics, food and

[1] Art. 65.

agriculture, labor, transport, posts and telecommunications, housing, expellees, Bundesrat affairs, All-German affairs, and Marshall Plan.[1]

Summary. A few years is a short time in which to draw conclusions relating to a national government, and in the case of Western Germany experience covers only the period since 1949. Under any circumstances it could be expected that significant changes would take place as time passed; in Western Germany such developments are even more likely as the Contractual Agreement with the Western Allies becomes effective and the West German Federal Republic receives more or less full responsibility over internal affairs and a considerable degree of leeway in its international relations. The exact course which such changes will take depends in large measure on future events both in the international sphere and in the internal economic field. At this time it is perhaps not appropriate to do more than emphasize the striking progress made in the very brief period of a few years in establishing an elaborate governmental structure in Western Germany. An observer who visits Bonn has frequently to remind himself that the parliament and the ministries go back only to 1949, for they give the impression of greater maturity.

POSTWAR POLITICAL PARTIES

The collapse of the Third Reich and of the National Socialist party resulted in a profound political vacuum. It is true that the Communist party (K.P.D.) displayed some life almost immediately, largely because it had merely been driven underground by the Nazis and had managed to carry on in some degree despite the ban on all parties other than the National Socialists. Some meager remnants of the old Social Democratic party (S.P.D.) also survived the holocaust of Nazism and war, though for some months after V-E Day they were too weak to exert more than a minimum of effort. All remaining political groups which have appeared in Germany since 1945 are entirely new. Some have made a brave showing in a relatively short time and, except in the Soviet Zone, surpass the Communist party in membership and importance. Others are splinter groups of one kind or another, or local parties falling clearly into the minor category.

The Christian Democrats. From the remains of shattered Germany, two or three new party groups of substantial strength came

[1] For additional discussion of the executive, see E. Plischke, *The West German Federal Government*, Chap. iv.

into being. One, the Christian Democrats (C.D.U.), known in Bavaria as the Christian Social Union, attracted to its membership middle-of-the-road elements in large numbers, especially those with deep religious motivation. Except in the field of church and state, its program, as might be expected, is somewhat vague. Definitely anti-Communist and favorable to the retention of private property, the party—in essence the heir of the pre-1933 Catholic Center party—nevertheless is not unalterably opposed to some measure of state socialism. Though less successful in the industrial Ruhr than in Bavaria and certain rural areas, the Christian Democratic party has been the leading political group in Western Germany since 1945. Under the leadership of Dr. Adenauer the C.D.U. undertook to form a government in 1949 after the establishment of the West German Federal Republic. It did not quite have a majority of the seats in the Bundestag and consequently had to depend upon the Free Democrats and the small German party in a coalition, but its ability to keep this majority together was remarkable—in contrast to the rapid turnover under the Weimar Republic, the Christian Democrats could point to an unbroken record of control during the period 1949-52. Recent elections have seen the C.D.U. losing some ground, and it is possible that in the general elections which will take place in 1953 its opponents may succeed in displacing it for the time being.

The Social Democratic Party. The record of the Social Democratic party during the closing days of the Weimar Republic was not such as to inspire great confidence. But its program today, comparing fairly well with that of the British Labor party, naturally commands widespread support; and of late this has enabled it to forge ahead despite its unfortunate past. A few of its leaders survived the Nazi contamination and concentration camps, and this served to give the party somewhat of an advantage during the period immediately after 1945. In the industrialized British Zone, the Social Democrats have been particularly successful, but their support has been widely scattered throughout Western Germany. In the federal government set up in 1949 the Social Democrats were second only to the Christian Democrats, and they have furnished a vigorous opposition to the Adenauer coalition. The Social Democrats have recently enjoyed somewhat greater support in most of the state and local elections, and, if the trend continues, may rise from second to first place in Western Germany.

The Free Democratic Party. Another new party which has displayed substantial strength is the Free Democratic party.[1] Standing further to the right than the Christian Democrats, its members are drawn from the ranks of business and professional men and well-to-do farmers who have little of the Catholic religious background prevailing in the case of the Christian Democratic party. This party has been particularly strong in Württemberg-Baden and in certain sections of Northern Germany, and to the surprise of many has displayed not a little strength in Eastern Germany. At the federal level in West Germany it has worked with the Christian Democrats, and one of its members, Dr. Theodor Heuss, was chosen as the first president of the new republic.

Communist and Socialist Unity Parties. The Communist party, because of its underground persistence after 1933, first displayed activity in postwar Germany.[2] The Western Allies, indeed, fully expected the Communists to be able to muster very large support among the defeated Germans, not only in the Russian Zone but throughout the country. The results of the early elections surprised almost everyone, probably including the Russians; for they indicated that the Communists, despite their boasts, actually were comparatively few outside of the Russian Zone. In the *Landtag* elections in the American Zone in late 1946, the Communist party polled only 8.4 per cent of the votes, while in the French Zone elections of 1947 it polled about 8.1. In the British Zone, results were comparable in the 1947 *Landtag* elections. In 1948 elections, the party made a slightly better showing in the Western zones, but still occupied only a minor position. In more recent elections Communist support in the West has fallen rather sharply, often dropping to less than 5 per cent. The Communist party in Germany has the same ideology and program familiar in the Soviet Union and elsewhere, therefore requiring no elaboration here. Efforts to fuse the Communist and Social Democratic elements throughout Germany into a Socialist Unity party (S.E.D.) failed outside of the Soviet Zone. There, however, the new combination became the major party—in the 1946 *Landtag* elections polling just under half of the votes and winning 244 out of 519 seats. Except in name,

[1] The name was adopted in 1948, and it involved a consolidation of various liberal groups.

[2] The Communist party of earlier days is treated at length in O. K. Flechtheim, *Die Kommunistische Partei Deutschlands in der Weimarer Republik* (Offenbach, 1948).

the Socialist Unity party can hardly be distinguished from the Communist party.

Other Parties. Various other political groups have been formed in Germany since 1945, sometimes proving at least reasonably permanent and again passing from the scene after a brief period. The British Zone seems to have been the area of greatest activity on the part of splinter and local groups, though it has by no means had a monopoly. One of the most interesting of these political groups has been the Refugee party (B.H.E.), recently renamed the All German *Bloc* (G.P.), which has sought to bring together the many millions of refugees in Western Germany.[1] It has enjoyed considerable success in areas such as Schleswig-Holstein, but its general record has been less spectacular. If it could fuse the nine million or so refugees of the West into a cohesive group its future would be bright indeed, but that is problematical. Thus far its program has been vague and it has more or less followed the line of expediency. A Bavarian party, active, as its name would indicate, only in Bavaria, has been founded on a platform calling for "Bavaria for Bavarians." It has polled enough votes to elect local and state officials in Bavaria in fair numbers and has a small representation in the federal Bundestag. A Center (Zentrum) party has displayed considerable strength, particularly in the Ruhr. Its name suggests a continuance of the well-known Catholic Center party of the Empire and Weimar Republic, but this is misleading since the present-day Center party includes only the left-wing elements of the older group—the majority of those who formerly made up the Center party have moved to the Christian Democratic ranks. The postwar Center party is rather close to the Social Democrats in political beliefs. A German party (D.P.), with strength particularly notable in Lower Saxony, has enjoyed a fair amount of success on a staunchly rightist and states' rights platform.

Neo-Nazi and Ultra-Nationalistic Groups. There have been many predictions of the spectacular rise of neo-Nazi and ultra-nationalistic political groups in Germany, but during the immediate postwar years at least such predictions failed to materialize. By 1951 there were certain indications that such groups might become strong enough to present a menace, though their success at the polls was far from impressive. Some observers feared a tie-up between the extreme

[1] The full name of this group before the recent change was *Bloc* of Expellees and Victims of Injustice.

rightists and remnants of National Socialism and the refugees; others found some evidence of Communist support for such groups. The most publicized early neo-Nazi political group, the Socialist Reich party, first came into prominence in Lower Saxony in 1951, winning enough votes to justify efforts to extend it throughout Western Germany. The West German Federal government took notice of it after it became apparent that its leaders had been prominent Nazis and that its program was undemocratic in character. Steps were taken to ban the party and, after the Federal Constitutional Court had upheld interim injunction, later made permanent, against the party in 1952, the leaders who were involved in a bitter dispute among themselves announced the dissolution of their party. This was interpreted in some quarters as an indication that the group would carry on an underground program. As the occupation comes to an end, it is probably to be expected that there will be some rise in ultra-nationalism if not in neo-Nazism, but whether such groups will become powerful enough to represent a menace is problematical—much depends upon future developments in Europe, the emergence of a strong leader, and whether they unite to present a united front.[1]

THE PROSPECTS OF UNIFICATION

Though the political indifference of the masses of German people remains an outstanding problem, there is little doubt that the desire for the unification of all territory west of the Oder-Neisse line is widespread and deeply rooted. This is supplemented by a passionate hope on the part of large numbers of Germans that the lands east of the Oder-Neisse line, which were given to Poland and taken over by the Soviet Union following the defeat in 1945, can also be recovered and brought again under German hegemony. There has been a great deal of discussion of unification among the German people and their leaders and long-drawn-out negotiations on the part of the Allied powers. German sentiment in this direction remains strong and indeed is probably on the increase, but the progress made by the Allies in reaching a workable agreement is hardly perceptible. The Soviet Union would like very much to see a united Germany *provided* it

[1] For additional information relating to the postwar political parties, see E. W. Meyer, *Political Parties in Western Germany* (Washington, 1951); Office of Military Government in Germany (U.S.), *Political Parties in Western Germany* (1949); and Office of the U.S. High Commissioner for Germany, *Political Parties in Western Germany* (1952).

could dominate such a state; the Western Allies favor unification in principle, but they are most unwilling to see a united Germany become a Russian satellite. It is possible but most improbable that the Soviet Union will yield to the demands of the Western Allies for a free Germany; and conversely it is most unlikely that the Western Allies will agree, if they have any choice, to a unified Germany under Russian domination. With the strong sentiment on the part of the German people which frequently ignores practical considerations, it is not to be expected that the problem of unification will lose its primacy; yet agreement among the Allies appears to be a remote contingency.[1]

[1] For additional discussion of political reconstruction, see G. A. A. Almond [ed.], *The Struggle for Democracy in Germany* (Chapel Hill, N. C., 1949); D. Middleton, *The Struggle for Germany* (Indianapolis, 1949); H. J. Morgenthau [ed.], *Germany and the Future of Europe* (Chicago, 1951); S. Neumann, *Germany, Promise and Perils* (New York, 1950); Office of U. S. High Commissioner for Germany, *Quarterly Reports*; A. Brecht, "Re-establishing German Government," *The Annals*, Jan., 1950.

3. *SCANDINAVIA*

CHAPTER XXXV

THE GOVERNMENTS OF NORWAY AND SWEDEN

Why Deserving of Study. Norway and Sweden are comparatively small countries on the basis both of population and of territory. Yet their political institutions have received more attention from students of government than those of some other lands of far greater population and area. And the governments of both deserve the attention of American students for a number of reasons.[1] While Norway and Sweden alike are nominally limited monarchies and maintain royal families well known abroad, they have gradually developed through the years into unusually effective political democracies; and their governments, along with that of Switzerland, afford excellent examples of the operation of the democratic system in environments quite different from those in Great Britain, the United States, and other larger democracies. In the second place, these governments are of interest because they have demonstrated that the multiple party system, so frequently identified by American critics with lack of political stability, may under certain conditions be employed without frequent changes in the government and the weakness attending such changes. Finally, Norway and Sweden may profitably be examined because of the experience which they have had with

[1] Detailed discussion of these governments will be found in B. A. Arneson, *The Democratic Monarchies of Scandinavia* (2nd ed., New York, 1949); N. Herlitz, *Sweden: A Modern Democracy on Ancient Foundations* (Minneapolis, 1939); and M. Cole and C. Smith [eds.], *Democratic Sweden* (London, 1938).

various social and economic programs. Both countries have moved toward state socialism in certain fields and yet, at least to date, have maintained a high degree of democratic freedom. Progress in social legislation has been fairly notable despite the comparatively small resources of the countries.[1]

The Countries' Common History. Though Norway and Sweden are independent countries, with many important divergencies in traditions and institutions, they have shared a certain amount of history. Under the Union of Kalmar in 1397, Norway, Sweden, and Denmark were united under a single sovereign and for approximately a century remained in this relationship. Following the break-up of this Union, Norway was joined with Denmark until early in the nineteenth century, while Sweden went on independently. In 1814, Norway was united with Sweden, though as an autonomous political area, and for almost a century the two shared the same royal family. Finally, in 1905, the Norwegians decided that they wanted complete independence; and since that time the two countries have been entirely separate, though concerned with numerous common problems. The fact that Norway and Sweden were once united for approximately a century and for almost a hundred years prior to 1905 shared the same king has some significance. Too much stress, however, should not be placed on these common experiences; for there has been a strong feeling of nationalism among the peoples of both countries, and political developments have followed somewhat different lines.

CONSTITUTIONAL SYSTEMS

The Norwegian Constitution. Though the full independence of Norway goes back only to the early years of the present century, the constitution drawn up at Eidsvold and adopted in 1814 has endured for 135 years and gives Norway a place among the countries with long-established written constitutions.[2] When it appeared that Norway would be ceded by Denmark to Sweden under the Treaty of Kiel in 1814, the Norwegians proceeded to display their inde-

[1] For a widely circulated study of such developments in Sweden, see M. W. Childs, *Sweden the Middle Way* (New York, 1936). A corresponding book dealing with Norway is O. B. Grimley, *The New Norway* (Oslo, 1937).

[2] The standard works on the Norwegian constitution in Norwegian are F. Castberg, *Norges statsforfatning* (2 vols., Oslo, 1935), and B. Morgenstierne, *Den norske statsforfatningsret* (2 vols., Oslo, 1926, 1927).

pendence by convening a constituent assembly. Delegates to the number of 112, chosen by the churches and the army and navy, assembled and in the brief period of only 14 days agreed on a constitution reflecting a certain amount of influence of the constitutions of the United States and France, but for the most part representing the resurgent feeling among the Norwegian people. After completing work on the document, the assembly proceeded to choose the Danish viceroy as king of Norway despite the Treaty of Kiel, and this led to the invasion of Norway by Swedish forces. After a brief conflict, an agreement was entered into under which Norway was recognized as an independent nation under a common king with Sweden. An Act of Union in 1815 defined the exact relationship of the two countries; but the constitution drawn up in 1814 was not displaced, even though the Swedes contended that changes in it could be made only with their consent.

Amendments to the Norwegian Constitution. As drafted in 1814, the constitution provided for a system of separation of powers resembling that in the United States. Experience of half a century convinced the people, however, that a basic change was desirable, and as a result of formal amendments and custom a cabinet system has since been substituted, with the legislative and executive branches now closely tied together in a working team. The original constitution naturally reflected the prevailing attitude at the time in regard to suffrage, and only a very small number of persons with substantial property holdings became voters. But a series of changes beginning in 1884 liberalized voting qualifications, and within a comparatively short time all males over 25 years of age were given the right to vote for members of the parliament *(Storting).* In 1913, too, Norway became the first among nations to extend the suffrage to women. The end of the union with Sweden in 1905 led to amendments adjusting the country to its new completely independent status. In that year also, direct elections were provided for in choosing members of the *Storting;* and in 1913 proportional representation was introduced. Amendment procedure is relatively simple, with the parliament proposing and ratifying by a two-thirds vote in a session following the next election.

The Swedish Constitution. Like that of Norway, the constitution of Sweden is one of the older written national constitutions now in

force.[1] Indeed it actually antedates the Norwegian constitution by a few years, having been adopted in 1809. With a parliamentary history going back to 1359 or earlier, Sweden had a well developed *Riksdag* (parliament) by the nineteenth century. And after deposing Gustavus IV, who had ignored the revolutionary influences abroad in Europe during the closing years of the eighteenth century, the *Riksdag* proceeded to draft a democratic constitution, adopted by the four chambers of the parliament[2] on June 5, 1809, and approved the following day by the new king. The constitution provided that the power to tax should be exercised by the parliament and that the law-making authority should be shared between the parliament and the king. An important provision stated that the king might issue orders only with the countersignature of the newly organized council of state, and the members of this council, although named in the first place by the king, were made responsible to parliament. Judicial authority was given to a Supreme Court already in existence; and various provisions were included guaranteeing popular rights and liberties.

Amendments and Basic Laws in Sweden. Amendments to the Swedish constitution may be adopted even more easily than in the case of the Norwegian document. A proposal to amend may be passed by ordinary majority vote in the two houses of parliament, and ratification is accomplished by ordinary majority vote by parliament after a general election has taken place. The king has theoretical power to veto amendments as in the case of ordinary laws, but during the last half-century the power has rarely been used for either purpose. A number of amendments have been adopted during the course of the years since 1809. For example, the suffrage has been extended until it applies to both men and women over 24 years of age. The constitution of 1809 contemplates basic laws, to be regarded as part of the constitutional system along with the constitution itself and its formal amendments; and the first of these became a law relating to succession to the throne, dating from 1810, a second, a law dealing with the prerogatives and status of the press, enacted in 1812, and a third, passed in 1866, a law reorganizing the parliament

[1] An authoritative work on the Swedish constitution is R. Malmgren, *Sveriges grundlagar* (Stockholm, 1937).

[2] The Swedish parliament for many years was divided into four estates, made up of the nobility, the clergy, the burghers, and the free peasants.

by substituting a two-chamber body for the historic *Riksdag* made up of four estates.[1]

POLITICAL PARTIES AND ELECTIONS

The party systems of both Norway and Sweden are definitely of the multiple type, but at the same time they do not display splinter characteristics to the extent observed in certain other European countries. If one includes the very small political groups which would be designated as minor parties in the United States, it is possible to list a fairly sizable number of separate parties; but only four to six of these ordinarily play a major rôle. While a single party is less likely to win a majority of the seats in the parliamentary bodies than in the United States, it is not uncommon for one political party to stand so far ahead of the other political groups in popular support that it quite easily dominates the government. At any rate, neither Norway nor Sweden presents the problem of coalitions and swift turnover of ministries so troublesome in France. The party systems of both Norway and Sweden permit a greater choice on the part of the voters and make it possible for the parties to take more definite stands on public questions than is the case in the United States. This naturally has the effect of making party membership more unified and cohesive. But it does not lead to the instability and weakness in the government which Americans so often associate with the multiple-party set-up. It is not easy to rate a government on the basis of political stability, and consequently it is a difficult matter to compare the governments of Norway and Sweden with those of the United States and Great Britain on this score. However, a good many observers who have had opportunity to study the four political systems see comparatively little difference in this respect. In other words, the experience of the two Scandinavian countries with the multiple-party system would seem to go a long distance in supporting the thesis that it is not so much the multiple-party set-up itself that leads to a rapid succession of governments as rather the psychology and traditions of the people who make up a country's electorate.

[1] For additional discussion of constitutional developments in Norway and Sweden, see R. V. Peel, "Scandinavian Political and Constitutional Development," in J. K. Pollock [ed.], *Change and Crisis in European Government* (New York, 1947), 105-108, 111-113; and N. Herlitz and J. H. Wuorinen, "The Government and Politics of the Scandinavian Countries," in J. T. Shotwell [ed.], *Governments of Continental Europe* (New York, 1940), 946-951.

Norwegian Political Parties. Political parties in Norway are based more closely on economic and social considerations than is the case with parties in the United States. Prior to 1928, when the first Labor government took over, cabinet responsibility had for almost half a century always rested with either the Liberal or the Conservative party.[1] These parties continue to enjoy the support of large numbers of voters, but they have increasingly found it necessary to contend with two newer groups, Labor and the Agrarian or farm party. Political consciousness among the members of organized labor and the farm group in Norway may not surpass that to be observed in the United States, but these elements have decided that their best interests lie in separate political organizations. Both the Labor and Agrarian parties have enjoyed a considerable measure of success and can point to cabinets which they have controlled.[2] The rise of the Labor party has been particularly spectacular over a short period of time. First coming into a position of authority in 1928, and then for only two weeks, the party managed to strengthen itself substantially during the nineteen-thirties and gained a leading position in 1935. The election of that year gave Labor 76 out of 150 seats in the *Storting* (parliament); in 1949 it won 85 seats. The Communists have been active in Norway for some years, but their relative strength was not impressive until the parliamentary and communal elections of 1945, when they managed to gain a major position, with 11 *Storting* seats; in 1949 they lost all of these. A new group, the Christian People's party, which, as its name implies, reflects religious viewpoints, succeeded in returning only one and two members of the *Storting* in the elections of 1933 and 1936, respectively, but in 1945 and 1949 it succeeded in forging ahead, electing eight and nine members respectively.[3]

Swedish Political Parties. The alignment of political parties in Sweden resembles that in Norway, although there is at least one important difference. During recent years, the Social Democrats have

[1] During the period 1884-1928, the Liberal party was in power 28 years and the Conservative party 16 years. In 1949, there were 23 Conservative and 21 Liberal members.

[2] The Agrarian party was in power during the period 1931-1933; it held nine seats in 1949.

[3] For a table showing the ministries since 1920 and the election results of 1936 and 1945, see E. C. Bellquist, "Government and Politics in Northern Europe; An Account of Recent Developments," *Jour. of Pol.*, Aug. 1946, 377-84. Also see Bellquist, "Political and Economic Conditions in the Scandinavian Countries," *Foreign Policy Reports*, May 15, 1948.

enjoyed greater political success in Sweden than any other party; yet such a name does not appear among the Norwegian political parties at all. Norway actually had a Social Democratic party for many years going back to the nineteenth century, but, as in the case of other similar groups, it became involved in splits over various matters. In 1921, a particularly bitter quarrel arose over the question of affiliation with the Third International, with the Social Democrats refusing to recognize that international group and the Labor party maintaining affiliation with it. Nevertheless, in 1927 the Social Democrats united with the latter party to form the Norwegian Labor party of today. The Social Democratic party in Sweden (until 1923 it was called the Social Democratic Labor party) goes back to 1889. As in the case of the corresponding political group in Norway, it has had various splits, but, unlike that group, it has managed to survive and indeed to prosper. As far back as 1911, the Social Democrats could claim 64 seats in the lower house of the *Riksdag* (parliament), in comparison with 65 held by the Conservatives and 101 by the Liberal Union. The party has frequently made an even better showing since that time, and in the 1944 election it won 115 seats, or exactly one-half of the 230 seats in the lower chamber.[1] In 1948, it lost some ground, but with 110 seats in 1952 it still could claim almost as many votes in the lower chamber as all other parties together. In the upper house, it did even better, with 79 seats out of a total of 150. While Sweden had a "national" government during the war years, the Social Democrats have managed to control the government much of the time since 1914.[2] The Conservatives do not merge in a single party in Sweden, but rather maintain a group called *Högern*, or the "Right," which is a combination of various small rightist parties. For many years the group had numerous seats in both the lower and upper chambers of the *Riksdag*, but during recent elections it has been eclipsed by the Social Democrats; in the election of 1952, the Conservatives won 31 seats in the lower chamber of the *Riksdag*, which represented a gain of eight seats over those held in the old parliament.

As in Norway, liberal and agrarian groups have been active in Sweden. Various liberal parties, including the Liberal Union party,

[1] For a discussion of the record of the Social Democrats in Sweden, see B. A. Arneson, *The Democratic Monarchies of Scandinavia*, 53–55.

[2] For tables showing the strength of this party, see Arneson, *op. cit.*, 55, and E. C. Bellquist, *op. cit.*, 362.

the Liberal party, and the Independent People's party, have played more or less important rôles, but the most important current party of this character is the People's party, organized in 1934. In the general elections which were held in 1952 the several liberal parties together won 59 seats in the lower house, thus standing second among the various party groups in strength. The Agrarian party was founded in 1913 by the agricultural interests, and in the elections since that time has held a place as one of the four top parties, although it has not attracted nearly as many voters as either the Social Democrats or the Conservatives. For some years its relations with the Social Democrats were far from cordial, but more frequently it has on occasion made common cause with the later party, even sharing with it the responsibility for forming a cabinet following the election of 1936. In 1952, the Agrarian party won 25 seats in the lower house, giving it fourth place among the parties.

The Communist party came into the public eye in Sweden for the first time in 1921 as a result of a split among the socialists and the affiliation of the leftist socialists with the Third International. In 1929, a schism took place over the question of loyalty to Moscow, with the result that a large wing of the party withdrew and formed a Socialist party with no dependence on foreign influences. Prior to World War II, the Communists had elected from two to eight members of the lower house of the *Riksdag*, and at times a single member of the upper chamber. As in the case of the corresponding party in Norway, the Swedish Communists have seen their position weaken quite materially in recent elections, electing only five members of the lower house of the *Riksdag* in 1952 in contrast to eight in 1948, and polling only 4.8 per cent of the votes in the communal elections held in 1950.

Elections in Norway. Two types of elections are scheduled in Norway—national and local. At the former, citizens of both sexes who are 23 years of age and who have lived at least five years in the country are entitled to vote for members of the unicameral parliament (*Storting*). Fifty of the 150 members of the *Storting* are assigned by the constitution to the cities and towns and 100 to the rural areas.[1] The constitution further makes provision for the electoral districts, which in every case are multiple. Eleven urban districts,

[1] Late in 1952 after this book went to press a constitutional amendment repealed this provision favoring rural areas.

each with from three to seven seats to be filled, and the 18 counties as rural election districts, each with from three to seven seats to be filled, have been set up. It should be added that the cities and towns within the counties are excluded from the county election districts, since they belong to urban election districts. Elections take place in every district on the same day, and each voter has as many votes as there are seats to be filled in his district. The various parties put up lists of candidates, and the voter indicates his choice by voting for the names on these lists rather than for the party slates or lists as such. The Norwegian constitution provides for proportional representation, and under this system each voter must indicate his preference among the candidates he supports unless he votes for only a single person. Hence if his election district is entitled to five seats and he therefore has five votes, he indicates one first choice, one second choice, and so on down to the fifth choice. A first counting of votes is on the basis of lists, to determine to how many seats each party is entitled. Then the votes for individual candidates are computed to ascertain exactly which of the party representatives are to be given the seats. The parties ordinarily select their candidates at conventions in the various election districts, subsidized out of public funds.

Swedish Elections. The election system in Sweden is based on national elections at which members of the *Riksdag* are selected and communal or local elections. With a two-chamber parliament, the Swedish selection set-up is somewhat more complicated than the system in Norway. The 150 members of the upper house are indirectly elected by electoral colleges for eight-year terms, with one-eighth of the seats filled every year. The country is subdivided into 19 districts, classified in eight groups; and one group chooses its members of the upper house each year. Electoral colleges are made up of the members of the county councils where a county is an election district; otherwise the members are especially chosen by direct popular vote. The 230 members of the lower house of the *Riksdag* are apportioned among 28 election districts on a basis of population, with the county as the usual unit. Elections in every district are held on the third Sunday in September of every fourth year, and are participated in by citizens of both sexes over 23 years of age. Like Norway, Sweden provides for proportional representation in the selection of the members of the lower chamber, but, unlike the Norwegian system, the voter casts a single vote for the party which

he supports. Parties put up lists of candidates which are more complicated than in most countries where the system is employed. A single party may put up more than a single list, and two or more parties may join in submitting a list. A party list is sometimes presented in sections in order to please factions of the party, and names on the list may not be arranged in the same order in every case. While most parties prepare single lists, the exceptions make the counting of the vote to determine the number of seats won by each party difficult, and determination of the exact persons on each list to occupy these seats is sometimes very complicated.

EXECUTIVE AND LEGISLATIVE BRANCHES

The King. Both Norway and Sweden maintain royal families, the heads of which bear the title of "king." While at an earlier period the authority of these kings extended over a wide field—even at times amounting to absolutism—both countries have now fallen into the category of limited monarchies. As a practical matter, the position of king in both countries has become almost purely formal. According to the provisions of law, the monarch can veto acts of the legislative bodies; but in both countries he acts only with the advice of his ministers, with the result that the ministers exercise the actual authority as representatives of the people, while the king contents himself with being only the formal head of the state. It should not be assumed, however, that the kings of Norway and Sweden are disparaged by their peoples. Both occupy positions of great prestige, and indeed may exert important personal influence. Social and ceremonial duties remain heavy. The leadership displayed by the Norwegian king in connection with the German occupation brought him into more than usual prominence and added to the prestige attached to the position.

The Cabinet System. In both Norway and Sweden, the cabinet system of government operates in practice despite the theoretical authority given to the king. The relations characterizing the executive and legislative branches are somewhat less carefully integrated than has been noted in the case of Great Britain, but nevertheless in both countries the cabinet plan prevails as a basic system. The Norwegian cabinet is a comparatively small group of 13 members headed by a prime minister. Unlike their counterparts in Britain, these persons not only do not have to be members of Parliament, but actually are

not permitted to occupy seats in that body—even though they may have been members when chosen as ministers. Many parliamentary members, indeed, are chosen as cabinet members; but if they accept, they must give over their parliamentary seats to alternates, selected in connection with the regular elections.[1] The leader of the strongest party in Parliament is usually designated by the king to form a ministry, and if he succeeds he, of course, holds the position of prime minister. At times, one party is strong enough in the *Storting* to control alone; and in such event the prime minister and all of his colleagues will be taken from that one party. However, it is frequently necessary for two, or even more, parties to unite to form a ministry; and in that event, the ministers are apportioned among the coöperating parties. The Norwegian constitution provides that legislative proposals may be introduced either by the government, which of course means the cabinet, or by individual legislators, and, as this suggests, the cabinet has somewhat less dominance than in Britain. In Sweden, the council of state, as the cabinet is there designated, is also a comparatively small body of 16 members. But, unlike the situation in Norway, members of the Swedish cabinet are usually members of Parliament. The leader of the strongest party is named by the king to form a cabinet, and this he does by selecting the leading members of his own party in both chambers of the legislature as well as representative members of any parties which have joined to form a coalition. The king can exercise his official prerogatives only with the consent of the council of state, which means that the cabinet wields the executive authority. It also furnishes a substantial amount of leadership for the legislative branch, although bills may also be introduced by non-ministerial members.

The Norwegian *Storting*. Norway is one of the very few countries in the world having a unicameral legislative body—although on account of the way in which the body splits itself into two branches for purposes of work, the casual observer easily might mistake it for bicameral. There are 150 *Storting* members in all, elected for four-year terms, and required to be at least 30 years of age, qualified voters (of either sex) in their districts, and resident in Norway a

[1] Although cabinet members may not occupy seats in Parliament, they often run for election, so that if they should lose their cabinet positions they will at least have membership in the *Storting*.

minimum of 10 years. Annual sessions are held, beginning in January, and special sessions may be called by the cabinet.

Organization. After a new *Storting* has been elected, it meets as a single body and proceeds to choose a temporary chairman and a committee on credentials. After these and other preliminaries have been disposed of, it then designates a president, a vice-president, and a secretary. The next step is to select one-fourth (38) of the members who will constitute the *Lagting* and three-fourths (112) who will compose the *Odelsting.*[1] Still acting as a body, the *Storting* then listens to the address from the throne, which has actually been prepared by the cabinet to indicate the general program for the year. The *Lagting* and *Odelsting* also choose presidents and vice-presidents who, together with the president and vice-president of the *Storting,* constitute a council of presidents *(Presidentskap)* which has fairly important authority in supervising the general work of legislation. Another body made up of the council of presidents and the chairmen of the standing committees acts as a steering committee. The *Storting* maintains some 15 standing committees, selected by a committee on committees, which bases selection on the relative strength of the various political parties.[2] In addition, the *Odelsting* has two committees which deal with matters of protocol and constitutional items requiring secrecy, such as foreign and military affairs. Special committees may also be set up to handle legislative business which for one reason or another does not seem appropriate for the regular committees.

Procedure. The constitution specifies that bills shall be introduced in the *Odelsting* either by one of its members or by the government through the ministry. Bills acted on favorably by the *Odelsting* are sent to the *Lagting,* which may accept or reject them. If a bill is rejected, it is returned to the *Odelsting,* with reasons for the refusal to approve it. The *Odelsting* may then amend the bill and send it again to the *Lagting,* or it may decide to take no further action. If a bill is sent a second time to the *Lagting* and still proves unacceptable, it is then considered by the *Storting* meeting as a single body

[1] The people elect simply to the *Storting,* without any reference to the division later to be made.

[2] These committees are as follows: Administration, Finance and Customs, Health, Justice, Local Affairs, Church and School, Military Affairs, Agriculture, Posts, Telegraph and Coastal Shipping, Marine and Fishing, Forestry and Water Power, Social Affairs, University and Professional Schools, Foreign Affairs and Constitutional Amendments, and Highways and Railroads.

and either approved or rejected by a two-thirds vote of the members. In addition to formal legislation on these lines, the *Storting* gives its attention to many matters which have significance, but are not covered by the constitution. For example, the budget has to be considered and passed; taxes must be levied. In these matters, the *Storting* acts by ordinary majority vote. Formal legislation requires the approval of the king, while other actions become effective without such approval; but with the cabinet acting in such affairs for the king, this is not a matter of great moment. Bills not accepted by the king become law after being acted upon favorably by three successive and separately elected *Stortings;* but this, too, is of little practical importance. Authorization is made in the constitution for provisional laws issued by the king (cabinet) in the fields of commerce, tariffs, and the police power. These, however, may not contravene the terms of the constitution nor laws enacted by the *Storting,* and they remain in effect (unless rescinded) until the next *Storting* adjourns unless overthrown by *Storting* vote prior to adjournment.

The Swedish *Riksdag*. In contrast to Norway, Sweden has a bicameral legislative body.[1] The upper house, corresponding to the American Senate, is known as the "First Chamber," a designation sometimes confusing because it suggests the more popular body. The First Chamber is made up of 150 members, who must be at least 35 years of age and must present certain property qualifications.[2] The lower house, known as the "Second Chamber," has 230 members. Unlike the situation existing in most countries at the present time, the two Swedish chambers have substantially equal status under the law, although the larger lower chamber may have a decisive voice in the joint votes which are authorized on matters of public finance when the two houses fail to agree. The fact that the members of the First Chamber are indirectly elected and for longer terms than their colleagues in the Second Chamber has some bearing on the response of the two houses to public opinion. Instances of disagreement between the two chambers are not numerous, and the result is that

[1] For extended studies of the *Riksdag*, see R. Malmgren, *Sveriges Riksdag* (Stockholm, 1934); and N. Eden, *Den svenska rigsdagen under femhundra ar* (Stockholm, 1935). For a briefer discussion in English, see N. Herlitz, *Sweden; A Modern Democracy on Ancient Foundations* (Minneapolis, 1939), 37-45. Also see R. C. Spencer, "Party Government and the Swedish Riksdag," *Amer. Polit, Sci. Rev.*, June, 1945.

[2] Members are required to have owned at least 50,000 kroner worth of property over a three-year period or to have an annual income of at least 3,000 kroner.

as a matter of practice both houses share legislative responsibility fairly equally. Sessions of both houses are convened early in January of every year, and special sessions may be called by the king (actually the ministry) when occasion demands.

Organization. Upon convening for a regular session, the two houses of the *Riksdag* meet separately to choose a speaker and two vice-speakers and to provide for such other items of organization as may be required. Having finished these preliminaries, the two houses then meet jointly to listen to an address by the king and to pledge loyalty to king and country. At this joint session, the prime minister also addresses the entire membership of the *Riksdag* in order to acquaint all with the current situation confronting the government. In many respects, the Swedish Riksdag resembles other parliamentary bodies, but in one important provision having to do with the committee system it offers a contrast.[1] Committees in the *Riksdag* are not left to be determined by the rules of the respective houses, but are provided for in the basic law relating to the *Riksdag,* which, as noted above, constitutes one element in the Swedish constitutional system. Of course, the *Riksdag* has authority to amend this basic law by taking action in two successive sessions with an election intervening; but this is hardly a simple matter. The result is that the committee system is quite firmly established and unlikely to undergo frequent modification. Moreover, the *Riksdag* committee system stands out not only because of its legal basis, but perhaps even more in the eyes of many observers because it embodies the principle of joint action. Instead of two separate systems of committees, such as exist in the Congress of the United States, the *Riksdag* operates under a system of eight joint committees,[2] made up of members of both chambers and reporting to both chambers. Membership on the several committees varies from 10 to 24, and each chamber selects half by a system intended to give the various parties representation according to their parliamentary strength. The committees choose their own chairmen, who frequently are well known and exert far-reaching influence. While committees are renewed every year, there is a strong tradition of reëlection, and many members have long service on their respective committees.

[1] For an authoritative work on the committee system, see H. Tingsten, *Sveriges Riksdag—Utskotsväsendet* (Stockholm, 1934).

[2] The committees are as follows: Constitutional Amendments, Finance, Ways and Means, Agriculture, Banking, First Judicial, Second Judicial, and Foreign Affairs.

All items of public business coming before the *Riksdag* must be referred to a committee, and, in many instances at least, the consideration given them is, as Professor Herlitz expresses it, "far from being merely formal." [1] As a rule, too, the influence of committees is sufficiently great to cause the two chambers to follow their recommendations. Unlike practice in England, where ministers play an important rôle in committee deliberations, the basic law of Sweden does not permit ministers to attend committee sessions at all. The relationship between committee members and the political parties represented in the two chambers is ordinarily quite intimate. Committee members frequently canvass the sentiment of their respective parties before they participate in committee sessions and represent the party point of view rather than their own individual ideas. After a committee has completed its consideration of a proposal, it reports simultaneously to both chambers, with the result that both chambers are likely to debate important matters of legislation at about the same time; and it may be added that the debate frequently extends over a considerable period and reaches a point of intense interest, with the participants addressing not only their fellow-members but the people of Sweden. Inasmuch as the representatives of both chambers have expressed their points of view in the committee and divergencies have been ironed out, the chambers themselves are much more likely to agree than is the case in the Congress of the United States. The committees referred to are standing committees; in addition, however, the *Riksdag* sometimes sets up special committees to assist such standing committees. The two chambers also on occasion create select temporary committees to handle matters not entrusted to the standing committees, although the over-all significance of these is not great.

Procedure. Legislative proposals may originate in either the First or the Second Chamber of the *Riksdag;* and they may be introduced in any one of three ways: (1) by the government (the ministry), (2) by a standing joint committee, and (3) by an individual member. Many bills, essential to carry out the program formulated by the coalition or the party which has been made responsible for the government, come from the ministry. But standing committees also may propose bills as well as consider them at a later stage. After introduction, bills are referred to the appropriate

[1] See his *Sweden; A Modern Democracy on Ancient Foundations,* 44.

standing joint committee, and after the committee has completed its work, a report is presented to both houses, with debate thereupon in order. The informal method of voting is by voice, but standing and roll-call votes are also possible; and a tie vote is decided by lot. In most fields, it is necessary to secure the approval of both houses before bills can be enacted into law, but in relation to revenue and appropriation bills a rather unique provision is made for situations in which the two chambers are unable to agree. The separate votes of the two houses are added, and if a majority of the total vote approves a tax or appropriation measure, the bill is considered adopted. Tax measures do not have to be submitted to the king, since the constitution gives the exclusive power to tax to the *Riksdag*. In other matters, the royal approval is required; but it is exercised only with the consent of the ministers. Actually, a veto is most unusual under the cabinet system in Sweden as well as elsewhere.[1] The Swedish constitution provides for a royal ordinance power covering many matters usually regarded as included under general legislative power in the United States. The constitution also specifies that the king may share this ordinance authority with the *Riksdag;* and this is frequently done. In so far as the ordinance power relates to details, it is now ordinarily exercised in administrative orders issued by the ministry; but on those occasions when it involves matters of general interest, it has become the established practice to pass the responsibility to the *Riksdag,* the latter handling such matters in a manner similar to that noted in the case of ordinary legislation. A law council *(Lagrad),* consisting of three Supreme Court judges and one member of the highest administrative court, assists the *Riksdag* by going over the majority of bills prior to their consideration by that body.

ADMINISTRATIVE AGENCIES

Perhaps the first thing to be noted in connection with a survey of administrative organization in Norway and Sweden is the comparatively small number of administrative departments. Hardly less noteworthy is the absence of the large number of commissions, boards, and other independent establishments so familiar in the United States. The smaller populations of the Scandinavian countries

[1] The veto power has not been exercised since 1912, even with the consent of the ministers.

doubtless account for these differences to some extent, but do not seem to constitute a full explanation. The fact that both governments are unitary rather than federal would of itself suggest an elaboration of administrative agencies beyond that to be noted. Moreover, the elaborate programs of social security and the higher degrees of socialization characterizing both countries would seem to point in the direction of greater bureaucracy. As a matter of fact, the initial impression of cohesiveness is probably somewhat misleading. This is not to say that the small number of departments and the absence of independent establishments lack significance; but it is fair to point out that a closer examination reveals that this is the result, to some extent at least, of combining various more or less unrelated services under a rather small number of loosely organized departments.[1] In the case of Sweden particularly, this seems to be the case.

Norwegian Administrative Agencies. Norway has set up 12 departments or ministries which handle the wide range of administrative matters to be encountered within that country. In size and importance, they vary; but in general they are conventional in character. A Ministry of Foreign Affairs corresponds to the British Foreign Office and to some extent to the Department of State in the United States. Supervision over the courts and the police is assigned to a Ministry of Justice and Police, while agricultural matters are administered by a Ministry of Agriculture. The quite elaborate social security program is handled by a Ministry of Social Welfare. The importance attached to education and religious affairs is indicated in some measure by the Ministry of the Church and Education. Ministers of Communications and Commerce are self-explanatory, while the Ministry of Finance corresponds to the Treasury Department in the United States. Responsibility for all aspects of national defense falls to a Ministry of Defense. Inasmuch as Norway has a unitary type of government, these administrative departments have far broader scope than would be given most agencies of similar names in the United States. Thus the Ministry of the Church and Education supervises all educational programs from the lowest levels up through the technical schools and the university. It licenses teachers; is responsible for the training of the deaf, blind, and feeble-minded; handles radio-broadcasting; supervises libraries throughout the coun-

[1] Professor B. A. Arneson, in his *The Democratic Monarchies of Scandinavia*, 93, stresses this point.

try; and even furnishes weather reports. With the Lutheran Church accorded a special position as a state church, this ministry also oversees the general administration of church affairs, though local congregations are permitted some leeway in deciding their own problems. An exception to the general rule noted above may be pointed out in the case of the Bank of Norway, which is not a part of any of the ministries and might be classified as an independent agency. A Board of Auditors, made up of five professional accountants, and having the assignment of auditing the accounts of other administrative agencies, is also to be considered entirely separate from the regular departments.[1]

Swedish Administrative Agencies. The Swedish constitution specifies that there shall be not less than eight nor more than ten general administrative departments. Actually, ten general ministries have been set up to deal with the administrative work of the government. The only ministry specified by name in the constitution is that of Foreign Affairs. The Ministries of Justice, Defense, Agriculture, Communications, Finance, Commerce and Social Welfare are counterparts of those in Norway, though their functions may not always coincide. Instead, however, of a Ministry of Church and Education as in Norway, Sweden has a Ministry of Education and a minister without portfolio to deal with ecclesiastical affairs. The Ministry of the Interior and a Minister for the Civil Service are found in Sweden but not in Norway; Sweden also maintains a minister without portfolio to deal with various administrative problems and a minister without portfolio to oversee its propaganda program. The heads of the Swedish ministries must be members of the council of state, or cabinet, and thus there is the same dual relationship to be noted in certain other governments. Indeed the Swedish administrative system has been characterized as more dualistic than is ordinarily encountered, not because of the dual position of the ministers entirely, but also because of its internal organization. The United States, as also to a lesser extent certain other countries, has a number of major administrative departments, together with numerous independent agencies. In Sweden, there are at first glance very few of these separate administrative agencies, because everything seems to be concentrated under the ten ministries.

[1] For a summary of the functions entrusted to the various ministries, see B. A. Arneson, *op. cit.*, 102-110.

However, a closer examination will reveal that Sweden has placed a considerable number of offices, commissions, boards, and the like rather loosely under ministries without actually integrating them with the ministries. On an organization chart, the boards and offices seem to be responsible to the ministries, but in reality some of them at least are virtually autonomous and carry on an independent existence within the ministry, however closely their operations may be related to the work of the ministry itself. The National Debt Office and the Bank of Sweden are completely independent of any confines of a ministry. Professor Arneson credits the Swedish people with being "among the first in the world in their interest in, and capacity for, efficient administration," citing "the smoothness with which the government machinery operates, the impressive morale among the public servants, and the degree of respect which the people display toward the government." [1]

The Rôle of the State in Norway and Sweden. In comparison with the Soviet Union or National Socialist Germany, the rôle of the state in Norway and Sweden is not very extensive. However, among the democracies these Scandinavian countries have gone rather far in extending their activities without seeming to sacrifice the political liberties of their citizens in serious measure. Inasmuch as these governments are of the unitary type, it is difficult to compare them with the federally-organized American system. The fact that the countries are rather small in area and population also makes a meaningful comparison difficult. Nevertheless, it is important to note the concept which the Norwegian and Swedish peoples have of a "service-state," as Professor Herlitz designates it.[2] There is far less suspicion of the too overshadowing state than is to be encountered in the United States, and considerably more of a feeling that the state is a benevolent agency which can be of great service to human beings. In both Norway and Sweden, the activities of the state therefore cover wide areas, even though there is some divergence in the specific activities undertaken.

Examples of State Activity in Norway. Though certain aspects of the social security program in Norway are of recent origin—the old-age pension system was not inaugurated until 1936—the current

[1] See his *The Democratic Monarchies of Scandinavia*, 111. For additional discussion of the Swedish administrative system, see N. Herlitz, *op. cit.*, 56-117, and B. A. Arneson, *op. cit.*, 110-122.

[2] See his *Sweden; A Modern Democracy on Ancient Foundations*, 108.

coverage is beyond that to be observed in the United States.[1] The old-age pension system extends to agricultural laborers and small farmers, in contrast to the more limited provisions in the United States. Perhaps more significant is the health insurance and health protection program, which has now been in operation for several decades. All workers between the ages of 15 and 70 are required to carry health insurance unless their incomes exceed an amount fixed by the government, and the national and local governments pay 20 and .10 per cent, respectively, of the total cost. The full cost of hospital service in individual cases, two-thirds of the cost of medical attention, and a daily allowance for living expenses for a maximum period of six months are paid out of the insurance funds. While there is some question as to whether the medical services should be classified as completely socialized, they have gone a long way in that direction. Child welfare services, workmen's compensation, and unemployment compensation—all are parts of the Norwegian social security system. For some fifty years, too, Norway has given attention to public housing, with the result that the country's public housing facilities are among the best in the world. Oslo is sometimes regarded as the outstanding example of a city which has provided adequate housing for its workers and poorer inhabitants.[2] In smaller cities and rural areas, less has been done; but even in these places the government has assisted on a large scale. In addition, the government has encouraged the spread of a coöperative system which controls something like 99 per cent of the creameries, much of the milk production, a sizable part of the egg production, and is important in the housing field and in the consumer purchasing field.

Examples of State Activity in Sweden. The Swedish record in the old-age pension field is considerably longer than that noted in the case of Norway, with the general program going back to 1913. In health insurance, Sweden has played a less active rôle than Norway, although the government has supervised private sick benefit societies since 1891. Unlike the compulsory Norwegian system, the Swedish health insurance program has until very recently (July 1, 1950) been organized on a voluntary basis. In the child

[1] For a monograph dealing at some length with the scope of social activity on the part of the state, see J. E. Nordskog, *Social Reform in Norway* (Los Angeles, 1935).

[2] Approximately 90 per cent of the inhabitants of Oslo live in public housing projects or in houses built by coöperatives assisted by the government. See Arneson, *op. cit.*, 211.

welfare field, in workmen's compensation, and in unemployment compensation, the Swedish government has long taken an active rôle, even though in the latter preferring to work through trade unions and unemployment benefit societies. While no Swedish city can equal Oslo in its housing record, the Swedish government has been active in this field for several decades. The coöperatives have been given a larger rôle in housing than in Norway, and purely public ownership has been somewhat less extensive; but the housing provided by coöperatives receiving government assistance occupies a very important position not only in the capital city, but in other cities and even in rural areas. The producer coöperative movement has been particularly active in the agricultural field. Something like 90 per cent of all milk throughout the country is produced by dairy coöperatives supervised and assisted by the government. The generating of hydro-electric power is a state enterprise, and a large part of all electric energy in Sweden is produced by government undertakings. The telephone and telegraph systems are practically state monopolies. Radio-broadcasting is handled by a semi-official corporation. Many of the railroads are state-owned and operated. Most of the cities own their electric distributing systems, which buy their power from the state electric generating system. Numerous cities own and operate their gas works, and some have been active in the bus and tramway field. The state also operates a tobacco monopoly. Even outside of the Social Democratic ranks, where one would naturally expect sentiment for various programs of state enterprise, there seems to be general acceptance of the desirability of these public activities.[1]

COURT SYSTEMS

Characteristics of the Norwegian Legal and Judicial System. The Norwegians have made no contribution to the legal systems of the world which would bear comparison with the English common law or the Napoleonic Code, but they have developed several legal and judicial practices which may be of interest. In the first place, Norway has been among the pioneers in the field of conciliation. Rather than bring all manner of disputes before the courts, the

[1] For additional discussion of state activity in Sweden, see N. Herlitz, *op. cit.*, 108-117; M. W. Childs, *Sweden the Middle Way* (New York, 1936); A. H. Oxholm, *The Small-Housing Scheme of the City of Stockholm* (Washington, 1935); Royal Social Board, *Social Work and Legislation in Sweden* (Stockholm, 1938).

Norwegians have provided that all ordinary civil cases must first of all be considered by a conciliation council, which is to be found at the local level throughout the country. Conciliation councils consist of three mediators designated by the local authorities, and they attempt to settle disputes short of formal judicial hearing. If the parties to a dispute can be brought into agreement, the conciliation council commonly gives its formal sanction; and if one of the parties fails to put in an appearance, the council has authority in minor matters to pronounce judgment. The result is that large numbers of cases which clutter up the dockets of courts in other countries are disposed of in Norway before they reach that stage. The Norwegians have also made use of lay judges in certain tribunals to assist the professional judges, thus following a practice which is often thought peculiar to the Soviet Union. These lay judges are not expected to be familiar with the details of the law, but they are considered desirable in order to check the legally-minded professional judges and to make available knowledge of local psychology and problems. Some use is made of the jury system also in certain of the courts. Finally, it may be observed that while there is some constitutional basis for judicial review on the part of the Supreme Court, the actual rôle of the Court in this sphere has been limited. Public opinion places more confidence in the *Storting,* which is made up of a fairly large number of popularly-elected representatives, than in an appointive Supreme Court; and this, together with the care exercised by the legislative branch in seeing that laws which it passes are in keeping with the constitution, sharply circumscribes the rôle of the Supreme Court in declaring laws unconstitutional.[1]

Norwegian Lower Courts. If the conciliation councils are unable to settle a civil case out of court, or if criminal charges are involved, various local courts come into action—in three categories: (1) town courts, (2) the *Byfogd,* and (3) the *Sorenskriver.* The four largest cities of the country—Oslo, Bergen, Trondheim, and Stavanger—have town courts, consisting of a presiding judge and from two to 15 or more associate judges. In other towns less populous but still fairly sizable, an official known as the *Byfogd* combines the duties of notary with those of judge and hears cases corresponding to those disposed of by the town courts in the largest cities. Finally, in the

[1] For additional discussion of the rôle of judicial review in Norway, see B. A. Arneson, *op. cit.,* 131-132.

rural areas, district courts have been set up under a *Sorenskriver,* or local magistrate. All of these courts have the same jurisdiction, handling both civil and criminal cases. Judges are appointed by the king (cabinet) for life, rather than elected by the voters. As already intimated, in certain instances the professional judges attached to these courts are assisted by two lay judges. Above these local courts is an intermediate grade of courts, each known as a *Lagmannsrett.*[1] Decisions of local courts may be appealed to a *Lagmannsrett* if more than 500 kroner is involved, although if more than 5,000 kroner is at stake they may be taken, under certain conditions, directly to the Supreme Court. In criminal cases where the penalty is more than five years in prison, the intermediate court has original jurisdiction. In both civil and criminal cases, it is the custom of the *Lagmannsrett* to make use of lay judges, and in important criminal cases a jury of 10 persons is often employed to decide on guilt or innocence. Norway does not maintain a system of administrative courts as is done by certain countries of Europe, but there are various special courts, with jurisdiction over fisheries, civil servants, and other matters.

The Norwegian Supreme Court. In a country of as limited population as Norway, it is somewhat surprising to find a Supreme Court more complex than that of the United States. This is the only regular court provided for in the constitution, though a High Court of the Realm (*Riksretten*) is authorized to try charges against ministers, members of the *Storting,* and high judges. Under terms of the constitution, the Supreme Court must consist of a president and at least six judges; actually, it currently includes some 20 judges, organized into two separate sections, and with three of the number serving as an appeals committee to decide which cases brought up from the intermediate and lower courts shall be heard. Certain appeals of great importance are heard by a full sitting of the court, but ordinarily the cases are disposed of by one or the other of the two sections.

Characteristics of the Swedish Legal and Judicial System. Though Norway and Sweden are very similar in many respects, they also not infrequently display more or less striking differences. In the case of the court system, one may note several of these divergencies.[2]

[1] There are five of these courts.

[2] For a good discussion of the general character of the Swedish judicial system, see N. Herlitz. *op. cit.*, 96-107.

Sweden follows the lead of certain larger European countries in maintaining a separate system of administrative courts,[1] while Norway makes the ordinary courts responsible in such matters. The jury system is not entirely unknown to Sweden, but it is used only in a single type of case where freedom of the press is involved, and consequently has less of a rôle than in Norway. The doctrine of judicial review finds no place in Sweden, which sees fit to give final authority over the making of laws to the legislative branch. The legislative branch has set up a *Justitieombudsman* (Parliamentary Supervisory Official for Civil Affairs), who, among other responsibilities, is expected to keep his eye on the operation of the courts and report to the *Riksdag* any weaknesses or maladministration. Thus in Sweden it is not a matter of the Supreme Court watching the *Riksdag* to check any exercise of unconstitutional authority, but rather of the *Riksdag,* through its agent, keeping watch over the courts.

Swedish Lower Courts. As in Norway, the local courts of Sweden are planned to meet the needs of the urban places and the rural areas. Cities and larger towns, to the number of more than 75, have local courts known as *Magistrat* courts. Whether a town shall have its own local court or be subject to the jurisdiction of a district court depends upon various factors other than population, with the result that one town may be found to have such a court while a somewhat larger town does not. These town courts are presided over by the local mayor (*börgmastare*), who, in the case of the sizable cities, is expected to have had legal training. There are usually two or more associate judges to assist the mayor, and in Stockholm, where the work is heavy, there are more than 20.[2] Where the number of cases reaches an unusually high level, there may also be police courts in sizable cities to relieve the town court of less important cases. The rural areas and smaller urban places have been organized into some 125 districts, each of which has a district court presided over by a single judge. These district judges are assisted by committees of 12 or more citizens elected for six-year terms in subdivisions of the district. Such citizens receive no monetary compensation for their services, but the service carries some prestige, and many of the laymen take their responsibilities quite seriously. At least seven must par-

[1] For a brief but illuminating essay on the Swedish system of administrative law, see N. Herlitz, *op. cit.*, 118-127.

[2] In Stockholm, a number of sections operate in order to handle the cases.

ticipate in every case except minor ones, where three suffice; and by unanimous vote it is possible for them to overrule the judge. Both the town and district courts have civil and criminal jurisdiction alike. The judges in the district courts and the assistant judges in the town courts receive their positions by appointment from the cabinet, for indefinite tenure until the retiring age is reached. Above the courts of first instance in the towns and districts are four courts of appeal, each made up of a presiding judge and from half a dozen to 40 or more associate judges, and ordinarily organized in sections specializing in different types of cases. In the case of the court located in Stockholm, two of these sections take on the character of special courts, giving their attention, respectively, to water-right controversies and military cases. Another special court which stands apart from the courts of appeals is the labor court, composed of a president and seven associate judges, and with jurisdiction over disputes involving labor. Finally, there is the Supreme Administrative Court, made up of seven members, and hearing cases arising out of the operations of the government.[1]

The Swedish Supreme Court. The Supreme Court (*Högsta Domstolen*) antedates the present constitution,[2] and thus looks back on many decades of activity. The constitution of 1809 provides that the Supreme Court shall not have more than 12 members unless subsequently specified by law that the tribunal shall be organized into sections. Actually, there are more than 25 judges, operating in two or three sections. If cases involve far-reaching questions, the Supreme Court sits as a body; but ordinarily it meets in two sections, each of which must include at least seven judges. Prior to 1909, the king could preside over the Supreme Court and exercise two votes in its deliberations, and even today the court acts in the name of the king. When cases come up from the military courts, two high military officers, one from the army and one from the navy, sit with the court to decide appeals. Occasionally, the court is called upon also to decide cases involving the state church, though these are more likely to be heard by the Supreme Administrative Court. In a few cases involving malfeasance on the part of important government officials, the Supreme Court has original jurisdiction; but for the most part it

[1] Prior to 1909, the ordinary courts handled these administrative cases.
[2] It was set up in 1789.

hears cases only on appeal, and only when matters of some moment are at stake.

LOCAL GOVERNMENTS

The Norwegian *Fylker*. The most important subdivision of Norway for local-government purposes is known as the *fylke,* which approximately corresponds to the administrative county in Britain.[1] There are 18 of these *fylker* in the rural areas, and the two cities of Oslo and Bergen, enjoying a somewhat similar status, are at times added to the number to make 20. To some extent, the *fylker* are administrative districts intended to facilitate the controls exercised by the Ministry of Justice and Police, which is charged with local-government responsibility. The *fylkesmann,* a sort of prefect who heads the *fylke,* is named by the king (actually the cabinet) upon nomination by the Minister of Justice and Police. The position carries with it considerable prestige, and frequently leads to advancement; but the prefect does not have entire authority in handling the affairs of the county, since there is a county council (*fylkesutvalget*) which enjoys substantial influence. Made up of the chairmen of the rural district councils (*herredstyret*), this council meets in regular session once every year, though it may convene at other times on call of the prefect, by decision of its executive committee, or on its own motion. It chooses its own chairman and committees, and devotes its attention mainly to budgetary matters, public works, and education. Its executive committee, made up of four members chosen from within or without its membership for four-year overlapping terms, is presided over by the prefect and actually handles much of the work of the council, especially during the lengthy periods when the latter is not in session.

The Norwegian *Herreder*. Counties are subdivided into *herreder,* or districts, to the number of some 700. These may include villages, but in general they are rather rural in character, with population varying from a few hundred to many thousand—the average district being likely to have somewhere between 1,000 and 2,500 inhabitants. In each district the voters elect a district council under the list system of proportional representation, the size depending on the population

[1] For a detailed treatment of Norwegian local government, see A. Engh and K. M. Nordanger, *Kommunalkunnskap* (2 vols., Oslo, 1936).

of the particular district, but ordinarily varying from 12 to 48.[1] This popularly elected council chooses a chairman and an executive committee, made up of one-fourth of its members; and it has the power to enact ordinances and to deal with financial matters, subject to a considerable amount of supervision from the prefect of the county. The chairman of the district represents his district on the county council.

Municipal Government in Norway. Urban places in Norway vary in population from small towns to sizable cities, such as Oslo and Bergen; but irrespective of size the general set-up is substantially the same. There is a popularly elected council, running from 20 to 84 members, which enjoys a fairly important degree of authority over financial and other local matters, though in many cases approval must be given by the Ministry of Justice and Police. The council chooses the mayor and an executive committee which deals with many administrative matters. Towns and cities are directly under the national ministry rather than subject to the counties and districts, and handle public works, local schools, certain types of welfare programs, public health, local finance, and municipally-owned utilities.

The Swedish *Län*. Sweden is subdivided into 24 *län*, or counties, occupying much the same position as the *fylker* in Norway.[2] Their position is a dual one, since they serve as administrative areas for the control of local-government affairs by the Ministry of Social Affairs and also make it possible for the people to exercise some measure of self-government. The central government provides a prefect for each county, and this official enjoys wide authority as well as a salary approximating that received by cabinet members. The voters in the county elect a county council (*landsting*) of at least 20 members for four-year terms under proportional representation; and this body meets in regular annual session, with such special sessions as either it or the prefect may deem necessary. The council elects its own chairman and also chooses an administrative committee corresponding more or less to the Norwegian executive committee, and particularly important when the county council is not in session, as well as for carrying out the decisions of the latter in regard to

[1] In a few cases the size may go up to 60.

[2] For a detailed treatment of local government in Sweden, see J. Olsson, *Sveriges kommunalstyrelse* (Stockholm, 1935).

administrative matters, working in collaboration with the prefect. The council ordinarily acts only by a two-thirds vote, and in certain instances its decisions can be vetoed by the Ministry of Social Affairs or by the prefect. It deals with financial matters, education at the local level, public health and welfare, public safety, and communications, and also serves as an electoral college to choose the county representative to the upper house of the *Riksdag*.

The Swedish *Landskommuner*. Counties are subdivided into a large number of districts (*landskommuner*), aggregating 2,371 in the entire country, and varying widely in population and importance. If its population exceeds 1,500, a district must have a council, and in certain smaller districts councils have been set up also. In most smaller districts, however, town meetings, which include all of the local voters, handle public business. Members of the district council are elected by proportional representation for four-year terms and vary from 15 to 40 in number. Both the district councils and the town meetings hold three regular sessions each year, and both set up committees of from five to 11 members to serve as executive and administrative agencies. Some measure of local leeway is enjoyed over public works, finance, schools, and certain other fields, but the general policies laid down by the Ministry of Social Affairs take precedence.

Swedish Urban Government. The urban government set-up in Sweden is somewhat complicated. There are more than 100 cities (*städer*), varying in size from Stockholm with a population exceeding a half million to one place with less than 1,000 inhabitants. With the exception of Stockholm and five other larger ones, all cities are under the counties in which they are located. Provision is made also for towns (*köpingar*), although these are less numerous than cities; a typical town has some 2,000 people. There are, in addition, urban communities, known as *municipalsamhällen,* which are not sufficiently populous to justify city or town status, but which nevertheless have certain problems making it necessary to separate them to some extent from the districts in which they are located. More than 200 of these villages or urban places are recognized by law and set up as special municipal districts, with a voters' assembly and a council. Stockholm is so important that it is placed in a class by itself and has its own governmental pattern;[1] but the other cities follow a more

[1] On the provisions made for Stockholm, see B. A. Arneson, *op. cit.*, 177-178.

or less common form. Town meetings theoretically exist, but at present they play little if any rôle. Varying in size from 15 to 60, depending upon the population of the municipality, the city council is popularly elected every four years under proportional representation; and mayors are appointed by the central government from a list of three names selected by popular proportional voting. Council meetings are regularly held every month, and are presided over by a chairman elected by the members, rather than by the mayor, who, however, may attend. The mayor heads the *magistrat,* which occupies a dual position, serving as the municipal court and also as the administrative body of the city, and the mayor or one of his associates in the *magistrat* serves as director of public safety. Swedish cities maintain various lay boards to deal with fire protection, schools, poor relief, and financial matters,[1] among them the board of finance being the most important. In addition to responsibility in the field of financial administration, the board of finance, elected by the city council, exercises a certain amount of general administrative supervision, especially in those domains in which the central government is not dominant. Provisions made for towns and urban places are not as elaborate as in the case of cities, but the general pattern is somewhat similar and authority is more or less the same in scope.

[1] On the effectiveness of these lay boards, see N. Herlitz, *op. cit.,* 76-81.

PART THREE



GOVERNMENT IN EASTERN EUROPE—

THE SOVIET UNION

CHAPTER XXXVI



THE RISE OF THE SOVIET RÉGIME

The Greatest of Revolutions. The French in 1789, wrote Alexis de Tocqueville, made the greatest effort ever undertaken by any people to cut in two, as it were, their national history and to separate by a bottomless pit that which they had previously been from that which they wanted to become. From their effort, too, flowed, as we have seen, momentous consequences, for France and for the world. A century and a quarter later, another major European people, the Russians, stirred itself to a similar gigantic enterprise. As in France, an old and powerful monarchy was overthrown, an established Church swept off its foundations, a privileged aristocracy wiped out, property stripped from owners and investors, and an entire social and economic order challenged and shattered. Moreover, whereas the French upheaval, after momentarily threatening to turn society upside down, ended by merely transferring political and economic power to the middle classes, the Russian struck down both the upper classes and such scanty middle-class elements as existed in the country and thrust complete control, not only of government, national and local, but also of industry, transportation, and agriculture into the untried and untrained hands of industrial workers, peasants, and their revolutionary leaders. The upshot was the rise of a governmental system unique in the annals of politics, and of a socio-economic régime constituting the most stupendous experiment of its kind in mankind's long experience. Marxist doctrine, proletarian monopoly of power, one-party dictatorship, economic regimentation —these are salient features of a new order which for years the world expected to see go down in collapse, but which nevertheless—re-

oriented at many points as experience has dictated, yet emerging intact after the shock of World War II—seems today as impregnably entrenched as ever. Not only so, but in this postwar era it has become, more than at any previous time, a challenge and menace to the remainder of Europe and to the world. From political régimes of varied hue in Western Europe, we turn to this extraordinary one in the East—and first to the circumstances under which it arose.

A POLYGLOT EURASIAN EMPIRE

A loose-knit dominion of continental proportions covering half of Europe and a third of Asia (one-sixth of the land surface of the globe), stretching ever monotonously before the eye, with the sharpest contrasts of heat and cold, flood and drought, opulence and misery; a chaos of races and creeds and a bable of tongues; historically in the main, but not wholly, European; geographically largely, but not entirely, Asiatic; a world within itself and a world between worlds—such was the Russia that came down from the centuries. Known to the ancient Greeks as "outer darkness," the land of the Scythian winter, the country has been no less an enigma, or riddle, to the modern world; Russians themselves find difficulty in explaining it. Even its European segment was of mixed origin. When, in the early centuries of the Christian era, that branch of the Aryan family known as the Slavs dispersed from its original home on the northern slopes of the Carpathians, those portions that did not turn westward to form the later Poles, Czechs, and Slovaks, or southward to become the ancestors of the Serbs, Croats, and Slovenes, poured eastward into the great plains of Ukrainia and beyond, where they found and mixed with the Asiatic Finns, and later mixed also with the equally Asiatic Mongols, who held the land in tribute for two hundred and fifty years. Increasing in numbers with that fecundity which still characterizes the Russian people, and spreading northward, eastward, and southward, they gradually subdivided (beginning in the thirteenth century) into the Great Russians in the north, the Little Russians or Ukrainians in the center, and the White Russians to the west.

Tougher than their brethren and more advantageously located for the purpose, the Great Russians became preëminently the pioneering, colonizing, conquering branch of the family. The eastward urge which quickly carried them to the Urals never died out; what the Far West has been for Americans, the East has ever been for

Russians. Refusing to recognize the low-lying ranges as in any sense a boundary, they pushed on and on—particularly in the sixteenth century—until in 1637 their venturesome explorers, having traversed thousands of miles of Siberian waste, came out upon the Pacific coast at the mouth of the Ulya River. Indeed, the sea did not stop them; for Alaska was penetrated, and remained a Russian possession until sold to the United States in 1867.[1] To Great Russians, Little Russians, Finns, Jews, Letts, and Poles were therefore added Tartars, Bashkirs, Uzbegs, Turkomans, Mongolians, and what not, as constituent elements of the swarming, hybrid population of the expanding Empire, with the consequence that no fewer than 185 nationalities and 147 different languages and dialects were numbered within the bounds of the Soviet Union even before the most recent annexations. With one-fourth of the population purely Asiatic, with the dominating Great Russians themselves strongely infused with Asiatic blood, and with deep strains of Asiatic influence showing in every aspect of life and culture, it is not strange that men debated—without ever settling—whether Russia was to be regarded as Eastern Europe or Western Asia. Properly, the country should be looked upon as neither European nor Asiatic, but rather as "Eurasian"—a term to be construed, not as signifying a combination of all Europe and all Asia, but as denoting instead a sort of third continent, the geographic and historic area constituting Greater Russia, without reference to the conventional, and in this connection wholly artificial, distinction between Europe and Asia.[2]

SIX CENTURIES OF POLITICAL DEVELOPMENT

1. The Rise of Tsarist Absolutism. For the beginnings and growth of the Russian state, the reader must be referred to the many excellent historical works dealing with the subject.[3] Suffice it to say that from among various rival grand-duchies and principalities, with governments curiously compounded of monarchical, aristocratic, and

[1] There were Russian settlements also in California, which, however, were abandoned in the 1840's.

[2] The ethnological and geographical aspects of Russia's development are explained with exceptional clearness in G. Vernadsky, *Political and Diplomatic History of Russia* (Boston, 1936), Chap. i.

[3] None is better than that of Vernadsky mentioned above. Others include R. Beazley, N. Forbes, and G. A. Birkett, *Russia from the Verangians to the Bolsheviks* (Oxford, 1918); B. Pares, *A History of Russia* (rev. ed., New York, 1937); and V. O. Kluchevsky, *A History of Russia,* trans. by C. J. Hogarth, 5 vols. (London, 1911-31).

democratic elements, there emerged in the early fourteenth century one known as the grand-duchy of Moscow, whose vigorous rulers gradually gained primacy and in time not only delivered Eastern Europe from a long-endured Mongol overlordship, but extended their own sway from the Urals to the Baltic. Outgrowing the not particularly distinctive designation of grandduke, Ivan IV ("The Terrible"), early in the sixteenth century, took to himself the title of "czar" (a corruption of "Caesar"), suggestive—according to the Greek Orthodox divines whose faith had now been accepted in the country—of the "third Rome" [1] that Moscow was destined to become, and naturally of the imperial power which its master was later to wield throughout the Eastern world. Gradually the institutions of the earlier grand-duchy, which originally had been a good deal like those of a great private domain, evolved into a system of state administration; and for hundreds of years, every circumstance surrounding the growth of the nation was favorable not only to monarchy, but to the upbuilding and maintenance of thoroughgoing autocracy. Most of the newer areas were brought in by conquest and required vigorous control; the popular assemblies characteristic of the little grand-duchies of earlier times were not adapted to the needs of a broad, expanding, and increasingly heterogeneous empire; strong Byzantine influence, exerted through the church and other channels, prompted development of the pomp and exclusiveness always associated with the Russian court, and of absolutist principles and practices generally; the country was isolated and, until late, not much affected by Western influences.

2. Limited Reforms. As time went on, there were, to be sure, some developments and experiments in the direction of liberal, and even representative, government. Some were merely gestures; some produced significant changes for a time—but always with absolutism in the end reasserting itself. No less an autocrat than Ivan IV permitted a *zemski sobor,* or national representative congress, to be convoked in 1550. But the assembly did not develop into a permanent piece of political machinery, and at best was an organ only of the ambitious *boyars,* or nobles, rather than of the people. Another national assembly elevated the Romanov dynasty to the throne in 1613, and for a generation continued to be convoked from time to time to aid in raising money. But it entirely missed the opportunity to

[1] Byzantium, or Constantinople, was conceived of as the second.

impose restraints on the new ruling family after the manner of the English Parliament when accepting William and Mary toward the close of the same century; and it never gained more than advisory functions. In 1730, Empress Anne signed a document granting executive powers to a council and then tore it up, convinced that, after all, the nation wanted to be governed in the old way. Catherine II (1762-96) set up a "grand commission" to assist in a recodification of the national laws. But the body was not intended to be a regular parliament, and its deliberations proved so profitless that it was disbanded with its main task still unperformed. Alexander I came to the throne in 1801 with liberal ideas, including a plan for giving the country a written constitution, to be formulated by an elected representative assembly. As czar, he, however, drew back from the idea. Finally, Alexander II (1855-81), liberator of the serfs, came to a decision to establish representative national committees with power to give preliminary consideration to legislative proposals; but he was assassinated hardly 24 hours before the time when a decree of this purport was to have been promulgated. Down to the close of the nineteenth century, genuine and lasting advance toward popular control of affairs was achieved in the domain of local government only. Catherine II introduced elective municipal *dumas,* or councils, representing all classes of the urban populations. Alexander II, in addition to reconstructing the judicial system and further reorganizing municipal government, instituted in 1864 two sets of elective *zemstvos,* or assemblies—district zemstvos, chosen by the landholders (including the newly emancipated serfs), and provincial zemstvos, composed of representatives of the several district assemblies within the province, and empowered to provide roads, schools, and experimental farms and to serve other local needs.[1]

3. Situation at the Opening of the Present Century. The twentieth century found autocracy still in the saddle. Sometimes it was benevolent, but always it was autocracy, challenging every liberal idea and setting itself resolutely against change. "In theory," according to one very good description of the political system as it stood a quarter of a century ago, "the tsar was the autocrat of all the

[1] It should be added that the peasant villages (*mirs*) were practically autonomous until Alexander III (1881-94) placed them under the supervision of wealthy landed proprietors. The general development of government to the close of the nineteenth century is sketched in illuminating fashion in M. Kovalevsky, *Russian Political Institutions* (Chicago, 1902), Chap. ii.

Russians, his will was law, and to him both church and state were subject in every particular. The tsar was, of course, assisted by ministers in charge of the administration; but each minister was appointed by and responsible only to the tsar, the council of ministers had no organic unity, and the ministers came together only rarely and at the tsar's express command. It could therefore hardly be said that the ministers formed a cabinet. Moreover, the discretion allowed to ministers in matters of policy was slight. . . . But great as his powers might be in theory, in practice the tsar could do little. During the quarter of a century before 1914, the actual direction of affairs fell into the hands of a court which was notorious throughout Europe for its corruption and for the prevalence of dark forces, while the routine work of government was carried on by a highly centralized bureaucratic machine which lumbered along in its autocratic fashion in spite of the almost incredible ignorance and dishonesty with which it was encumbered." [1]

Forces of protest, however, were increasing and growing more articulate. The zemstvos became rallying points of liberalism, and at their second general congress, in 1904, their leaders called in no uncertain terms for constitutional government, including a national parliament. Equally significant was the appearance of so-called political parties—not, of course, broadly based parties like those of democratic countries, but at all events groups of agitators and propagandists urging political and economic reforms, and reaching out for followings among the urban workers and peasants. First in importance among these was the Russian Social Democratic Labor party, organized in 1898 on the model of the German Social Democracy, and subscribing in the main to the teachings of Karl Marx. A second, the Social Revolutionary party, formed in 1901, appealed primarily to the peasants. A third, the Union of Liberation (known after 1905 as the Constitutional Democrats, or "Kadets"), was organized in 1903 mainly by merchants, manufacturers, and middle-class intellectuals, and based its program, not upon Marx, but upon the political teachings of constitutional and democratic groups of Western Europe and America. All of these organizations existed in defiance of law; all were forced to resort to underground methods and to lead a hand-to-mouth existence.

[1] J. W. Swain, *The Beginning of the Twentieth Century* (New York, 1933), 112.

REFORMS OF 1905

Constitution and Duma Promised. With dissatisfaction steadily mounting and social conditions provoking ever-increasing unrest, matters drifted until the imperial government unwisely led the country, in 1904, into war with Japan. Defeat followed defeat, on land and on sea, precipitating a popular reaction from which the forces of revolution and reform drew unexpected opportunity. So serious did strikes, riots, and other forms of public disorder become that in August, 1905, an imperial manifesto announced that a nation-wide representative assembly, with power to deliberate although not actually to make laws, would presently be established as an Imperial Duma. As only a half-way measure, this concession, however, satisfied no one; and with conditions steadily growing worse, the harassed authorities were shortly driven, as a means of staving off social revolution, to issue a new manifesto promising the country what, to all intents and purposes, would be a written constitution. The Duma was to be constructed so as to represent all classes of the people under a democratic form of suffrage; no law might thenceforth become effective without this body's approval; the ministers were to be formed into a council, with a prime minister at its head, as in Western countries (even though, like the chancellor in contemporary Germany, that key official was still to be responsible only to the titular head of the state), and a broad grant of civil liberty was included—inviolability of person, and freedom of thought, speech, assembly, and organization. A few weeks afterwards, another rescript set up the promised electoral system, giving votes to the great mass of the male population, including peasants and urban workers. Thenceforth, the czar was to share the government of Russia with duly elected representatives of his people.[1]

The Duma's Checkered History. The political transformation thus auspiciously begun did not work out satisfactorily. Peace with Japan, restored under terms of the Treaty of Portsmouth, liberated the government to some extent from the difficulties which had compelled it to make concessions; radical elements bent upon outright revolution refused to be diverted from their objective; even the more moderate reform forces persisted in dissipating their strength in factional strife,

[1] For the texts of these important documents, see W. F. Dodd, *Modern Constitutions*, II, 181-195.

each group intent upon realizing its own particular program. The upshot was that constitutional, parliamentary government was strangled at its birth. Even before the first Duma met, a decree of March, 1906, revising the old Fundamental Laws of the Empire to serve as the promised constitution, associated with the popular body a second chamber, known as the Council of the Empire, and composed equally of members appointed by the czar and elected by the nobility, zemstvos, and university faculties. At the same time, the fundamental laws, the composition of the legislative bodies, the army and navy, and foreign relations were enumerated as matters which the two houses should not so much as discuss. When it is observed further that no measure could be considered in any case without the government's consent, that the arrangements contained no hint of responsibility of ministers to the people's representatives, that the tsar retained an absolute veto over all legislation, could prorogue or dissolve the Duma at will, and enjoyed unlimited ordinance power when the Duma was not in session, it goes without saying that the new representative assembly was endowed with no great amount of actual authority.

No sooner was the first Duma elected than it promised to be dominated by elements—chiefly the Constitutional Democrats—sharply hostile to the government; and when, upon assembling in May, 1906, it fell to discussing a bill looking to breaking up large estates and distributing the land among the peasantry, and even began talking about the steps necessary to launch a cabinet system, it was dissolved and election of another one ordered. The result was, from the view-point of the government, no better; indeed it was worse, for notwithstanding that the elections were widely tampered with, revolutionary parties which had boycotted the first elections now participated freely, and the second Duma turned out even more liberal than the first. Consequently, after being tolerated for a brief period, it went the way of its predecessor. Then the government concluded that it had made a mistake in sanctioning an electoral system enabling such things to happen; and before permitting another election, it arbitrarily changed the scheme, sharply curtailing representation from the Polish and Caucasus districts, shamelessly gerrymandering other areas, and introducing a complicated class system calculated to ensure the return of majorities amenable to control. The expedient worked, and the third Duma, proving more

tractable, was permitted to live out its legal term of five years. The fourth, elected in 1912 on similar lines, was in existence when World War I began, and survived until 1917.

Some Gain Realized. The "revolution" of 1905 was not entirely fruitless. The resulting Duma, to be sure, was no such free and vigorous national assembly as the reformers desired; indeed, the unhappy experience of a decade had, by 1914, pretty well brought these elements to the conviction that true parliamentary government could never be attained in Russia by ordinary constitutional means. Even in its later less democratic form, however, the assembly reflected public opinion to some extent, furnished a forum for discussion of national affairs, and occasionally exerted some influence on the government's policies. Clearly it served to familiarize the country with the idea of representative institutions on a national scale, even though, all in all, the Empire's government was still, in 1914, a thinly veiled autocracy.[1]

THE BOURGEOIS REVOLUTION

Political Tension during World War I. Hardly anything less than superhuman skill on the part of the monarch and his ministers could have carried the Russian political system of prewar days through the experiences of 1914-18 intact. But Nicholas II was far from being superhumanly clever, and, with few exceptions, the people who surrounded and influenced him—whether the ministers who passed in dreary succession across the political stage, the members of his immediate household, or the hangers-on at the court—were stupid, reactionary, and corrupt. The result was that under the impact of the war the government tottered and collapsed, forces of revolution burst all restraints, the tsar and his family were brutally murdered, the Red Terror swept the land as fire driven by the wind, society was turned upside down, and the once imposing Empire became only a memory. The outbreak of the war was the signal for a demonstration of patriotic feeling almost as general and impressive as the show of public sentiment in France, Germany, and other belliger-

[1] On the revolution of 1905 and after, see G. Vernadsky, *Political and Diplomatic History of Russia,* Chap. xxvi; P. Milyoukov, *Russia and Its Crisis* (Chicago, 1905); B. Pares, *Russia and Reform* (London, 1907); S. A. Korff, *Autocracy and Revolution in Russia* (New York, 1923); and from a Marxist point of view, M. N. Pokrovsky, *Brief History of Russia,* trans. by D. S. Mirsky (New York, 1933), II. Cf. E. A. Goldenweiser, "The Russian Duma," *Polit. Sci. Quar.,* Sept., 1914.

ent countries. All elements except the Bolshevik wing of the Social Democrats [1] pledged the government unqualified support. However, the stupendous losses of men, the German conquest of the Polish and other western provinces, and the sufferings of the masses, produced, within the first year, grave discontent; and in September, 1915, the moderate groups in the Duma—now fast becoming a body with a will of its own—drew together in a "progressive *bloc*" bent upon urging immediate and drastic political reform. Strong demand was forthwith made for a restoration of democratic suffrage and for a full parliamentary scheme of government. Far from heeding it, however, the embittered czar allowed himself to be swayed in the direction of extreme reaction, and a breach arose between the government and the reformers which widened steadily as the second year of the war advanced. The winter of 1916-17 brought matters to a crisis. The weak-willed czar was completely dominated by the czarina, who, in turn, was under the spell of a Siberian peasant charlatan with hypnotic power, Gregory Rasputin; [2] ministers and bureaucrats brazenly bartered with the enemy and lined their pockets with the proceeds of their treachery; gross and willful mismanagement in government circles cost the lives of countless thousands of soldiers and brought untold suffering to other thousands and to the civilian population in all parts of the country; although doggedly holding its hard-won positions, the army at the front was war-weary and distrustful of its leaders; conscripts in the rear were listening eagerly to socialist, defeatist, and revolutionary propaganda; economic insecurity was helping undermine such morale as remained. When, after a protracted recess, the Duma was reassembled in February, 1917, the government met its protests with obvious determination to make no concessions and to stamp out the entire liberal movement. Preservation of autocracy and of the privileges of the bureaucracy seemed to have displaced the winning of the war as the chief concern at court; and despair of any improvement under the existing political régime became general.

The End of Czarism. The upshot was revolution. With disorder threatened in the capital at the hands of desperate soldiers and workmen, and with the imperial government itself showing unmistakable

[1] See p. 805 below.

[2] Rasputin, to be sure, was assassinated on December 30, 1916, but his death merely embittered both czar and czarina.

signs of disintegration, a *ukaz* proroguing the Duma was issued on March 11. Far from obeying, the body assembled in one of the palaces and sought to curb, or at least to guide, the forces of rebellion. Representing chiefly the more substantial elements of the population, the Duma leaders by no means relished a proletarian uprising, and every effort was made to induce the government, even at the eleventh hour, to forestall the threatened revolution by adopting a liberal and conciliatory policy. But the court reactionaries would not be convinced. Perhaps disaffection had gone too far to be checked. At all events, when the troops were sent out to disperse the throngs surging through the streets and demanding food, they joined the mob instead, and the city was forthwith given over to revolution. The great prison fortress of Saint Peter and Saint Paul was stormed and the prisoners released; ministers and other bureaucrats were arrested and slain or imprisoned; a Petrograd [1] soviet,[2] or council of workers' and soldiers' deputies, was set up; from afar, news came that the armies in the field had declared for an end of the old régime. Still hoping to guide the revolution along reasonably moderate lines, the Duma laid claim to full power, appointed a provisional government with Prince George Lvov, a Constitutional Democrat, as chairman, and on March 15 procured the abdication of the now frightened and despondent Nicholas II. When forsaking his throne, the czar designated his brother, the Grand Duke Michael Alexandrovich, as his successor and Prince Lvov as head of the ministry. The latter arrangement gave some show of legality to the new order. But as for the grand duke, he refused to accept so dubious

[1] As a demonstration of Pan-Slav feeling, the name of the national capital was changed, a few days after the war began, to the Slavic equivalent of the German-sounding "Petersburg," *i.e.*, "Petrograd."

[2] The "soviet" concept seems to have originated in England, where a follower of Robert Owen in the early nineteenth century (though without that leader's approval) proposed a plan for dispensing with the House of Commons and organizing a government based on councils representing the various trades. The idea reappeared in France in 1848, when the short-lived Luxembourg Commission was organized from delegates elected by trades from the various workshops to represent the Paris proletariat. Its first appearance in Russia was in 1905, when a strike committee—the first real soviet—was set up in St. Petersburg to carry on the general strike which forced the granting of the October manifesto. Disappearing as soon as the reaction set in, the device is not heard of again until 1917. In Germany and other countries, soviets sprang up like mushrooms in the turbulent years 1918-19, and both Hungary and Bavaria had short-lived soviet governments in the last-mentioned year. Soviets, however, took firm root nowhere except in Russia, where they became the basic units of all subsequent political organization.

a succession; and the rule of the Romanovs in Russia—at the end so weak that it fell almost without being pushed—was finished.[1]

The Provisional Government and Its Difficulties. The new government promptly won recognition from the United States and the Entente Powers. Furthermore, it commended itself to liberals throughout the world by the manifest sincerity with which it proclaimed democratic principles and asserted the rights of the people, especially the subject nationalities. The political regeneration of Russia was, however, too vast an undertaking to be carried out so quickly and so easily. The collapse of the old order inevitably became the signal for particularistic manifestations, long repressed, against the unity of the polyglot nation; inexperienced in self-government on any large scale, the people could but stagger under their suddenly imposed responsibilities; the habit of hating the czarist government had bred distrust of, and impatience with, government in general. As a result, the Lvov provisional government at once ran into insurmountable difficulties. These cannot be described here; but the fundamental trouble lay in the fact that whereas the new régime was bourgeois, capitalist, and pointed solely toward reorganizing the country on a constitutional basis after the fashion of Western states, radical leaders with a steadily growing following cared not at all for that sort of thing, but looked rather to some form of economic-political reconstruction that would bring power mainly or entirely into the hands of the working and peasant classes. From the outset, the provisional government, representing the political revolution, was meagerly supported outside of the capital, while extra-legal soviets of workmen's, soldiers', and peasants' deputies—organized throughout the country on the model of the Petrograd soviet of March, 1917, and representing the social revolution—increasingly drew the interest and support of the masses.

As weeks passed, the breach between the provisional government and the elements represented in the soviets widened steadily, and in the early summer (1917) it became necessary, in order to hold things together at all, to open the ministry to five members representing the Petrograd soviet. This intensified internal differences from which the government already suffered and left it even more irresolute. The soviets steadily grew more outspoken in their opposition to

[1] Nicholas II and the members of his family, after being held prisoners at various places, were executed at the Ural town of Ekaterinburg on July 18, 1918.

the prolongation of the war; propaganda of a dozen sorts—pacifist, pro-German, nationalist—produced appalling discord and unrest. With the country fast slipping into anarchy, the situation was ripe for the rise to power of any party or group of men which could put itself dynamically behind a definite program and mobilize popular feeling in its behalf. Such a party promptly appeared in the form of the ultra-radical Bolsheviki.

Bolsheviki and Mensheviki. Russian socialists in the earlier twentieth century fell into two main schools, or parties, already mentioned—the Social Revolutionaries and the Social Democrats. The former, recognizing that the country was, and must long remain, agricultural, was interested principally in arousing the illiterate and apathetic peasantry (comprising nearly four-fifths of the entire population) to revolt with a view to gaining individual proprietorship of land still owned for the most part by the state or the nobility or held in common by the villages, or *mirs*.[1] There was no party of quite the same nature in Western Europe, for no Western country presented a situation of quite the same kind. The Social Democrats, on the other hand, concerned themselves primarily with the urbanized industrial workers, whom they considered the shock troops of the coming revolution. Drawing their inspiration principally from Marx, they had more in common with socialist parties elsewhere. Both parties were split into moderate and radical factions, each of which tended at times to merge with the corresponding faction of the other party. The moderate and radical wings of the Social Revolutionaries were as a rule referred to as the Right and the Left. The Social Democrats were even more sharply divided into the Bolsheviki ("Majority") and Mensheviki ("Minority"). This schism arose at the second congress of the party, held at London in 1903, and reflected no particular difference in aim or objective, but decided difference on policy and method. Like the orthodox, evolutionary socialists of Germany and France, the Mensheviki believed that the socialist state was to be attained gradually and by peaceful means; they envisaged a large and relatively moderate political party on the pattern of the German Social Democracy; and they were prepared to coöperate with other liberal, but non-socialist, elements. Like Western communists and

[1] For excellent accounts of the agrarian situation, see G. T. Robinson, *Rural Russia under the Old Régime* (New York, 1932), and G. Pavlovsky, *Agricultural Russia on the Eve of the Revolution* (London, 1930).

other extremists, the Bolsheviki, on the other hand, scorned slow, peaceful, political methods; indeed, long before 1917 they had advanced to the point where they would be satisfied with nothing short of a cataclysmic, world-wide overthrow of the capitalist order, to be followed by a dictatorship of the proletariat. All of the parties and factions as yet drew their leadership, and in truth much of their membership, not from the workers themselves, but from the intelligentsia of middle-class, or even noble, origin. Prominent among the Social Revolutionaries were the editor Victor Tshernov and the indomitable Catherine Breshkovskaya.[1] Leading Mensheviki included L. Martov, George Plekhanov, and Lev D. Bronstein, the last-mentioned a Jew who, as Leon Trotsky, later became the tactician of the earlier stages of the Bolshevik revolution. Chief among the Bolsheviki was Vladimir Ilyitch Ulyanov, son of a government inspector of schools who had received a patent of nobility from the government, and destined to fame under the pseudonym of Nicolai Lenin.[2]

THE BOLSHEVIK REVOLUTION

The Bolshevik Program. Although constituting a majority in the London congress where the name was acquired, the Bolsheviki originally formed only a small minority of the Russian socialists generally; and not only did they totally fail to realize their purposes in 1905, but even in 1917 they formed no very important element in the soviets as first organized. They, however, were unencumbered by any relations with or responsibility for the provisional government;[3] they were blessed with able and not too scrupulous leaders; and they had a program which, although incongruously aimed at forcing a Marxist system devised in terms of an industrial society upon a decidedly rural and agricultural people, nevertheless could be counted upon to prove attractive to uneducated, impressionable, war-

See K. Breshkovskaya, *Hidden Springs of the Russian Revolution* (Stanford University, 1931).

[2] Having been arrested and deported to Siberia at the age of 26 because of his radical political activities, Lenin settled in Switzerland in 1900, remaining there (except for a brief sojourn in his home country in 1905-07) until 1917. His paper, *Iskra* ("The Spark"), published at Zurich, became the earliest Bolshevik party organ. See Leon Trotsky, *Lenin* (New York, 1925); *ibid., My Life* (New York, 1930); G. Vernadsky, *Lenin, Red Dictator* (New Haven, 1931); D. Shub, *Lenin* (Garden City, N. Y., 1948). Cf. N. Bardyaev, *The Origin of Russian Communism* (London, 1937), and A. Rosenberg, *History of Bolshevism . . . from Marx to the First Five-Year Plan* (London, 1934).

[3] Many Mensheviki served as ministers in this government.

weary masses wanting, not constitutionalism and democracy (of which they still knew little), but land, bread, and peace. The main points in this program were: an immediate armistice, to be followed by peace negotiated by representatives of the proletariat; confiscation of all landed estates and parcelling of the soil among the peasants, who were everywhere to be organized in soviets; full and immediate management of all factories and mines by the workers, organized similarly; nationalization of all production and distribution; repudiation of the czarist national debt; autonomy for national minorities; and organization, on the basis of the urban and rural soviets, of a government controlled exclusively by (or at least in the name of) the masses. A dictatorship of the proletariat was the objective; "all power to the soviet," the slogan.

The Seizure of Power. Notwithstanding that as late as June, 1917, when the first All-Russian Congress of Soviets was convoked, the Bolsheviki contributed hardly more than a sixth of the delegates,[1] clever propaganda—now directed on the spot by the resourceful Lenin—brought the party by the end of the summer into control of (even though not as yet numerical preponderance in) the soviets; and the growing futility of the provisional government's efforts, rendered the more hopeless by the breakdown of the military establishment on the Western front, foreshadowed both the collapse of Russia in arms and a transfer of power to the Bolshevik-controlled councils. An attempt to seize the reins in July failed, and the provisional government, thenceforth under Kerensky's leadership, labored on to keep the military and political situation in hand. But every plan of rehabilitation failed, and as weeks passed it became clearer that both army and government were simply going to pieces. Elections to a second All-Russian Congress of Soviets, to be convened at Petrograd on November 7, gave no party an absolute majority. But on the night of November 6, carefully rehearsed Bolshevik soldiery—detachments of the famous Red Guards—occupied the Winter Palace and other government buildings; the local garrisons remained inactive or went over to the revolution; and on the morning of the meeting day of the Congress, the members of the provisional government—Kerensky alone escaping—were placed under arrest. Confronted thus with an accomplished *coup* when it convened, the Congress promptly fell into line. The Mensheviks and

[1] The rest were Social Revolutionaries and Mensheviki, in almost equal numbers.

a right-wing element of the Social Revolutionaries absented themselves; left-wing Social Revolutionaries threw their support to the Bolsheviks; and with the radicals in full control, the Congress forthwith "regularized" what had been done by assuming supreme authority over the nation, proclaiming a Russian Socialist Federated Soviet Republic, and setting up, as a sort of cabinet, a Council of People's Commissars, selected mainly from the ranks of a newly chosen Central Executive Committee of the Bolshevik party, with Lenin as premier and Trotsky as "people's commissar for foreign affairs." A "decree of peace" forthwith announced that so far as Russia was concerned, the war was over;[1] a "decree of land" ordered a partitioning of large estates among the peasants and stamped with approval a general plan of land nationalization previously prepared by the Social Revolutionaries; a "decree of industry" presently proclaimed the control of workers' committees over industrial plants.

Consolidating the New Régime. By stages, yet in a space of less than eight months, the most reactionary government in Europe had given way to the most radical. But could the new régime, at first localized entirely in the capital, and personalized in a little group of commissars sitting on kitchen chairs around a pine table in a former girls' boarding school, actually establish itself and endure? Most people, even in Russia, thought not; even after months and years had passed, the world still expected to hear, almost any day, that the end had come. It was the old story, however, of a compact, determined, and ably led minority having its way against a huge but amorphous and inarticulate majority. Not that the victory was won in a week, or a year. Even by the summer of 1918, when control had been extended over the larger part of what remained of European Russia, the new order had only begun its real fight for existence—a fight of extraordinary severity through the next three years, not only against counter-revolution (involving civil war on many fronts) and foreign intervention, but against passive resistance, sabotage, famine, and other less spectacular but equally weighty obstacles, including the necessity of relying almost exclusively on the country's own dis-

[1] With untold numbers of soldiers forsaking their posts on the Western and Caucasian fronts and streaming back to their native villages, Trotsky opened peace negotiations with Germany late in December. In the humiliating treaty of Brest-Litovsk, signed on March 3, 1918, Russia indeed obtained peace, but also acknowledged the independence of Poland, Finland, Lithuania, Estonia, part of Transcaucasia, and even the Ukrainian Republic which a short while previously had chosen to go its own way.

integrated resources. With "strike quickly, strike hard, strike secretly" as its principle of action, Lenin's new engine of power, however—although an Ishmael among the governments of the world—so successfully swept resistance before it as both to paralyze its foes and confound those who prophesied its destruction. "We have shown," said Trotsky to the Petrograd soviet, "that we can take the power. We must show that we are able to keep it. I summon you to a ruthless fight." Of ruthlessness, there was indeed no lack. The Red Terror, betokening, as it seemed to startled Westerners, almost a relapse into Mongol savagery, was loosed upon the country, and nobles, landowners, tsarist officials, and unsympathetic intelligentsia were imprisoned, executed, or exiled by the thousands. There was ruthlessness, too, toward institutions no less than toward persons. Land, banks, and industries were ear-marked for nationalization; the church was disestablished and its property turned to secular uses; and when, in January, 1918, a national constituent assembly, elected under democratic arrangements devised by Kerensky's government (and significantly containing not over 40 Bolsheviks out of a total of 703 members), met in Petrograd and began passing resolutions hostile to the new order, it was summarily dissolved and the dictatorship of the proletariat triumphantly reasserted.

To maintain itself in power was naturally the first concern of the little group that found itself on top. But beyond that was the huge task of rebuilding a backward and demoralized nation on totally untried lines. In this, of course, lay the real revolution; and for two decades the work proceeded, with many a stop and start and many a compromise, yet with (for better or worse) a surprising amount of actual achievement, especially when one considers the enormous areas and populations to be reached, the magnitude of the transformations undertaken, the hostility encountered both at home and abroad, and the brevity of the period during which the great experiment was carried through its successive stages. When global war burst upon the country in 1941, the task was by no means complete; nor is it complete today. In the view of those speaking with authority, the country was, and still is, in only a preliminary, or preparatory, stage—the stage of "state socialism," from which in time is to be evolved the pure "communism" constituting the ultimate goal. Whether such a goal will ever be arrived at, or, on the other hand, further development toward it will be checked or deflected, only time

can disclose.[1] But whatever the future may hold, the world will have much to learn, to its profit or its sorrow, from the spectacle unfolded.[2]

[1] Significant developments apparently took place in 1952. At this time Stalin issued a statement in which he noted certain modifications which seemed necessary in earlier pronouncements of Lenin and himself. Excerpts from this statement may be found in the *New York Times,* Oct. 4, 1952. A new Statute for the Communist party was drafted in 1952. For its text, see the *New York Times,* Aug. 21, 1952. Both of these may also be found in J. H. Meisel and E. S. Kozera, *Materials for the Study of the Soviet System* (rev. ed., Ann Arbor, Mich., 1953), xiv-xix, xliii-lxi.

[2] The fortunes of Russian national government throughout the war period are traced authoritatively in P. Gronsky and N. J. Astrov, *The War and the Russian Government* (New Haven, 1929), 1-127. The collapse of the provisional government of 1917 and the launching of the Bolshevik régime are outlined clearly in G. Vernadsky, *op. cit.,* Chaps. xxvii-xxviii, and M. T. Florinsky, *The End of the Russian Empire* (New Haven, 1931). Fuller accounts will be found in W. H. Chamberlin, *The Russian Revolution, 1917-1921,* 2 vols. (New York, 1935); J. Mavor, *The Russian Revolution* (New York, 1928); E. H. Carr, *The Bolshevik Revolution, 1917-1921* (New York, 1951) and *Studies in Revolution* (New York, 1950); and G. Vernadsky, *The Russian Revolution, 1917-1931* (New York, 1932). Important books by participants include A. Kerensky, *The Catastrophe* (New York, 1927); L. Trotsky, *History of the Russian Revolution,* 3 vols. (London, 1932); and V. I. Lenin, *Collected Works,* XX, "The Revolution of 1917" (speeches and writings of that year), also in two vol. ed., *The Revolution of 1917* (New York, 1932). Documents relating to the revolution of 1917 and various more recent developments will be conveniently found in J. H. Meisel and E. S. Kozera, *Materials for the Study of the Soviet System* (Ann Arbor, Mich., 1950).

CHAPTER XXXVII

THE COMMUNIST PARTY

A One-Party Régime. As used in the United States and other Western democracies, the term "political party" denotes some element or segment of the people (especially the voters) drawn together in support of some more or less definite program of public character. It carries the implication, too, of a number of organized elements, existing side by side and competing for offices, parliamentary seats, and other means of power. With political democracy widely stifled or openly repudiated during the period since World War I, the world has seen many so-called one-party or monolithic régimes, based on authoritarian refusal to permit any political party to exist except only the one supporting the ruling dictatorship. In two important countries—Germany and Italy—such régimes have now disappeared as a result of defeat in war, followed by collapse of the Nazi and Fascist systems. The one major country in which the one-party plan is still rigidly maintained is the U.S.S.R.[1] There, from the Bolsheviks' original capture of power in 1917, only the party once known as the Bolsheviki, but now called the Communist party, has had any legal recognition, or for that matter any actual existence. There might (or still may), it has been remarked, be other parties, but "on the sole condition that one is in power and the others in jail.[2]

[1] In Rumania, Bulgaria, and other smaller countries which have become Russian satellites, a pretense is made of permitting other parties.

[2] A. R. Williams, *The Soviets* (New York, 1937), 56. The Soviet Union was actually the first of the recent crop of one-party states. The earlier constitutions were barren of any express provisions on the subject, but the constitution of 1936 fills the gap by specifying in Art. 126: "The most active and politically conscious citizens in the ranks of the working class and other strata of the toilers unite in the Communist Party of the U.S.S.R., which is the vanguard of the toilers in their

The Relation of Party and Government. Where the one-party system prevails, one may be sure that the government not only has been created and maintained as a going concern by the controlling political group, but is closely interlocked with the party structure in personnel and even in function. In the case of the Soviet Union, to be sure, government and party are, on paper, separate and simply complementary. From Moscow down through the constituent republics, the regions and districts, and out into the remotest villages, the two run parallel, each with its own headquarters, congresses, councils, officers, treasuries, newspapers, and what not; and officially it is the government, not the party, that makes laws, issues decrees, conducts foreign relations, carries on administration, controls the army and navy, and gives orders to the police. Actually, however, it is the party that rules. Higher officials in the government are picked by party bureaus, and leaders such as Lenin, Stalin, and Malenkov have dominated, not so much because of formal government offices (such as chairman of the Council of Ministers) as from the vantage point of the party positions that they have occupied. Whether it be a five-year plan, a veto of a Security Council proposal, a policy affecting labor or the press, the party in effect decides, the government receives the decision and carries it out. "The party openly admits," Stalin once said, "that it guides and gives general direction to the government." In point of fact, the party *is* the government in all except form, and the Communist dictatorship is the dictatorship of the Communist *party*—a party which has on its rolls approximately 7,000,000 members and candidates [1] out of a total national population exceeding 200,000,000, and which, notwithstanding formal arrangements tending to give a contrary impression, is organized and run on lines affording little scope for democracy. Any study of government in the U.S.S.R. today must, therefore, start with an inquiry into what the Communist party is and how it works.

Communist Doctrine. Like most organizations of the kind, the party is both a creed and a mechanism. It is a creed in the sense that it cherishes an elaborate body of economic and political doctrine to which all of its members must unswervingly adhere. It is a mechanism in the sense that it is geared in all of its parts to highly

struggle to strengthen the socialist system."

[1] Exact membership statistics are not readily available. However, at the 19th Congress of the Communist party in 1952, Malenkov reported that there were more than 6,000,000 full members and some 6,882,000 members and candidates.

centralized control by a single compact group driving steadily toward an ultimate goal. The party's principles are derived largely from the teachings of Marx and Lenin. Like Marx, the party sharply indicts the whole structure and theory of modern capitalistic society. As long as there are men who live mainly by labor and others who live mainly by investment and directing the labor of others, hostility between the two groups is inevitable and class war must remain the mode or means of all social evolution. In all of its typical contemporary forms, the state is an organization for upholding the institution of private property, an instrumentality for perpetuating the domination of the owners of wealth over the propertyless, an agency for preserving the economic and social status quo. Democracy, as operating in countries like Great Britain and France, is not popular rule, but bourgeois rule. Social justice therefore requires that the type of state, and the instrumentalities of government, known to the capitalistic world be overthrown and dictatorship of the proletariat substituted; and while Marx had the idea that this could come about only after capitalism had wrought its own destruction in a highly industrialized society, Lenin and his followers boldly planned—in an agricultural country which according to the Marxian hypothesis was least prepared of all for a socialist revolution—to take a short cut and proceed to the revolution forthwith. And the Communist party became the activating agency in the program.[1]

The "Party Line." On the road toward realization of the broad objective indicated, the party needs at every stage a formulation of policies and methods; and thus arises what the Communists refer to as the "general line" of the party, or, more popularly, the "party line." At any given time, the party line is, of course, binding upon all party members; and party "directives," *i.e.*, orders, on whatsoever subjects, must proceed from it. Over a period of years, however, the "line" possesses flexibility; in the light of altered circumstances, the

[1] On the general subject, see V. I. Lenin, *The State and Revolution* (Detroit, 1917); J. Stalin, *Leninism*, trans. by E. and C. Paul (New York, 1928); H. J. Laski, *Communism* (New York, 1927); R. W. Postgate, *The Bolshevik Theory* (New York, 1920); E. Colton, *The X Y Z of Communism* (New York, 1931); T. B. Brameld, *A Philosophic Approach to Communism* (Chicago, 1933); and H. Kelsen, *The Political Theory of Bolshevism; A Critical Analysis* (Berkeley and Los Angeles, 1948). The relations of Russian communism to the thought of Marx are dealt with in M. Hillquit, *From Marx to Lenin* (New York, 1921), and J. N. Hazard, "Russia and Marxism," in F. Morstein Marx, *op. cit.*, Chap. xx. In a lengthy article in *Bolshevik*, Stalin in 1952 pointed out modifications in the doctrines of Marxism which must be made. For extensive excerpts, see the *New York Times*, Oct. 4, 1952.

competent authorities may give it new twists and slants. The earliest formal expression of it is found in the party program adopted at the eighth party congress in March, 1919—a comprehensive document presenting the official Communist interpretation of the recent revolution and setting forth the policies of the new régime with respect to national groups, military affairs, justice, education, religion, agriculture, money and banking, labor, housing, public health, and other matters.[1] In the intervening years, no change whatsoever has been made in this ample statement of party policy except only one involving the official party name.[2] But successive party congresses have amplified it and given it more specific application to developing situations, and even between congresses the party Central Committee has performed a similar function.

PARTY MEMBERSHIP

Limited Size. Like the Italian Fascist and German National Socialist parties, the Communist party in the U.S.S.R. is a compact and integrated body, set off sharply from the general mass of the citizenry and purposely kept small enough to enable exacting standards to be maintained and rigid discipline enforced. When power was captured in 1917, the number of members (of the then Bolshevik wing of the Social Democratic party) did not exceed 200,000. Rising to 1,500,000 in the following decade, it was then permitted to expand still further, until for a period before World War II it approximated 3,000,000. Finally, during that war it was felt that it would be advantageous to bring in large numbers of key persons serving in the military forces and in the industrial plants; and by the end, between six and seven million persons, including full members and candidates in the probationary stage, could claim membership. Large numbers of people not members of the party consider themselves Communists and may be reckoned as supporters of the régime; by lowering standards, the party could easily double or triple its membership. The general policy, however, has been to keep the requirements for admission so high that relatively few people will undertake to meet them; during some intervals, indeed, the doors have been closed completely.

[1] For this document, in English translation, see W. E. Rappard *et al.*, *Source Book*, Pt. v, 7-33.

[2] The name "Russian Communist party," adopted officially in February, 1918, was in 1923 changed to "All-Union Communist party."

Conditions of Admission. Possessed of sufficient zeal and fortitude to desire to become a member and if at least 18 years of age, one secures recommendations from three members of the party of at least three years' standing who have known the applicant for not less than one year. If under 20 years of age he must have been a member of the Komsomol, the Communist youth organization, and in that case the recommendation of the Komsomol *Raion* Committee is considered a substitute for the support of one of the three party members. The applicant then indicates his candidacy to the local party branch, which institutes a more or less searching inquiry into his qualifications. If accepted, he becomes—and remains for at least one and not more than two years—a "candidate," or probationer, finally passing from this status to full membership only if, upon rigorous examination, he is found to be actuated by no selfish or ulterior motives, grounded in and wedded to the Communist faith, devoid of any traces of "bourgeois mentality," informed on his civic obligations and duties, and of good moral standing. Not everyone, however, is eligible to apply for membership. Private merchants, speculators, priests, and *kulaks* [1] will under no circumstances be received. Those who have resigned from other parties may qualify only on recommendation of five party members—three having a membership of a minimum of ten years and two who have been party members since before the revolution. And even if applicants meet such onerous terms, they are not finally admitted until the Central Committee of the party has given approval. At an earlier period preference was given to workers in factories and mines, while collective farmers, small craftsmen, and elementary school teachers were examined more carefully, and civil servants, members of a profession, intellectuals, and "white collar" folk generally were held off for five years. However, the 1952 rules provide a uniform requirement.

Party "Purification." If it is difficult to get into the party, it is easy enough to get out of it. Any member may leave it of his own free will at any time; and even if he does not choose to resign, he need only grow lax about meeting his obligations or incur suspicion of disloyalty to have his red card taken away from him. From time to time, the world has heard of large-scale purges of the party—a "purification" carried out in 1934-36 was so drastic that every party member who survived was obliged to have his card specially

[1] Farmers resisting collectivization of their land

renewed.[1] But the party rolls are under the continuous scrutiny of a Commission of Party Control,[2] and many of the names on them are removed annually. Grounds for expulsion are almost incredibly numerous, ranging from offenses directly against the party, such as publicly criticizing the party or its leaders, failing to pay party dues, promoting factional strife, or defying party authority,[3] to various forms of conduct tending to bring discredit upon the régime—abuse of office or authority, peculation, association with "alien elements" (*e.g.*, traders or priests), or drunkenness. Lenin's oft-repeated admonition, "Reduce the membership and you strengthen the party," while sounding strange to American ears, is still accepted literally as a principle of action.

Duties and Obligations of Members. Defining itself in its published rules as "a unified, militant organization held together by conscious iron proletarian discipline," the party naturally subjects its members to a rigorous system of controls. A member, to be sure, takes no mystic vows, wears no shirt of specified color or other uniform, displays no badge, employs no special salute, and uses no secret sign or password. But he is fully registered, both locally and at Moscow; and his membership card carries with it a list of obligations calculated to frighten off all save those of genuine conviction and zeal. Here are some of the things that he must do: (1) pay an initiation fee and afterwards support the party by monthly dues running up to three per cent of his income (if it exceeds 500 rubles), and in addition dip into his usually meager resources for contributions to all sorts of charitable, memorial, and patriotic enterprises; (2) accept unhesitatingly the "party line" of policy and action,

[1] This most relentless of all cleansings reduced the party membership for a time from the earlier 3,000,000 or more to 2,000,000.

[2] See pp. 827-828 below.

[3] Even Trotsky and other leading actors in the revolutionary drama have found to their sorrow that there is no place in the party for factions having their own programs and objectives. Trotsky's supreme offense lay in his insistence upon lines of policy (*e.g.*, promoting world revolution rather than merely consolidating the régime in the Soviet Union) contrary to those at the time favored by the directing authority of the party. In extremer cases like this, ejection from the party is likely to be accompanied by ejection from the world also! But Trotsky contrived to escape and for several years prior to his death lived in exile. Other leaders, as also humbler members, having been expelled from the party, have sometimes given sufficient evidence of repentance to win restoration to the rolls. For Trotsky's interpretation of the party's policy, and his reasons for opposing it, see his book, *The Revolution Betrayed*, trans. by M. Eastman (Garden City, 1937). Cf. also his *My Life* (New York, 1930).

irrespective of whether developed in directions of which he personally approves; (3) observe strict party discipline, and carry out all party orders and instructions, recognizing that his time and talents are no longer his to do with as he will, but absolutely at the command of the party, regardless of dangers and hardships that may be entailed; (4) "take [so say the rules] an active part in the political life of the party and of the country"—in other words, not merely go along passively as a believer or well-wisher, but add to his labor in earning a living unremitting positive services to the party, *e.g.*, by helping arrange and conduct meetings, participating in drives and demonstrations, instructing recruits, sitting with committees, and what not; (5) "work untiringly to raise his ideological equipment, to master the principles of Marxism-Leninism and the important political and organizational decisions of the party, and to explain these to the non-party masses"—in short, to consider that the instruction which he received as a probationer is only the beginning of his political education, to be continued endlessly in special classes, schools, "circles," reading courses, and even, on the higher levels, seminars; (6) "set an example in the observance of labor and state discipline, master the technique of his work, and continually raise his production and work qualifications"; and (7) abstain from trade and other lucrative occupations, evincing no concern about profits, and turning whatever he can of his earnings to pension funds and similar public ends. In a word, a member must subject himself to a régime of discipline, self-denial, and service reminiscent of nothing quite so much as that enforced by a mediaeval religious order. Of course there are compensations. Party membership carries with it a certain distinction; one can always be sure of a job, with preferential treatment in such matters as promotion; various other forms of priority—even in such respects as admission to rest-homes and hospitals—can be claimed; in short, the party looks after its own. But duties and services come first; and if there is any dereliction or wavering, the member will not have long to wait before the disciplinary authorities take him in hand.

Self-Criticism. As the sole political party permitted in the U.S.S.R., the Communist party seeks to avoid some of the excesses of the former National Socialist and Fascist parties in Germany and Italy, respectively, by providing for what is designated "self-criti-

cism." [1] The party does not desire to be criticized from without, and those who dare to incur its wrath are likely to find themselves in prison or at least social pariahs. But it does profess to desire to eliminate smugness and self-complacency from within, because it regards these as enervating. The result is an elaborate system involving both amateur and professional "sleuthing." Virtually every member holding any important position in a state factory, on a collective farm, or in a government department is spied upon by one or more—usually several—persons assigned to such activity by the local party leader or by the political police or by both. Such spies may be volunteers, or they may be ordered by the police to serve on penalty of loss of privileges enjoyed by themselves or their families. Ordinarily they are given nominal employment in the place where the persons to be watched are to be found, unless they are women, in which case social relations may be made the basis. Often, too, the spies are in turn spied on by other agents. As a result of reports turned in, members of the party may at any time find themselves summoned to midnight sessions with the secret police and confronted with accusations at meetings of their local party group. Charges may be clear-cut, or again they may be somewhat equivocal. Party leaders and associates add their comments, ask questions, and serve as a jury. The member being "self-criticized" seeks to defend himself or admits his guilt. In many cases, he is censured and told to mend his ways; in others, he may be subjected to penalties of one kind or another; finally, in a good many instances he is purged or expelled.

AFFILIATED ORGANIZATIONS

Young Communists. The founders of the Communist régime were well aware that the ultimate success of their ambitious experiment would not unlikely depend upon the extent to which they succeeded in indoctrinating with their views a younger generation which had known nothing of the struggles against czardom. Upon boys and girls of even tender ages must be imposed a "proletarian morality," precisely as in Western countries the ruling elements are alleged to impose a "bourgeois morality." Like the Italian Fascists, and later the German Nazis, the founders therefore made special

[1] For a discussion of this device from the standpoint of an American scholar, see S. N. Harper, *The Government of the Soviet Union* (New York, 1938), 81-83, 170-171. For a vivid and perhaps exaggerated account by a former party member who relates his own experiences, see V. Kravchenko, *I Chose Freedom* (New York, 1946).

provision for the political instruction of youth. The basic youth organization is an All-Union Communist League of Youth (abbreviated into *Komsomol*), organized on lines roughly similar to those of the party, embracing some 450,000 "cells," or branches, in factories, secondary schools, universities, etc., and on collective farms, and having a postwar membership of approximately 10,000,000. Membership is open to young people of both sexes, between the ages of 15 and 26, and drawn from non-Communist as well as from Communist families; although in the case of youth of non-proletarian origin, an applicant must present recommendations from two party or *Komsomol* members of two years' standing and undergo a year's probation. Discipline is somewhat less rigorous than in the party. Nevertheless, there are plenty of rules that must be obeyed, under penalty of expulsion. As would be surmised, the prime object of the organization is the training of youth in Communist doctrine and practice; and although it is not contemplated or desired that all *Komsomol* "graduates" shall pass into the party ranks, the day is anticipated when the party will be composed exclusively, or nearly so, of people who have come up through the ancillary organization.

Young Communist Activities. Although charged above all else to "study, study, study," *Komsomol* members have served the Communist cause in many practical ways—bearing the brunt of great construction enterprises, coaching illiterate voters in the use of the ballot, training aviators, helping round up and discipline homeless and incorrigible children running wild in the streets of the great cities, and providing leadership for organizations of younger elements generally in the population. The *Komsomol* also carries on an elaborate sports program for its members and devotes a great deal of energy to their general education, maintaining numerous scholarships in universities and technical schools for the most promising. Its vocational training projects have received considerable publicity.[1]

Pioneers and Little Octobrists. The *Komsomol* is only the inner circle of a scheme of youth organization planned eventually to embrace the whole of the many millions of children and youth

[1] See S. N. Harper, *Civic Training in Soviet Russia* (Chicago, 1929), and *Making Bolsheviks* (Chicago, 1931); M. Fainsod, "The Komsomols—A Study of Youth Under Dictatorship," *Amer. Polit. Sci. Rev.*, Mar., 1951; and K. Mehnert, *Youth in Soviet Russia* (London, 1933). For the text of a program for the *Komsomol* adopted in 1936, see J. H. Meisel and E. S. Kozera, *Materials for the Study of the Soviet System*, 223-228.

in the Soviet Union. Next beyond it is the circle represented by the Pioneers, embracing over 13,000,000 children between the ages of 10 and 16; and beyond this, the organization of Little Octobrists, formed of children of from 8 to 11. Admission to these junior organizations is without reference to origin or class; and emphasis is placed, largely under *Komsomol* tutelage, on indoctrination with Communist principles, formation of habits of "socially useful labor," and elementary military training. As of October 29, 1948, the thirtieth anniversary of the founding of the *Komsomol,* the total membership of all youth organizations exceeded 33,000,000.[1]

Comintern and Cominform. In 1919, a world organization of Communist parties was organized under the name of the Third International, frequently referred to as the *Comintern.*[2] While in theory the policies of this world-wide group were decided by a congress drawing representatives from more than 60 countries, there was a good deal of evidence to indicate that the executive committee and central headquarters in Moscow actually dominated. Leaders of the Communist party of the U.S.S.R., including Stalin himself, occupied seats on the executive committee, and indeed they bulked so large as a group that their very number suggested Russian domination. The main object of the *Comintern* was proclaimed to be that of spreading Communism throughout the world, and in this connection it carried on activities widely resented; indeed, its battle cry of "world revolution" and its avowed objective of overthrowing the capitalistic system were accompanied by underground operations leading to serious difficulties in various countries. Despite sharp criticism by many foreign governments, the leaders of the Soviet Union nevertheless gave the *Comintern* substantial support until World War II, when (in 1943), as a gesture to the Western Allies, Stalin announced its liquidation. In some quarters, this move was interpreted as a relinquishment on the part of the U.S.S.R. of all intention to push the spread of Communism outside of its own borders. However, it proved only temporary; for shortly after the defeat of Germany and Japan, the formation of a *Cominform* was

[1] See *New York Times,* Oct. 30, 1948.

[2] On the Third International, see L. L. Lorwin, "Communist Parties," in *Encyc. of the Social Sciences,* IV, 87-95, and W. H. Chamberlin, *Soviet Russia,* Chap. xi. One may consult also W. R. Batsell, *Soviet Rule in Russia* (New York, 1929), and "The Communist Party and Its Relations to the Third International and to the Russian Soviets," *Internat. Conciliation,* Nos. 158-159 (Jan., Feb., 1921). The classic work on the *Comintern* is F. Borkenau, *World Communism* (New York, 1939).

announced. While less elaborate in formal scope than the *Comintern* —the *Cominform* is ostensibly a clearing house or central bureau of Communist organizations—the new agency seems to have substantially the same purposes as its predecessor. There are, however, certain differences. The *Comintern* had its headquarters in Moscow, and consequently was regarded as more or less of an offshoot of the Communist party of the U.S.S.R. In order to create the illusion, at least, of some truly international character, the central offices of the *Cominform* were located in Jugoslavia to begin with, and then after the Tito rebellion were moved to Rumania. Such camouflage, however, did not prove very effective after it came to light that the moving figure in the *Cominform* was none other than A. A. Zhdanov, one of the most ambitious and energetic of the party's leaders, secretary of the party's important Leningrad district, and, most significant of all, a member of the Politbureau.[1] The fact that Zhdanov had been very close to Stalin and that he had been used to handle difficult tasks for the party added to the strong impression that the *Cominform* was to play a far more important rôle than that of mere clearing-house or information center. Allegations made by high officials of the French government, involving the discovery of correspondence between Zhdanov and the Communist party in France in which orders were directed at sabotaging the recovery program, strengthened the earlier view of the organization as being actually an instrument for the promotion of world revolution.[2]

PARTY ORGANIZATION

Hierarchical Aspect. The organization of the Communist party is probably more elaborate than that of any other political group in the world at the present time, although in this respect the former National Socialist party of Germany may have surpassed it. Organization, too, follows the lines of the purest type of hierarchy. Among party rules are two which stress an almost military aspect: (1) the acceptance of strict party discipline, and (2) unquestioning acqui-

[1] Zhdanov died in 1948, under circumstances regarded by some as mysterious, perhaps even to the point of not being "natural." The suspicion was heightened by what many regarded as the "botchy job" which Zhdanov did in permitting Tito to go his own way.

[2] A French minister made such charges in 1948 in connection with the paralyzing coal strike sponsored by the Communist-dominated French Confederation of Labor.

escence of lower echelons, and indeed of all party members, in decisions reached at higher levels. In an address delivered prior to World War II, Stalin gave some description of the general nature of the party set-up. At the top, he noted three or four thousand "generals" who were responsible for the work of the central organization. Below these were from thirty to forty thousand "field officers" who carried on party programs at the level intermediate between the central organization and the local party units. And at the bottom, from one hundred thousand to one hundred and fifty thousand "non-commissioned sergeants and corporals" commanded the members in the ranks.[1] There is the same "command" type of arrangement as is to be observed in military formations, with responsibility running from the bottom upwards and orders originating from the top and proceeding downwards through the intermediate levels to the basic units. Some observers have been led astray by another rule providing for the election of party officials and organs, and have viewed the set-up as intrinsically democratic, if not the world's finest example of democratic principles in operation. But while lip-service is given to such a rule and some leeway may actually be permitted to local units in choosing their officers, a reasonably objective analysis reveals that the emphasis is placed on the party rules prescribing strict discipline and full responsibility of lower echelons to higher ones. Important policies are established at the center, and must be implemented by people at the regional and local levels irrespective of personal preference.

The All-Union Congress. Ultimate authority in the party is supposedly lodged in a large body known as the All-Union Congress, which in a sense antedates the revolution of 1917; the first party congress assembled at about the turn of the century as a Social Democratic party conference, and a number of other meetings were held before the Communist party as we now know it emerged. According to the rules, the All-Union Congress convenes at least every four years.[2] During the period of World War II and down to October, 1952, however, no meetings whatever were held;[3] and the fact that the affairs of the party could be handled during so critical a time without the Congress ever once being called into

[1] The numbers given are probably subject to revision as of 1952 because of expansion.

[2] Prior to 1952, meetings were supposed to be every three years.

[3] In all, 18 party congresses were assembled during the period prior to 1940.

session indicates the body's essentially formal nature and the superiority of other party agencies as the actual formulators of policy. All-Union Congresses are made up of approximately 1,200 delegates and "candidates" (alternates) representing the party organizations of the constituent republics, the autonomous republics, and the other regional areas;[1] and meetings are held in Moscow, with manifestations of much popular interest and color. Top leaders are ordinarily present in full force, adding luster to the proceedings by making speeches and lending themselves to more or less informal associations with the less important delegates. Reports are made on various phases of the work of the party; programs of future action are presented; and formal approval is given by the assembled delegates to what has been done or is anticipated. All this can be completed in from one to two weeks, and consequently the Congresses are not long-drawn-out affairs. Sessions, furthermore, are not open to the public.

The Central Committee. In order to make some provision for the long periods between meetings of the All-Union Congress, a Central Committee has been set up; and this is a fairly sizable body of 125 members and 111 candidates or alternates, all chosen, at least in form, by secret ballot of the Congress itself.[2] The committee "holds not less than one plenary session every six months" and carries out the decisions of the All-Union Congress, frequently taking action also on its own initiative, although major polices are supposed to be laid down by the parent body. With the Congress sometimes not meeting for many years at a stretch, it is obvious that the Central Committee, on the whole, does not receive any large amount of guidance from that source; in any event, Committee decisions rank with those of the Congress itself and are not subject to question after a final pronouncement has been made. Although meetings of the Committee are executive in nature, reports are given out as to at least some matters discussed, with formal announcement also made of important decisions reached.

The Central Committee is rather large for really efficient action, and consequently it delegates its authority in large measure to its officers and subcommittees. It has a president, a secretary-general,

[1] The 1934 Congress was made up of 2,159 delegates; the 1939 Congress contained 1,574; the 1952, some 1,200. One voting delegate is now permitted for each 5,000 members of the party and an alternate for every 5,000 members.

[2] There were 71 members and 68 alternates prior to 1952.

and several assistant secretaries. Prior to 1952 the Central Committee acted largely through a *Politbureau* and to a lesser degree an *Orgbureau*, but these were displaced in 1952 by a Presidium.

The Party Conference. Before passing on to a consideration of the *Politbureau, Orgbureau*, and central headquarters, notice should be taken of the Party Conference, which for some years was to some extent a substitute for the All-Union Congress. Starting in 1919, this Conference was held at frequent intervals for several years, but afterwards less often until in 1934 it was officially abandoned. In 1939, however, the Congress reëstablished it, specifying that thereafter it meet at least once a year. It was not provided for in the 1952 Statute for the Communist party.[1] Varying in size from 118 to 911 (in 1941, a total of 595), and made up of the party leaders from the regional organizations, the Conference served the purpose of keeping the central headquarters familiar with what was going on in the field and of making it possible for regional leaders to make their ideas known to the top-level people in Moscow. Conferences gave their attention primarily to the domestic economy and to problems involving the operations of the party.

The *Politbureau*—1. Composition and Organization. The *Politbureau*, or Political Bureau, was a reasonably small body made up of the top leaders.[2] Inasmuch as the exact number of dominant personalities in the party varied somewhat from time to time, as some passed from the scene as a result of death or loss of status and others forced themselves to the front, the size of this inner council was not entirely constant. At the same time, it should not be assumed that there was any rapid or sensational expansion or contraction, for additions or other changes were not lightly made. Starting out as a permanent agency of the party as a result of action taken by the Eighth Party Congress in 1919, the *Politbureau* had five members. By 1923, it consisted of seven full members and four candidates or alternates. Subsequently the number of full members ranged as high as 11 and the number of candidates from one to eight.[3] The *Politbureau* was headed by Stalin, whose exact status was a subject of uncertainty and even controversy among foreign observers. It was difficult to

[1] For the text of this Statute, see the *New York Times*, Aug. 21, 1952.

[2] See N. Leites, *The Operational Code of the Politbureau* (New York, 1951); also G. Schueller, *The Politbureau* (Stanford University, Calif., 1951).

[3] For a table showing the size at different periods, see J. Towster, *Political Power in the U.S.S.R., 1917-1947*, 160. In 1952, there were 11 members and one alternate.

separate Stalin's colorful and determined personality from the office of chairman. Some writers ascribed to him virtually dictatorial powers, while others went quite far in the other direction and referred to him as a "prisoner" of the *Politbureau*.[1] It is probable that the truth lay somewhere between, but just where is the question. Perhaps a good deal depended upon the exact time. The fact that the *Politbureau* met several times each week during much of the year, and that it frequently did not adjourn until the early hours of the morning, after long hours of debate, would seem to indicate that the members did not defer to the chairman without expressing themselves in some detail. That the chairman wielded greater influence than any other single member may certainly be taken for granted. The *Politbureau* maintained a number of committees or commissions to give special attention to various matters; indeed the proliferation of commissions reached a point some years ago where Stalin decided that the time had arrived to call a halt. The *Politbureau* also found it desirable to create a staff of experts to provide technical services; and in addition to a secretarial group, there were available various trained persons to gather data and to carry on research in connection with problems confronting the U.S.S.R.

2. Functions. As a matter of theory, the *Politbureau* was, of course, a subcommittee of the Central Committee, which in turn is subordinate to the Party Congress. In reality, it is no exaggeration to say that the *Politbureau* was the keystone of the entire party structure, and indeed of the U.S.S.R. Exactly what decisions were made by the *Politbureau* and what ones stemmed from some other source, it was not always easy to ascertain, but there can be little doubt that the policies which determined the general course of the party and of the Soviet Union originated with this comparatively small body.

The *Orgbureau*. A second, but distinctly less important, subcommittee set up by the Central Committee, and closely related to the secretariat and central party headquarters, was known as the *Orgbureau*, or Organization Bureau—an agency authorized along with the *Politbureau* by resolution of the Eighth Congress of the party in 1919. Like that of the *Politbureau*, its membership varied from time to time, ranging from five to 13 members and from no candidates to seven. Like the *Politbureau*, too, it was made up of influential members of the party, in some cases the same men

[1] President Truman, among others, made such a reference in 1948.

who held seats in the more powerful body, although its general standing was considerably inferior. Its jurisdiction extended to most matters relating to the organization and operations of the party, and accordingly it had an important rôle to play in party affairs.

The Presidium. The dropping of the powerful *Politbureau* and the less influential *Orgbureau* and the substitution of a Presidium by the party Congress which met in October, 1952, gave rise to much surprise and speculation in countries outside the Iron Curtain. That such steps were scheduled was apparent from the draft text of the "New Statute for the Communist party" made public in August, 1952,[1] but the exact composition of the Presidium was not announced until the closing hours of the party Congress. Various explanations were advanced outside of the Soviet Union for such a sensational move—perhaps as convincing as any was the alleged desire to broaden the top leadership by bringing in representatives of a younger age group as well as regional levels of the party organization. Starting out with 25 full members and 11 alternates, the new Presidium, which was to take over the functions of the *Politbureau* and *Orgbureau* and serve as the center of power in the Communist party and the Soviet government (though in theory the instrument of the Central Committee), included all but one of the members of the old *Politbureau* and continued Stalin as chairman.[2] The rather large size of the Presidium and the fact that some of its members were not easily available for frequent meetings in Moscow led foreign observers to conclude that the actual power would probably be wielded by an inner circle; few felt that the change in organization would have great practical significance. Almost immediately after Stalin's death the size of the Presidium was cut back to ten members and four alternates, the personnel being almost identical with the old *Politbureau* except that Malenkov took the place of Stalin as chairman.

The Secretariat and Central Party Headquarters. The Statute of 1952 made certain alterations in the party secretariat, omitting the position of secretary-general and substituting a group of ten members, with Stalin heading the list. The central headquarters of the Communist party in Moscow which are under the party secretariat are so elaborate in organization and so completely staffed that a student of

[1] See the *New York Times*, Aug. 21, 1952.

[2] Only A. A. Andreyev was left out. A. N. Kosygin, however, was demoted from full membership to alternate status.

government from the United States or Great Britain finds nothing in his own country which is comparable. For three decades the party headquarters were managed by a single energetic official, Joseph Stalin, in his capacity as secretary-general.[1] Ten secretaries were provided under the reorganization in 1952; after Stalin's death the number was cut to five. Employing several thousand persons in Moscow alone, and occupying a large amount of office space, the central headquarters of the party are now organized in numerous sections and bureaus which supervise party activities and interests throughout the U.S.S.R.[2] and to some extent throughout the entire world. Paralleling the administrative structure of the government, the party maintains subdivisions which deal with industry, agriculture, finance, transportation, schools, political affairs, and other major activities; and these, of course, are intended to check on the corresponding government agencies and in large measure to determine their policies. Their heads frequently occupy commanding positions in the government departments. In addition to subdivisions giving their attention to governmental operations, the central headquarters maintain offices, or *otdels*, responsible for the operations of the party as such in all of its ramifications. One such subdivision handles the administration of cadres; another gives attention to instruction-indoctrination. One of the most active has charge of propaganda and agitation projects; and some idea of the elaborateness of the organization may be derived from noting that this *otdel* of propaganda and agitation, divided into various branches, has responsibility for the press and publishing houses, scientific inventions and discoveries, party propaganda and agitation, and the promotion of Communist programs through clubs, the radio, libraries, theatres, and related media.

The Auditing Committee and the Commission of Party Control. Under reorganization measures adopted at the seventeenth meeting of the party Congress, in 1934, the Congress elects not only the Central Committee, but also (1) an Auditing Committee which is charged with checking up on the finances of all the central party organs, and, more important, (2) a Commission of Party Control, which is sometimes described as the "collective keeper of the party conscience." In the last-mentioned agency, we en-

[1] Stalin became secretary-general in May, 1922.

[2] For additional discussion, see L. Nemzer, "The Kremlin's Professional Staff," *Amer. Polit. Sci. Rev.*, Feb., 1950.

counter the disciplinary arm of the party—the authority which keeps the party membership lists, inspects (through observers) the meetings of committees and other organs to see that the "party line" is not departed from, calls before it for questioning party members suspected or accused of disloyalty, serves as final court of appeal in cases of expulsion, and directs the carrying out of all general purgings and cleansings. Since 1934, too, the Commission of Party Control has been associated, in the supervision of all institutions and activities of the state, with a Commission of Soviet Control—later transformed into a Ministry of State Control; and this relationship, combined with the fact that the latter, although an organ of government, is nominated by the party Central Committee, illustrates how the government is subordinated to the party—even though this point is the only one at which, officially, government and party are connected in the Soviet Union.

Organization at the Regional and District Levels. Below the central organization described, there is an elaborate system of regional and district machinery. In each republic—in the Russian Republic, in each province (*oblast*)—the party maintains a set-up resembling that at the national level: there is a party council, usually quite sizable; this council delegates its authority in large measure to a central committee made up of party leaders; control commissions supervise the party membership, guarding against disloyalty and lukewarmness; a party secretariat and headquarters handle the day-to-day work and exercise general supervision over party activities. Party organizations at the regional level naturally vary somewhat in elaborateness because of the great difference in the size of the several republics; but, as indicated, they are based on the pattern set by the central organization.[1] In general, there are to be found in the regional headquarters the same basic subdivisions indicated as existing in the central headquarters. At the *raion*, or district, level, party structure is naturally far less elaborate than at the republic level, but nevertheless there is considerable similarity in fundamentals. The primary party organs send representatives to a district council, which, meeting infrequently, sets up an executive committee and selects a chairman and secretary to handle the work of the party within the district. In certain cases, the area of the district organization of the party does

[1] The organization at the republic level is prescribed by Arts. 40-45 of the 1952 party Statute.

not coincide with the administrative district, or *raion*, though that is the exception rather than the rule.

Primary Party Organs. The basic unit in the hierarchy of party organs is a group of at least three (though of course usually more) members in good standing, organized in a factory, mine, army regiment, store, office, university, village, or on a collective farm—sometimes, indeed, one in each department or branch of a large establishment—and charged with upholding the party's interests and propagating its ideas and policies within the range of its contacts. Known formerly as "cells," these local units, now officially termed "primary party organs," number some 300,000; and the larger ones have secretaries and committees. From this point upward, the committees and congresses are in all cases elective, and therefore in theory representative. The primary organs choose delegates who constitute the party councils of towns and rural districts; these, in turn, elect the party councils of regions; from these are sent representatives who form the party councils in each of the federated republics of the Union; and from these go the delegates who make up the occasionally convened All-Union Congress. The thread of responsibility and control is unbroken from top to bottom; each organ, elected by those immediately beneath it, has full power over its inferiors, annulling or modifying any of their actions deemed out of harmony with the "party line." [1]

VOTING AND ELECTIONS

The Suffrage. The 1936 constitution starts off by declaring the U.S.S.R. "a socialist state of workers and peasants," and elsewhere it specifies that the soviets shall be elected "by the working people in their respective territories." [2] From such provisions, the suffrage might readily be inferred to be restricted rigidly on occupational or functional lines. But such is not the case. In earlier days, to be sure, one could be a voter only if earning his livelihood "by productive

[1] General references on the All-Union Communist party include S. and B. Webb, *Soviet Communism; A New Civilization?*, 2 vols. (rev. ed., New York, 1937); H. Popov, *Outline History of the Communist Party of the Soviet Union*, 2 vols. (New York, 1934); A. R. Williams, *The Soviets*, cited above; W. Gurian, *Bolshevism: An Introduction to Soviet Communism* (Notre Dame, Ind., 1952); W. Gurian [ed.], *The Soviet Union, Background, Ideology, Reality* (Notre Dame, Ind., 1951); B. Moore, Jr., *Soviet Politics—The Dilemma of Power: A Study of the Rôle of Ideas in Social Change* (Cambridge, Mass., 1951); and J. Towster, *Political Power in the U.S.S.R., 1917-1947*, Chaps. vi-viii. H. Barbusse, *Stalin* (New York, 1935), is too laudatory, but nevertheless useful.

[2] Arts. 1 and 95.

work useful to society" or if engaged in domestic service which enabled other men or women to pursue such productive employment; and numerous categories of people were excluded altogether, not only from voting but from office-holding, *e.g.*, persons employing hired labor for profit, persons engaged in private business, merchants and their agents, monks and clergymen of all faiths, and members and employees of the old czarist police. Even at that, the number of qualified electors at the time of the 1931 elections was no less than 84,000,000 (in the U.S.S.R. as a whole); some 60,000,000 actually voted on that occasion.[1] On the theory (no doubt rather optimistic) that all elements once requiring exclusion have been liquidated and the entire population welded into a single, homogeneous, proletarian body politic, the 1936 constitution confers the suffrage unreservedly upon all citizens, male and female, at the age of 18, "irrespective of race and nationality, religion, educational qualifications, residence, social origin, property status, or past activity"—an arrangement, on its face, going well beyond that to be found in any other country in the world. Only persons incapacitated by insanity or disqualified by criminal records are excluded.

Electoral Methods. Passing from the suffrage to other aspects of electoral procedure, the constitution provides (1) that voting, instead of being open and oral as previously, shall be by secret ballot; (2) that every citizen shall have one vote, and only one; and (3) that elections shall be direct all along the line, instead of only at the lowest level as before. An old arrangement under which village, or rural, communities were discriminated against in favor of urban communities is gone, and with it a general scheme under which voters once chose their representatives in the primary soviets on the basis of occupational groups—peasants, soldiers, miners, iron-workers, and what not. In other words, vocational or functional representation has given way to a wholly orthodox scheme of representation of voters lumped together in geographical constituencies.[2]

1 See L. Teper, "Elections in Soviet Russia," *Amer. Polit. Sci. Rev.*, Oct., 1932.

2 This is the more significant considering the frankly class and functional basis of the earlier system. Communist spokesmen aver that the old arrangements served a useful purpose in the stage in which they were employed, but that the approach to classless solidarity that has now been achieved renders them no longer necessary. Weighting of the electoral system in favor of the urban as distinguished from the rural populations may have been abandoned, not out of consideration for principles of democracy, but only because the enormous growth of urban populations in the past 15 years rendered the former discrimination no longer necessary.

Voting Record. Soviet leaders profess great pride in their people's voting record and are fond of contrasting it with that in the United States and other Western democracies. In comparing Soviet elections held in 1947 with the presidential election of 1944 in the United States, the semi-official newspaper *Pravda,* which reflects the government view, gleefully pointed out that 99.7 per cent of all qualified voters in the U.S.S.R. actually cast their ballots in comparison with approximately 80 per cent voting in the United States. And furthermore *Pravda* took pride in the fact that 99.18 per cent of those qualified to vote supported the official slate of candidates, whereas only some 25,600,000 out of 60,000,000 qualified voters in the United States favored the party in power.[1] In the Soviet Union, the obligation of voting is made so urgent that few have the temerity to remain away from the polls. Voters may, of course, hand in blank ballots; but naturally that is not looked upon with favor by the authorities. In the last elections held before World War II, the instructions on the ballots stated that voters might disregard the names of candidates whom they did not favor; but, with the number of candidates invariably the same as the number of positions to be filled, no real leeway resulted. In 1951, 99.98 per cent of all registered voters cast more than 113,000,000 ballots, 99.82 per cent voting for the Communist slate.[2]

Nominations. Until 1936, the entire matter of nominations was handled exclusively by the Communist party. The various party units would prepare lists of those whom it was desired to elect, usually including a few persons who were not party members. For a time, such lists were circulated and the voters used them at the polls. But this detracted from popular interest, and the use of lists was subsequently prohibited. Nevertheless, the party candidates continued invariably to be elected; for any concerted opposition would have been put down with vigor. The system provided for in the constitution of 1936 and the Electoral Act of 1937 keeps nominations pretty definitely in the hands of the party, as would be suspected; but it also throws the process open to affiliated organizations controlled by the

[1] *Pravda,* Feb., 17, 1947, cited in the *New York Times* of the following day.

[2] For additional information on elections in the U.S.S.R., see *The Election System of the Union of Soviet Socialist Republics* (London, 1945), and J. Towster, *op. cit.,* 187-198; and for a quasi-official exposition, A. Y. Vyshinsky, *The Law of the Soviet State* (New York, 1948), Chap. x.

party.[1] Labor unions, *Komsomols,* army units, collective and state farms, coöperatives, cultural societies, and other legally registered organizations now have the privilege of putting candidates in nomination for the various soviets.[2]

Reporting Meetings. The selection of deputies to the lower soviets has been accompanied by an interesting custom taking the form of meetings attended by the voters and the candidates and held sometime before election day. Candidates are asked to report on what they have done previously, and are then instructed as to what they will be expected to do in the future, so far as matters not covered by the party policy laid down from above are concerned. Such instructions have been called "mandates," and frequently are quite specific. But of course they can have to do ordinarily only with routine matters, or at all events matters of a purely local and practical nature, such as new public improvements.

The Recall of Deputies. For a good while it has been possible for the voters to recall their deputies in local soviets, and the 1936 constitution extended the procedure to deputies elected to higher ones as well.[3] At first, considerable use was made of the device; but the party leaders have frowned upon employing it freely, and it is now invoked only when the proper party agency agrees. During the early period, there was also a tendency to pass the honors around so that large numbers of people might have a chance at office. But this, too, has been modified to a considerable extent, with the result that a type of professional politician has arisen who seeks and receives election repeatedly. Naturally, these politican-deputies are frequently leaders of the local party, serving to tie up the soviets and the party organization.

A System Less Democratic than It Appears. Reading simply the constitutional provisions, or even some parts of the description just given, one might fall into the error of crediting the new electoral system with being—as indeed is contended by people enamored of the régime—one of the most democratic in the world. The error would lie in failure to remember (1) the total absence of anything approaching Western multi-partyism and (2) the all-pervading and unfailingly restrictive controls exercised by the Communist party

[1] See Art. 141 of the constitution and Arts. 56-65 of the Electoral Act.
[2] Art. 141 of the constitution and Arts. 56-57 of the Electoral Act.
[3] See Art. 142 of the constitution.

through its officials, agents, and even ordinary members in every corner of the land. One may be sure that candidates for election to soviets, high and low, will rarely get far unless approved by the local party organization, and that they will not be so approved unless of the right social origin and mentality and unswervingly loyal to the régime; even if elected, they would not long be tolerated if disloyal. The forms of democracy are no doubt provided for more fully in the later electoral arrangements than in earlier ones; and for this due credit should be given. It is simply not in the cards, however, that under a rigid party dictatorship a vast non-party electorate should be allowed to exercise its political privileges without guidance and restraint. If there be democracy, it is strictly within the iron framework of the Communist monopoly of power.

CHAPTER XXXVIII



THE CONSTITUTIONAL SYSTEM

Basic Elements. There are those who maintain that it is absurd to refer to a constitutional system as existing in the U.S.S.R. It is pointed out that the Soviet Union has from its beginning been dominated by a small group of leaders, that it has been one of the best examples of a police state, and that it is usually difficult to predict developments with much assurance. Admittedly, the Soviet constitutional system differs from that familiar to the people of the United States, and indeed from those known to peoples of other Western democracies. Nevertheless, it seems justifiable to regard the U.S.S.R. as a nation with a constitutional system. To begin with, the Soviet Union has a formal written constitution which at least in a conventional way may be compared with the constitutions of the United States, France, and various other countries. Of course it would be a mistake to assume that this constitution indicates in any very complete manner the actual working of the Soviet government; but that is not unique in the case of the U.S.S.R. A student of the government of the United States would have a far from adequate understanding of the government as actually operating if he relied solely on the constitutional text of 1787 and its formal amendments. Like the United States, the Soviet Union has both a formal constitution and a broader constitutional system, with the latter usually more significant than the former. In order to comprehend what is going on in the Soviet Union, one must, in addition to a perusal of the constitution of 1936, give careful attention to other basic elements in the constitutional system—the Communist party, the writings of Lenin, Stalin, Marx, and Engels, the personal ambitions and desires of the leaders who

at any given time are in control, important laws which have been promulgated from time to time, and custom and usage.

The Soviet Constitutional System Contrasted with Others. A consideration of the elements listed as contributing to the Soviet constitutional system indicates that there is at least some similarity to the constitutional systems of the Western democracies. One notes the presence of formal constitutional documents, important laws, and customs and usages, which are common to all governments of a constitutional character. Political parties play an important rôle in the Western democracies, though ordinarily not so integrated and entwined with the government as to warrant enumeration as a separate element of the constitutional system. Political leaders are important in all countries, but again their ambitions and desires are not usually so controlling in the Western democracies as to justify special mention of them as basic elements in the constitutional system. Judicial decisions have not been mentioned as an element in the Soviet system, although important in the United States; but that is because the rôle of the courts is more emphasized in the United States than in most other countries. Custom and usage have been listed, although less significant than, for example, in Britain. If one desires to contrast the formal Soviet constitution with those of other countries, it may be pointed out that, at least in the 1936 document, there is greater wealth of detail, requiring that any reading of the text shall always be supplemented by recourse to other sources, since details so readily become obsolete. Quite possibly, less stress is placed on the formal constitution in the U.S.S.R. than in other countries. But with the emphasis on the present and the future rather than the past, such an attitude is not surprising. Another point deserving of mention is the legal status of the formal constitution. At least in theory, the formal constitutions of the Western democracies have legal force, although it must be recalled that the Fifteenth Amendment to the constitution of the United States, as well as the provision relating to the setting up of districts with equal population for the election of members of the House of Representatives, is not fully effective. The Russians do not even pretend that all provisions of their constitution are to be applied immediately. Indeed Stalin once went so far as to say in effect that the section pertaining to the liberties and privileges of the individual is something to be looked upon as a goal rather than as a set of principles for immediate application.

FORMAL CONSTITUTIONS

A Series of Soviet Constitutions. As pointed out in a previous chapter, the political disturbances of 1905-06 impelled the czarist government of Russia to issue manifestoes giving the country what was in effect a written constitution.[1] The Bolsheviki, and later Communists, have, in their turn, been constitution-makers also; three extensive fundamental laws of their devising—dating from 1918, 1924, and 1936—have marked significant stages in the evolution of the present Soviet régime.[2]

1. 1918: Constitution of the Russian Socialist Federated Soviet Republic. With the more moderate Mensheviki excluded from all share in directing the course of the revolution, the Bolshevik leaders, in the spring of 1918, turned their attention to the rather bourgeois business of framing a constitution—as yet, of course, only for what was conceived of as an essentially Russian republic. A commission set up by the Central Executive Committee of the party, with Bukharin and Stalin among its prominent members, worked out a draft; the Fifth All-Russian Congress of Soviets, meeting at Moscow,[3] gave its approval; and in July the document was promulgated as the fundamental law of the Russian Socialist Federated Soviet Republic.[4] Based on an extensive series of declarations, rules, and decrees issued by the revolutionary authorities between the *coup* of November, 1917, and the early summer of 1918—although also introducing some new elements—the instrument presented many challenging features. Principles of civil equality and personal freedom as enunciated in Western constitutions yielded to sharp class distinctions and proletarian dictatorship; no right or privilege survived that was capable of being used to the detriment of the revolution. Private ownership of land was declared abolished, the Orthodox Church disestablished, education secularized, and every phase of economic life placed under the iron hand of the state. And machinery was erected for a socialist, soviet republic, composed of "auton-

[1] See p. 799 above.

[2] For an authoritative—in effect official—history and interpretation of this series of constitutions, see A. Y. Vyshinsky, *The Law of the Soviet State* (New York, 1948), Chap. ii.

[3] The capital was moved thither from Petrograd in February, and the Fourth All-Russian Congress was held there in March.

[4] For the text, see H. L. McBain and L. Rogers, *New Constitutions of Europe*, 385-400; W. R. Batsell, *Soviet Rule in Russia* (New York, 1929), 80-95.

omous" units created along ethnographic and national lines, and associated together in a federal scheme, which, however, did not fail to assign to the authorities at Moscow full control over "all questions of national importance." [1]

2. 1924: First Constitution of the Union of Soviet Socialist Republics. Early Bolshevik policy toward non-Russian peoples who had lived under the rule of the czar was almost ostentatiously generous. As Bukharin put it in 1918: "The Russian workman, who has the power, says to workmen of other peoples living in Russia: 'Comrades, if you do not care to become members of our Soviet Republic, if you desire to form your own Soviet Republic, do so. We give you the full right to do so. We do not wish to hold you by force a single minute.' " [2] Such a policy was dictated partly by the preoccupation of the new régime with consolidating its position in the more immediate neighborhood of its base, partly by the thought that such encouragement of self-determination might prompt revolutionary disturbances in other countries; and while, as time went on, centralized control was considerably tightened up in the areas directly under Moscow's domination, *i.e.,* in the *Russian* Federation of Republics of the 1918 constitution, the federal principle was progressively extended to portions of the old empire not originally reached. In White Russia, the Ukraine, Transcaucasia, Khorezem, Bukhara, and Eastern Siberia sprang up new states, endowed with constitutions and independent governments, modelled in most instances on the new Russian pattern, and therefore soviet in structure and more or less Communist in principles; and as the menace of counter-revolution and foreign intervention diminished, the Moscow dictatorship began considering the desirability of strengthening its position and widening its power through formal political union with such states, the destinies of which were, through party connections, already to some extent under its guidance. A treaty of union linked up Russia proper, the Ukraine, White Russia, and Transcaucasia in 1922; and in July, 1923, a new constitution was drafted by the Central

[1] The territories to which this first constitution applied comprised about three-quarters of the old czarist dominion in Europe. Conspicuously lacking were, of course, the areas that had broken away, such as Finland, Poland, Estonia, Latvia, and Lithuania.

[2] From a pamphlet entitled "Program of Communists," cited in *Internat. Conciliation,* Apr., 1920, pp. 172-173.

Executive Committee of the new Union of Soviet Socialist Republics.[1]

General Character. Sidney and Beatrice Webb once likened the first constitution of the U.S.S.R. to the American Declaration of Independence because it was issued for the purpose of proclaiming to the world a new state.[2] It started out with the words: "To all governments and to all peoples of the earth," and went on to recite the developments that had taken place since the revolution of 1917: "They [the several republics] emerged from the victorious proletarian revolution, having overthrown the power of their landowners and capitalists. Together they passed through the dire experiences of intervention and blockade, and emerged triumphant . . . While rendering to one another constant fraternal assistance with all their strength and resources, they nevertheless for a long time remained separate states only united by treaties of alliance. The further development of their mutual relations and the requirements of the international position have now led them to combine into one united state."

Principal Provisions. The constitution of 1924 was not a lengthy document, covering as it did only three printed pages of ordinary size.[3] After devoting more than one-third of its space to statements such as that just quoted, and explaining the reasons for the formation of a Union of Soviet Socialist Republics, the instrument provided for the establishment of a central army and navy, a commissariat of foreign affairs, and an agency to promote foreign trade, as well as unified systems of transportation and communication. Certain fields, such as finance, the production of food, and the control of labor, were to be shared by the central government and the republics, while others, such as education and justice, were to be left entirely to the republics. Each republic, furthermore, maintained its own system of local government, and at least in theory remained free to withdraw from the union.

Framework of the Central Government: 1. The Union Congress of Soviets. Although the constitution did not go into detail as to the structure of the central government, it nevertheless pre-

[1] This constitution became effective Jan. 13, 1924.

[2] *Soviet Communism; A New Civilization?* (2 vols., New York, 1936), I, 9.

[3] For the text, see W. E. Rappard *et al., Source Book,* Pt. v, 88-106, and on the antecedents of the formation of the Union, A. L. P. Dennis, "Soviet Russia and Federated Russia," *Polit. Sci. Quar.,* Dec., 1923.

scribed a Union Congress of Soviets; and although the exact composition and authority of the body were left to be determined by law, it was subsequently decided that there should be one delegate for every 25,000 voters living in towns and one for every 125,000 inhabitants of rural areas. And the more generous provision for urban dwellers than for country people was no matter of accident, being accounted for manifestly by the greater strength of the Communist movement in the urban places at this period. Members of the capitalist class, in so far as any remained, were not permitted to participate in the choice of delegates; nor could clergymen, former employees of the czarist government, or criminals have any part. Though varying in membership, the Union Congress was always a large body; in 1931, for example, there were 2,403 delegates, including 833 alternates, while in 1935 the number of voting members ran to approximately 2,200 and the total size, including alternates, approached 3,000. With several different languages spoken, the Congress was ill-fitted for any deliberative purpose, and as a matter of fact it met for only about a week every two years, devoting itself to listening to long reports and giving *pro forma* approval to programs presented to it.

The Central Executive Committee. The Union Congress delegated its authority in large measure to a Central Executive Committee which it at least nominally elected. This body was constructed along bicameral lines, with a Union of Soviets of several hundred members—there were 437 in 1931 and 607 in 1935—and a Soviet of Nationalities of 150 members.[1] Ordinarily, the Committee met three or four times a year, spending its time debating policies and ratifying decisions of its presidium or of the Council of Commissars. Among commissions, or committees, which it maintained, one was charged with matters relating to the budget; another considered matters pertaining to elections; while a third gave its attention to technical education.

The Presidium. When the Central Executive Committee was not in session—as was the case most of the time—it was represented by a presidium, which also, it may be added, performed certain functions during the meetings of its parent body. Much smaller than the Committee and therefore less unwieldly, this group was made up of

[1] The Union of Soviets was based on population and the Soviet of Nationalities on constituent and autonomous republics.

nine members elected by the Union of Soviets, nine chosen by the Soviet of Nationalities, and nine designated by a joint session of the two chambers. Among other functions were those of setting up the rules and regulations of the Central Executive Committee and approving tax levies.

The Council of People's Commissars. Finally, there was the Council of People's Commissars, which corresponded to a cabinet in so far as the Soviet Union had any agency similar to such a feature of Great Britain and France. Frequently modified in its composition, the Council had in 1934 15 regular members, known as "commissars," and some half-dozen other participating members; and the regular members were chosen from the heads of the administrative departments, which in the Soviet Union at this time were ordinarily known as "commissariats." Among such members were the commissars of foreign affairs, defense, finance, agriculture, internal affairs, food, heavy industries, and river transport. The other members included the president of the State Planning Commission, the president of the Council of Labor and Defense, and the head of the Office of Administrative Affairs. The Council of People's Commissars had a somewhat elaborate organization and in 1934 created a Commission of Soviet Control, with 60 members, to supervise the carrying into effect of the decisions of the Central Executive Committee as well as of its own program.

3. 1936: A New Constitution of the U.S.S.R. By the end of 1934, the first "five-year plan" (1928-32) of economic and social reconstruction had been carried out with considerable success and a second "plan," of similar duration, auspiciously launched. Agriculture had been widely collectivized; socialized industry had been developed at a rapid pace; government had been stabilized; domestic peace and order had been achieved; friends had been made abroad and an important place won in the councils of the nations. And it was with a view to bringing the machinery and processes of government into closer accord with the new conditions—including introduction of universal and equal suffrage, with direct election of all soviets by secret ballot—that Stalin influenced the Central Executive Committee of the party to approve a program of constitutional changes which the Seventh All-Union Congress of Soviets endorsed in principle during its session of February, 1935. Aiming not so much at a new constitution that should be a blueprint for the Com-

munist state of the future as at one that should record and consolidate the practical results already achieved, a newly elected All-Union Central Executive Committee appointed a constitutional commission of 31 members, with Stalin as chairman. After more than a year of work, in strict secrecy, this agency, in June, 1936, laid the results of its labors before the presidium of the Central Executive Committee, which voted to call a special meeting of the All-Union Congress to consider the draft, and in the meantime to publish the document for discussion by the people. Sixty million copies, in all, are said to have been distributed, besides publication in 10,000 newspapers; and 527,000 meetings of soviets and other groups are reported to have taken part in the great debate.[1] Suggested amendments poured in from all directions—154,000 of them—some accompanied by, or even cast in the form of, lyrics! District congresses of soviets made their contributions; and eventually, in November, 1936, the Eighth All-Union Congress, bringing together 2,016 representatives of 63 nationalities,[2] met at the capital, voted 43 changes in the original draft, and gave the document the final stamp of approval.[3]

Arranged in 13 chapters and 146 articles, the new fundamental law is a lengthy and challenging document. Chapter I, "Social Organization," sets forth the foundations of the "socialist state of workers and peasants," attributing all powers to "the working people of town and country as represented by soviets of working people's deputies." Chapter II outlines the system of federalism as revised on the basis of constituent republics now increased in number to 11. Chapter III has to do with "supreme organs of state power" in the Union, Chapter IV with supreme organs in the individual republics, and Chapters V and VI with the organs of "state administration" in Union and constituent republics, respectively. Chapters VIII and IX treat of local government and the judiciary. Chapter X indicates impressively the "basic rights and duties of citizens" on lines—at all events so far as paper provisions go—reminding one of the famous corresponding section of the Weimar constitution in Germany.

[1] A. L. Strong, *The New Soviet Constitution* (New York, 1937), 47.

[2] Seventy-two per cent of the delegates were members of the Communist party, 28 per cent non-members. Forty-two per cent were industrial workers, 40 per cent peasants, 18 per cent intellectuals. Nearly one-fifth were women.

[3] For a somewhat rhapsodical account of the making and adoption of the constitution, see A. L. Strong. *op. cit.*, Chap. iii.

Chapter XI introduces the new scheme of popular nominations and elections. And Chapter XIII specifies the method of amendment.[1] Many different provisions of the instrument will be dealt with in succeeding chapters.

Amending Process. In all three of the Soviet constitutions, the amending process has been comparatively simple. And this has doubtless been closely related to the desire to maintain a highly elastic fundamental law which would serve as a tool in pushing through the elaborate plans of the Communist party rather than as a brake. The 1918 constitution authorized the Congress of the Soviets and the Central Executive Committee to amend and to supplement, although it gave the former exclusive control over the amendment of "fundamental principles." [2] The constitution of 1924 gave only passing attention to the amending process, simply stating that "the ratification and amendment of the fundamental principles of the present constitution shall be within the exclusive competence of the Congress of Soviets of the U.S.S.R." [3] Actually, the Central Executive Committee was permitted to make alterations in this constitution as a matter of practice, although if important changes were involved, formal approval by the Union Congress was expected. Under both of these first constitutions, amendment was by ordinary majority vote and no extraordinary procedures were specified. The constitution of 1936, however, introduced some change, in that, with the amending power restricted to the Supreme Council, a two-thirds vote in both chambers of that body was required.[4]

The Amendment Record. It would be difficult to name a country in which more use has been made of the amending power than in the U.S.S.R.; virtually every session of the legislative body has brought changes of one kind or another. Many amendments have been of routine character, involving only changes in number or

[1] The full text of the document, in English translation, will be found in W. E. Rappard *et al.*, *Source Book*, Pt. v, 108-129; *Internat. Conciliation*, No. 327 (Feb., 1937); and A. L. Strong, *op. cit.*, 121-160 (with summary of changes from earlier Soviet constitutions, 163-169). For good analyses, see V. M. Dean, "The New Constitution of the U. S. S. R.," *Foreign Policy Reports*, XIII, No. 3 (Apr. 15, 1937); A. Brecht, "The New Russian Constitution," *Social Research*, May, 1937; and J. Towster, *Political Power in the U.S.S.R., 1917-1947*, Chap. ii. Of much interest, naturally, is *The New Democracy—Stalin's Speech on the New Constitution* (London, 1937).

[2] See Arts. 49, 51.

[3] See Art. 2.

[4] See Art. 146.

terminology; but others have been of far-reaching significance. In point of fact, in the case of the first two constitutions particularly, and to some extent the 1936 constitution also, changes have been effected even more easily than the formal requirements would indicate; for the presidium of the Central Executive Committee, the Council of People's Commissars, and even the Council of Labor and Defense have brought about modifications in the structure and functions of agencies which actually altered the constitution.

OTHER ELEMENTS OF THE CONSTITUTIONAL SYSTEM

Laws. Many of the important laws in force in the U.S.S.R. are not well known outside of its borders, yet it can hardly be doubted that they occupy a position of considerable significance in the constitutional system. As is the case in other countries, there are various types of so-called "law" in the Soviet Union. The codes laboriously drafted during earlier periods and new ones in process of preparation since before World War II are among the most elaborate "laws" to be found anywhere;[1] and certainly they deserve careful attention in connection with the constitutional system. Other laws are less extensive, but their importance within a given sphere may be so great that they too would seem to deserve inclusion; an example would be the Soviet Citizenship Law of 1938.[2] Of course many laws deal with routine matters and may be intended to meet only temporary situations; obviously this type of law has slight constitutional significance. The point may be indicated, too, that the dividing line between ordinary law and formal constitutional provision is less clear than in the United States. The fact that the Council of Ministers-Council of Commissars and the presidium of the Central Executive Committee have been able to take action which has in effect nullified, or at least altered, specific provisions of the formal constitution indicates the lesser status of the latter as compared with the formal constitution in our own country.

Custom and Convention. The comparative newness of the U.S.S.R. and the proneness of Soviet leaders to refer to the customs

[1] For information on the older codes, see a statement by Commissar of Justice N. V. Krylenka in W. E. Rappard *et al.*, *Source Book*, Pt. v, 166-186. On the new codes, see J. Hazard, "Drafting New Soviet Codes of Law," *Amer. Slavic and East European Rev.*, Feb., 1948.

[2] See T. A. Taracouzio, "The Soviet Citizenship Law of 1938," *Amer. Jour. of Internat. Law*, Jan., 1939.

of the past with some asperity might seem to indicate that customs, usages, and conventions have little if any significance in the Soviet constitutional system. If a comparison were made between the U.S.S.R. and Britain, it doubtless would be found true that the rôle of custom and convention is less important in the former country. But this does not mean that the influence of the past has not been, and does not continue to be, far-reaching in the U.S.S.R. The Russian peasant is still the backbone of the Soviet Union, and he is stubbornly attached to many of the traditions and customs which have been handed down from generation to generation. By no means all of these have any political impact, but even the top leaders of the Soviet régime have at times found it necessary to recognize the immense force of tradition and convention. In the handling of governmental affairs at the lowest level, in the villages and smaller towns, the rôle of convention has been of particular importance; for, despite the despotic rule of the czars, local government in Russia has for some generations been characterized by a certain amount of vitality. It is probably accurate to say that the attitude of the Communist leaders is less hostile to custom and usage at the present time than was the case during the earlier periods. For one thing, they have had experience which has demonstrated that it is difficult, to say the least, to ignore such inheritances from the past. Then, too, they have discovered that many of these inheritances offer less of a threat to the Communist régime than was anticipated. All in all, various aspects of the political system now operating in the U.S.S.R. can hardly be understood unless one recognizes the place of custom and convention in the broader constitutional system.

Communist Writings. There is another element of the constitutional system of the U.S.S.R. which deserves a high rating, though its exact place may be somewhat vague. Various leaders of the Communist movement have put their ideas into writing, and some of their books have not only enjoyed a wide circulation but exerted profound influence. Long before the revolution of 1917, Friedrich Engels and Karl Marx produced the *Communist Manifesto* and *Das Kapital,* which together have sometimes been designated as the "bible" of Communism.[1] There can be little doubt that these and other works made a very deep impression on Lenin, Trotsky, and

[1] These works date from the middle part of the nineteenth century and have been translated into many languages and widely circulated throughout the world.

other leaders during the early days of the Soviet régime.[1] Lenin not only gave deep consideration to the ideas set forth by Marx and Engels, but he took the trouble to write down his own interpretation of and reactions to these ideas; and his works have been published and given a very wide circulation in the U.S.S.R. as well as in foreign countries.[2] In the former, they have been regarded with such respect, and even fanatical devotion, that they have taken a place along with the *Communist Manifesto* and *Das Capital* as not only elements of the constitutional system, but something transcending any mere formal constitution in significance. Many Russians would say that constitutions can easily be turned out by assemblages of men, but that there has been only one prophet, Lenin. It is difficult for most Americans to appreciate the attitude of more fervent Communists toward Lenin's writings, since they have nothing to serve as a counterpart. The fact that Lenin died during the first decade of the new régime does not seem to lessen his influence perceptibly. Indeed, a correspondent of the *New York Times,* covering the meeting of the Security Council of the United Nations held in Paris in 1948, reported that, after more than two decades since Lenin's demise, it almost seemed that he was physically present at the sessions, so overpowering was his influence on the Russian delegation.[3] Such an impression may be somewhat exaggerated, but it serves to give some idea of the position which Lenin's ideas continue to occupy in the U.S.S.R.

The writings of Lenin have in turn been interpreted and elaborated by more recent Communist leaders. Although a man of action rather than a politico-economic philosopher, Stalin has found time to comment, both in his speeches and by written word, on the Leninist ideas.[4] Trotsky also interpreted the teachings of the earlier Communist prophets; but his interpretation was not considered orthodox, and he and his disciples were expelled from the party. Many lesser lights have added their bit to the stock of Communist dogma, and

[1] See J. Somerville, *Soviet Philosophy* (New York, 1946).

[2] One of the more important of Lenin's writings was published in English under the title *The State and Revolution* (New York, 1927). For a collection of extracts of Lenin's writings, see *Readings in Leninism* (New York, 1936).

[3] *New York Times,* Oct. 15, 1948.

[4] See Joseph Stalin, *The Problems of Leninism* (2 vols., New York, 1928, 1932); *ibid., Marxism and the National and Colonial Questions* (New York, 1936); *ibid., From Socialism to Communism in the Soviet Union* (New York, 1939); and *ibid., Leninism* (London, 1942).

their writings, while less influential than those noted, may be considered minor contributions to the broader constitutional system.

The Will of the Leaders. The influence of political leaders is likely to be significant in any country, but it is not common to include it as an element in a constitutional system. Doubtless there are those who would object to a listing of the will of the little band of men who dominate the Communist régime as an integral part of the Soviet constitutional order. Certainly it is not a written element. However, as has been emphasized, one cannot possibly understand what goes on in the Soviet Union without taking account of the decisions of the Communist party, which are actually made by a small group of top leaders. Custom and usage are normally considered part of the constitutional system of the United States and Great Britain; and it seems fully as essential to bring the will of the Communist leaders into any listing of the elements of the constitutional fundamentals of the Soviet Union. Obviously it is not always easy to determine the exact nature of that will; moreover, it seems to fluctuate from time to time. But the important thing is that it is always present. Instead of having a Supreme Court to say what the constitution means, the U.S.S.R. has party leaders who in effect exercise that prerogative. If changes in the fundamental law are contemplated, it is likely to be the leaders who will decide the point and dictate the alterations to be made, although of course the formalities may be handled otherwise. For some thirty years after Lenin's death, it was the will of Stalin which was most in the limelight, and it is probably correct to ascribe to the will of that leader greater influence than was exerted by any other one.[1] Nevertheless, one should not ignore the ideas of various other ranking members of the party; for these men have their own reactions, and at times seem to disagree with their senior associate. Indeed, the lack of a decisive policy which at times appears to characterize the U.S.S.R. may be accounted for by division within the ranks of the leaders. On many matters, however, there certainly is more or less complete consensus of opinion, and in such instances the signifi-

[1] Many books and articles have been written about Stalin and his rôle in the U.S.S.R. A former member of the Comintern's executive committee, Boris Souvarine, has contributed a study entitled *Stalin* (New York, 1939), which is worth consulting. Another more recent book by Ruth Fischer, a former member of the Communist party, entitled *Stalin and German Communism* (Cambridge, 1948), is valuable as a source of more than general information.

cance of decisions reached is of course particularly great. Within their respective spheres, the wills of the leaders as individuals may also be of striking practical consequence; for, while unity of ideas may be and is stressed under the Soviet system, there is also room for individual action on the part of the few at the top, at least to a certain point. In *Cominform* activities, for example, one leader enjoys considerable leeway; another as chief of the railroads is for most purposes lord within that domain; still another exerts far-reaching influence as the man in charge of industrial production.

PRIMARY CHARACTERISTICS OF THE U.S.S.R.

In preceding pages, the various formal and informal aspects of the constitutional system of the U.S.S.R. have been listed and discussed. It remains to examine some characteristics of the system which has been set up under this broad constitution. For example, it is almost universal practice to refer to the U.S.S.R. as Communist in character. It should be profitable to inquire to what extent Communism actually operates. It is often said that the U.S.S.R. is an example of a federal government.[1] Yet it seems to vary in many respects from the United States, and one well may inquire as to what variety of federalism is to be found in the Soviet system. Much is made by certain writers of the freedom permitted to various local units and racial groups within the Soviet Union. At the same time, it is maintained by others that a higher degree of centralization prevails than is to be found in any other country; and some examination of this paradox is pertinent.

The Withering Away of the State. In his book *Das Kapital,* Karl Marx devoted a generous amount of attention to the rôle of the state. In general, he regarded the state as a bad thing and looked forward to the time when under true Communism there would be no state, since men would not require a state to regiment and burden them. However, until such time as a communistic system could be inaugurated, Marx assigned to the state the rôle of liquidating the bourgeoisie, bringing an end to capitalism, and purging society of those evil elements which necessitate political institutions. Just how long a period would be required for the "withering away," Marx did not make entirely clear; nor have Lenin, Stalin, and other commentators, although at times dealing with the matter, thrown much light on the point. Certain of Stalin's statements have been interpreted by some to

mean that he has discarded the dogma entirely, while others believe that he simply has indicated a postponement or an extension.[1] But whether or not the leaders of the Soviet Union still anticipate the eventual displacement of the state, they do not pretend that such a situation has arrived as yet, and hence they do not maintain that Communism now operates in the Soviet Union.

There is perhaps no aspect of the Soviet Union which causes more misunderstanding among foreign observers than this. It is an almost universal practice to refer to Russian Communism, or to the Communist régime in the Soviet Union, and to ascribe many if not all of the weaknesses accompanying the current set-up in Russia to Communism. But the Russians do not consider that they are at present under a Communist system at all—they say that they are merely in the initial period of preparation for such a system. At the present stage, in addition to education and other constructive means, they have to employ all manner of ruthless techniques in order to purge the nation of the vicious elements which would make a Communist future impossible. Moreover, it is alleged that the program of the state must now penetrate to every nook and cranny of human life, because it is only through such vigorous effort that the people can be prepared for the time when there will be an abundance for everyone, the good things of life will be free for the asking, and human beings will live together in amity.

Alexander Werth, one of the keenest of the foreign journalists reporting from Moscow, accounts for the tremendous efforts directed toward industrialization under the Fourth Five-Year Plan, to some extent at least, on the basis of a realization that the abundance neces-

[1] In 1930, 1933, 1938, and 1939, Stalin made statements on this subject. The 1939 declaration was as follows: "We are going ahead toward Communism. Will our state remain in the period of Communism also? Yes, it will, unless the capitalist encirclement is liquidated, and unless the danger of foreign military attack has disappeared. No, it will not remain and atrophy if the capitalist encirclement is liquidated and a Socialist encirclement takes its place." See *Report* to the Eighteenth Congress of the C.P.S.U., 73-74. In 1930 Stalin had said: "We are for the withering away of the state. But at the same time we stand for a strengthening of the proletarian dictatorship, which constitutes the most powerful, the mightiest of all governing powers that have ever existed. The highest development of governmental power for the purpose of preparing the conditions for the withering away of governmental power, this is the Marxian formula. Is this 'contradictory'? Yes, it is. But this contradiction is life, and it reflects completely the Marxian dialectic." This was included in the *Political Report* of the Central Committee to the Sixteenth Congress, C.P.S.U., June 27, 1930. These statements and the ones made in 1933 and 1938 are to be found in J. Towster, *Political Power in the U.S.S.R., 1917-1947*, 13-14. Cf. discussion in A. Y. Vyshinsky, *The Law of the Soviet State*, 38-61.

sary for the establishment of Communism can be achieved only by large-scale production. Incidentally, too, he sees some reason to believe that a small beginning in inaugurating Communism may be made within the next decade, perhaps by abolishing charges for railroad travel or by furnishing bread without cost.[1] Certainly since 1917 the rôle of the state in the Soviet Union has been all-embracing; and it seems probable that such a situation will continue for many years. Even the introduction of free transportation and bread would probably not diminish state activity for the time being.[2]

The Principle of Democratic Centralism. The governmental process in the Soviet Union is not only notable for its extensive and detailed operations, but it is publicized as the embodiment of the original Communist concept of democratic centralism. This concept seems on its face paradoxical, and to many foreign students it remains contradictory and illusory. Under the theory, the various local units of government enjoy the most complete independence and freedom in managing their own affairs, and even in participating in the activities of the higher governments. There is literally nothing that they cannot do if they like—which on the surface would seem to make home-rule cities in the United States blush with shame at their lack of freedom. However, this independence is accompanied by absolute authority on the part of the higher levels to check, and even to veto, the acts of the governments which are subordinate. Thus the local units do exactly as they like *as long* as the agents of the governments which are above them *do not object.*

Democratic Centralism in Operation. In a governmental system as complex as that of the Soviet Union, it is not a simple matter to ascertain how this democratic centralism really works out in practice.[3] Communist leaders hail it as a great contribution and point with manifest pride to the freedom which it allows the people in handling their own affairs and in training themselves in self-government. On the other hand, emigrés and critics would have one believe that

[1] See his weekly articles in the *Manchester Guardian* during 1947 and the first part of 1948.

[2] Many authorities see little reason to believe that the rôle of the state will ever diminish. For comments of one well known scholar on this and other underlying concepts, see H. Kelsen, *The Political Theory of Bolshevism; A Critical Analysis* (Berkeley and Los Angeles, 1948).

[3] B. Moore, Jr. concludes in his *Soviet Politics—The Dilemma of Power* (Cambridge, Mass., 1950), that "democratic centralism seems . . . to have been more of a pious wish than a basis for political decision-making."

absolutely no leeway is permitted by the central authorities and by the Communist party, and that Russia is under the yoke of an absolutism that makes other totalitarian systems seem fairly liberal. The truth doubtless lies somewhere between these two extremes; but just where is the question.

It is probable that much depends upon the time and place—certainly the exact field enters into the picture, for it is reasonable to believe that the central authorities take more interest in certain matters than in others. Eye-witnesses have on occasion reported considerable local freedom in the case of a single village or factory or small city.[1] But some of these observers have perhaps been anxious to validate their preconceived sympathy for the Communist system, and it should be noted that few if any have spent more than a few months or at most a few years in Russia. It should be apparent that it is scarcely possible to judge a vast system on the basis of a single case, particularly when that single local unit is observed from the outside and over a short period of time. Considering what is known of the fondness of the Communist party for power, it is difficult to believe that democratic centralism embodies as much democracy as it does centralism. Nevertheless, the available evidence leads a student to conclude that there is a certain amount of freedom in routine affairs of a strictly local character.

The Status of Federalism. The foregoing comment on democratic centralism has an immediate bearing on the question of whether the government of the U.S.S.R. may be classified as federal. If one depends upon the language of Soviet legal documents, it is logical to consider it as such. Proceeding perhaps on this basis, Professor Hazard, one of the foremost experts on modern political institutions in the U.S.S.R., describes the Soviet Union as "a federation consisting of a number of constituent republics."[2] But if one examines the actual operation of the system, it becomes apparent that federalism as known in the United States and Canada is not to be found in the U.S.S.R. Professor Wheare, an authority on the general topic of federalism, regards the constitution of 1936 as "quasi-federal," but he does not consider the U.S.S.R. a "working

[1] See, for example, A. R. Williams, *The Russians, the Land, the People, and Why They Fight* (New York, 1943); M. Hindus, *Mother Russia* (New York, 1943).

[2] See his article on "Constitution and Government" in the *Martindale-Hubbell Law Directory* (1948 ed.).

example of federal government." [1] Certainly the practical emphasis upon the principle of centralization makes more than a formal type of federalism very difficult to achieve.

Party Integration. A notable feature of the Soviet system is similar to cardinal features of other one-party governments: the integration of party and government.[2] As has been stressed at other points, one who desires to have even a casual understanding of public administration in the Soviet Union cannot afford to ignore the pervasive rôle of the Communist party in that process. The various agencies of government are instruments in the hands of the Communist party rather than departments such as are familiar in the United States and Britain. Of course, the party cannot handle all routine matters, although the central headquarters is so elaborately organized that it can go far in dealing even with details. But important policies are rarely determined by the government departments. Rather, the party leaders canvass matters and instruct the organs of government as to what course they are to follow. In the past, this has sometimes resulted in conflict, with certain of the ministers accepting decisions nominally but doing very little to carry them out; and the periodic arrest and conviction of administrators bears testimony to such recurring difficulty.

The Principle of Equality. Marx and Lenin depicted very vividly and repeatedly the evils inherent in a politico-economic system where some receive vast rewards for their labor and others are given so little that they live in abject misery. One of the original tenets of Russian Communism took the form of a declaration of equality: there should be no master and servant, no superior and inferior, no general and privates in the ranks, and not even a head and employees in the government departments—but instead all should be considered equal; and to dramatize this principle, it was directed that everyone, even Lenin and Stalin, should call everyone else "comrade."

Developments since 1917 have convinced the Communist leaders that this principle has to be modified to some extent; but even so, the main outline of the creed of equality has never been entirely aban-

[1] See his *Federal Government* (New York, 1947), 27-28. For a Russian discussion, see A. Y. Vyshinsky, *The Law of the Soviet State*, 237-271.

[2] An interesting statement on this relationship was made by Stalin to an American labor delegation and is included in Stalin's *Leninism* (New York, 1930), 48-50; it is available also in Hill and Stoke, *op. cit.*, 550-552.

doned.[1] However, no longer is everyone given an equal voice, even in routine matters, relating to the management of a shop, an office, or a plant; nor do all now receive the same compensation for their labor. When all workers in a factory received the same compensation irrespective of how hard they worked, some soldiered on their jobs; and the difficulty was even greater on the collective farms, where, when all received the same, many did little to assist in increasing production.

"Equality" in Practice. At the present time, workers are paid partly on the basis of how much they turn out in a day, and officials and managers receive added compensation because of their responsibilities. Nominally, less differentiation prevails than in capitalistic countries; and both salaries and wages are modest in comparison with those prevailing in the United States. Nevertheless, if one takes into account the housing, food, clothing, automobile, and other allowances which money could not provide, the gap between the favored few and the masses may be quite as wide as elsewhere.

Rights and Duties of Citizens. Those who started the Soviet state on its hazardous course naturally considered that, at least until all danger of counter-revolution should have been removed, personal rights and liberties would have to be kept strictly in abeyance; and in the earlier constitutions one encounters nothing remotely resembling a bill of rights. Sponsors and defenders of the new régime early recognized that they were being put more sharply on the defensive in respect to this matter than any other; and, stoutly contending that Communism, far from stifling individual effort and creative activity, in the long run really affords them wider scope by guaranteeing freedom from exploitation, took advantage of somewhat more stabilized conditions to write into the new fundamental law of 1936 one of the most extraordinary bills of rights known to history.[2] Here again there is still too much evidence of harsh and arbitrary actions on the part of public officials, too much censorship and repression, too many secret trials and vindictive condemnations, to permit one to accept the constitution's fine-sounding phrases at face value. Indeed, the instrument itself frankly admits that the freedom

[1] Valuable comment on the progress made in the direction of abolishing class lines is to be found in an article by A. I. Stetsky, originally appearing in the *Bolshevik*, June 1, 1936. An English translation is available in W. E. Rappard *et al., Source Book on European Governments*, Pt. v, 130-165.

[2] Arts. 118-133.

of speech, press, and assembly for which it provides is to be "in accordance with the interests of the toilers and for the purpose of strengthening the socialist system" [1]—which means that it in no wise extends to any utterance, publication, or meeting capable of being construed as unfavorable to the régime.

Nevertheless, in later years there may have been a slight tendency toward emancipation of the individual from the prison-like collectives and cadres in which he was formerly encased; [2] and in any event, a few of the constitution's professed guarantees are worthy of being noted. Basic to all else is the equality granted women with men in all fields, and pledged likewise to all citizens of the U.S.S.R. regardless of nationality and race. Specific rights of a personal nature include those of (1) employment, with suitable compensation; (2) "rest," or leisure made possible by shortened working hours; (3) old age, sickness, and disability insurance; (4) free elementary and higher education; (5) freedom of conscience and worship, and of "anti-religious" (although significantly not of "religious") propaganda; [3] (6) freedom of speech, press, and assembly; (7) liberty to form trade unions, coöperative associations,

[1] Art. 125.

[2] See S. N. Harper and R. Thompson, *The Government of the Soviet Union,* 248-251.

[3] The support freely given by the Greek Orthodox Church to the reactionary excesses of the czarist régime was such that any revolutionary government could have been depended upon, merely as a matter of self-preservation, to confiscate that organization's wealth and uproot its power. Moving at first with well-justified prudence, the Bolsheviks were content to go no further in the constitution of 1918 than to provide for the disestablishment of the church, secularization of the school system, and guarantees of freedom for "religious and anti-religious propaganda." As power grew, however, church properties and establishments were confiscated, while the officially supported propaganda agencies turned their efforts to combating all influences of organized religion, especially among the younger generation. As already mentioned, atheism was from the beginning one of the tests for membership in the Communist party; and in 1929 a decree of the Central Executive Committee, while recognizing and regulating religious associations, sought to further atheistic opinion by (in effect) deleting from the constitution all phrases giving religion and atheism an equality of status. The result was to make atheism a state dogma; and, with atheists alone enjoying the right to teach their beliefs (as pointed out, no right of *religious* propaganda exists), Communist leaders were confidently expectant that after the present generation had passed, the Russian soul would be found to have been molded completely into their own materialistic cast. So confident were they of this that, even before World War II, the more militant phases of the war on religion were abandoned. During recent years, attitudes toward religion have shifted somewhat. While the most ardent members of the Communist party continue to regard religious organizations with suspicion, the Russian Orthodox Church has received official recognition and the relations between the leaders of that church and the government seem reasonably cordial. See B. W. Maxwell, *The Soviet State,* Chap. xii; W. H. Chamberlin, *Soviet Russia,* Chap. xiii; J. Hecker, *Religion under the Soviets* (New York, 1927).

youth organizations, and other societies; (8) inviolability of person, residence, and correspondence, including freedom from arrest except with the sanction of a prosecutor or on decision of a court. As for property, that which has been socialized (*e.g.*, land, mines, factories, railways, banks, etc.), must be "safeguarded and consolidated" by every citizen; but that which is owned privately (*e.g.*, dwellings, motor cars, tools, etc.), even though permissibly reaching considerable values, is to be respected and protected—so long (and this is the norm by which all rights of private property are to be judged) as it is held for the owner's exclusive personal use, and not as means for exploiting the labor of others.

Rights, however, carry with them corresponding duties; and obligations are laid upon the citizen (1) to observe the constitution and "carry out" the laws; (2) to maintain labor discipline; (3) to "fulfill his social duties"; (4) to "respect the rules of the socialist community"; (5) to safeguard socialized property; (6) to work, "according to the principle: 'He who does not work shall not eat' "; and (7) to serve, under the universal military service law, in the Red Army. All this for ordinary citizens; for party members—"citizens with special responsibility"—there is, of course, a great deal besides.[1]

[1] See the preceding chapter. A roseate view of "the new rights of man" in the U.S.S.R. is presented in A. L. Strong, *op. cit.*, Chap. v, and a skeptical view in W. H. Chamberlin, "Russia's Gold Brick Constitution," *Amer. Mercury*, Oct., 1937. Cf. R. Baldwin, *Liberty under the Soviets* (New York, 1929); K. Martin, "The Russian Press," *Polit. Quar.*, Jan.-Mar., 1933. The most authoritative discussion from the Soviet point of view will be found in A. Y. Vyshinsky, *The Law of the Soviet State*, Chap. ix.

CHAPTER XXXIX

GOVERNMENTAL ORGANS AND PROCESSES

THE SUPREME COUNCIL

Composition. The 1936 constitution provides for a Supreme Soviet, or Council, to take the place of the old All-Russian Congress of Soviets and of the Central Executive Committee. The bicameral principle is recognized, and the Supreme Council is divided into two branches: the Council of the Union and the Council of Nationalities. The members of both are elected by direct popular vote, but the former is the more strictly representative inasmuch as it is proportioned to population; all Russia is divided into districts of approximately 300,000 inhabitants each, and these send representatives—approximately 670 all told [1]—to the body.

The Council of Nationalities is based on the constituent parts of the Union, just as in the United States the Senate is based upon states. Although varying considerably in size and population, constituent republics have 25 members each, while autonomous republics have 11 each, autonomous *oblasts*, or regions, five each, and national districts one each, yielding a present total of approximately 630.[2] Thus, in contrast with the situation in the United States, where the Senate is distinctly smaller than the House of Representatives, the Council of Nationalities in the Soviet Union is about equal in size to the lower house.

[1] The number varies from time to time, depending on population. In 1937, there were 569 members; in the 1946 election 657 were chosen; in 1950, 671.

[2] In 1937, the exact number was 574; in 1946, 657; and in 1950, 631.

Membership. The members of both houses of the Supreme Council are more likely than not to belong to the Communist party, although there are always a good many who are not formally so affiliated. Needless to say, however, good standing with the party is always a *sine qua non*. In the Supreme Council elected on February 10, 1946, 81 per cent of the deputies belonged to the party, in contrast to 76.2 per cent in the preceeding Council, chosen in 1937.[1] If one compares the membership of the highest legislative body in the Soviet Union with that of the Congress of the United States, numerous divergencies stand out. First of all, the Supreme Council is a much younger group than the American Congress. Of the more than 1,300 members of the former elected in 1946, only 172 were over 50 years of age, while 46 were 25 or less. With the average member of the Congress of the United States over 50 years of age and numerous members in their sixties and seventies, it is obvious that in the Soviet Union a considerably greater premium is placed upon comparative youth. Another contrast appears in the fact that whereas our national constitution forbids members of Congress to hold other offices of public trust under the United States, in the Soviet Union it is common to find numerous officials from the administrative departments sitting as members of the Supreme Council. Of members elected in 1937, 239 were such officials; in addition, 65 members belonged to the professional military and were on active duty, and another 120 were full-time officers of the Communist party.[2]

Women are far more prominent in the Supreme Council than in the Congress of the United States. Approximately one-fifth, too—277 to be exact—of the deputies elected in 1946 were drawn from among manual workers. On the basis of social origin (not necessarily current occupation), 511 of all those elected in the year indicated were workers by hand, 479 office workers, professional people, or intellectuals, and 349 peasants. On the basis of formal education, Russian deputies hardly measure up to American congressmen, although certainly the Supreme Council can boast more notable academicians than occupy legislative seats at Washington; among deputies elected in 1946, for example, there were 18 well-known scientists. Approximately one-third of the members chosen in that year could claim to be university trained, while 523 had less than a

[1] See Vera M. Dean, *The United States and Russia* (Cambridge, Mass., 1948), 72.
[2] See *Amer. Rev. on the Soviet Union*, Apr., 1938, 51.

high-school education. As compared with our Congress, lawyers in the Supreme Council are few. Comparisons on the basis of past political experience are difficult, since the systems of the two countries are so unlike. However, many members of the Soviet Supreme Council have long been active in the Communist party, and large numbers have had previous experience as officials in the republics and in the local governments.

Some Formal Provisions. Although the earlier All-Russian Congress met only once every two or three years, and then for a period of only about ten days,[1] the Supreme Council is required by the constitution to convene twice each year; designated as the highest organ of state power, it holds a place of great formal importance. General authority in the field of legislation is conferred, as well as power to amend the constitution. Ordinary business is transacted by majority vote; and the two houses have substantially the same rights, even in the case of money bills. Conflicts between the two are supposed to be settled by conference committees drawn from the membership of both; but where recommendations of such a committee prove unacceptable, the presidium has the right to dissolve the Council and call a new election.

Committee System. Each of the two houses maintains three standing committees of considerable importance, dealing with foreign affairs, legislation, and the budget, with also various routine committees in each chamber devoting attention to auditing, inquiries, and credentials or qualifications of members. In addition, special committees are authorized from time to time to handle various measures; for example, acts providing for the drafting of personnel during World War II and the taxing of agriculture were considered by special committees. With sessions of the Supreme Council covering only a week or ten days, it is obvious that the rôle of committees must be far from that of standing committees in the Congress of the United States; and indeed the number of measures referred is relatively small. Committees, however, are not restricted to meeting solely during the brief sessions of the legislative bodies; and at least occasionally they display considerable vigor in revising bills. Thus in the case of a bill drafted by the Council of Ministers to reorganize the judicial system, the legislative committee of the Council of the Union adopted 27 amendments, while its counterpart in the Council

[1] However, the Central Executive Committee had more frequent meetings.

of Nationalities proposed 30; and some 37 actual changes resulted in the text of a bill which already had received several years of study from various groups. Furthermore, 30 of the amendments proposed on this occasion were approved by the Supreme Council and only seven rejected.[1]

While the standing committees of the Supreme Council are more likely to revise bills drafted by the Council of Ministers than to initiate any of their own, at times they seem to assume a more positive rôle. Thus a measure setting up the procedure for recalling public officials seems to have been originally drafted by legislative committees of the Supreme Council; and another relating to the system of compulsory education also may have been the brain child of such committees. During a recent period, too, the legislative committees of the Supreme Council expended much time on a project which called for going over all of the laws passed prior to 1936 in order to bring them into line with the new constitution.

Budget Committees. The budget committees of the Supreme Council ordinarily take themselves especially seriously. Indeed they have a reputation for earnestly scrutinizing every annual budget submitted by the finance minister; and in the case of every budget at least some changes are recommended, frequently in the direction of increasing rather than decreasing expenditures. Usually there is some difference of opinion between the budget committees of the two houses, and this may require a conference. Moreover, the budget committees not only recommend changes in particular budgets, but consider it within their province to survey the whole scene of financial operations; and criticisms which they make are frequently embodied in budget legislation. During recent years, budget committees have proposed a more effective procedure for collecting taxes, better coördination among the ministries in drafting budgets, stricter enforcement of the provisions of budgets, more attention to economies in the budgets of the constituent republics, and more adequate provision for controlling wasteful practices in state enterprises.[2] Budget committees also give attention to the state banking system, insurance, and other financial matters.[3]

[1] See William M. Mandel, *A Guide to the Soviet Union* (New York, 1946), 464.
[2] See *ibid.*, 465.
[3] Further on the committee system of the Supreme Council, see A. Vasiliev, "The Permanent Committees of the Supreme Soviet of the U.S.S.R.," *Amer. Rev. on the Soviet Union*, June, 1941.

The Supreme Council's Actual Rôle. It is not a simple matter for an American student to assess the place of the Supreme Council in the Soviet Union. Under a system such as characterizes the U.S.S.R., the rôle of almost every agency of government differs from that of any corresponding part of the government of the United States. The highly important position occupied by the Communist party and the almost invisible division between government and party add to the difficulty of arriving at anything like a satisfactory understanding of the place of the Supreme Council. The fact that the Council has been in existence only since 1937 must also be considered, especially since the war years represent a part of that period and during them conditions were far from normal. At the time when the constitution of 1936 was promulgated, there were those who looked for great things from the Supreme Council. Admittedly, an unsatisfactory situation had existed previously, but this was explained on the basis of the emergency aspect of the years 1917-36; with the new régime well established by 1937, a legislative body was expected which would be truly deliberative.

Judging from statements appearing in their press, the Russians themselves apparently are of the opinion that the Supreme Council qualifies as a deliberative body. However, many Western observers find it difficult to accept such an evaluation. With sessions covering only ten days or sometimes less twice each year, it is obvious that the Council does not spend the time on introduction of bills, consideration by committees, debate, amendments, and voting that is spent in the Congress of the United States and many other legislative bodies. Legislation in general is initiated in the Soviet Union by the Council of Ministers or the Communist party or some other agency. We have noted that the committee system, while less elaborate than in the United States and certain other countries, nevertheless has some vigor. Debate in the two chambers at times reaches a spirited level, though quite unlikely to be as detailed or as extensive as in the Western democracies. There seems little ground for doubt that decisions in regard to important matters are made by the party leaders, or that in such situations the Supreme Council will never be likely to challenge or even amend. Rather, what may be expected to happen is that the Council will merely receive recommendations made, perhaps engage in a bit of general debate, and end by obediently giving its approval.

But in a country as large and complicated as the Soviet Union there are matters which, because of their non-political or routine character, do not interest the party leaders; and here the rôle of the Supreme Council becomes more impressive. To be sure, the body may not spend a great deal of time debating such matters; but not infrequently, as pointed out above, its committees bring in amendments to proposals drafted by the Council of Ministers and these amendments receive serious attention from the two houses, with approval ordinarily expected, but rejection by no means out of order. The fact that the members of the Supreme Council come from the various widely diversified sections of the country naturally has some significance, for it means that they can express points of view which may not have been known beforehand to the ministers. As a result of such expressions of opinion, ministries may modify certain proposals which they have submitted to the Supreme Council, or may change programs which have been set up under legislation already passed.

In the Western sense, the Supreme Council of the U.S.S.R. may not be a truly deliberative body—certainly it does not conform to the pattern of Western legislative bodies—but it should not be assumed that it does not exercise at least a reasonable amount of influence in the public affairs of the Soviet Union. The fact that Communist leaders may be deputies, and that the majority of the members of both the Council of the Union and the Council of Nationalities are actively affiliated with the Communist party, also makes for a coördination which should not be overlooked.[1]

The Presidium. In a joint meeting of its two chambers, the Supreme Council elects a presidium made up of a chairman (who is sometimes regarded as the president of the Soviet Union), a vice-chairman for each constituent republic, 15 ordinary members, and a secretary.[2] This comparatively small group represents the Supreme Council when it is not in session and also has something to do with planning and organizing the work of the body when in session. It may also, at least in theory, grant pardons, appoint commissions for

[1] For a thoughtful discussion of the rôle of the Supreme Council by a competent American scholar, see J. Towster, *Political Power in the U.S.S.R., 1917-1947*, 250-263; and for a Russian interpretation, A. Y. Vyshinsky, *The Law of the Soviet State*, Chap. v.

[2] The total membership has recently numbered 32, although 33 places are authorized.

the consideration of special problems, name the heads of the army and navy, provide for the mobilization of the armed forces, ratify treaties, and interpret the laws enacted by the Supreme Council. If the Council is not in session, the presidium may appoint and remove ministers, subject to subsequent confirmation by its parent body, and declare war in case of armed attack on the U.S.S.R. or need for fulfilling international treaty obligations of mutual defense against aggression. Thus it may be seen that the presidium is both a legislative and an administrative agency, and that it combines some of the functions performed in other countries by a cabinet with those usually associated with an upper chamber or executive council.

Actual Rôle of the Presidium. The record shows that the presidium has taken a more active rôle in handling the work of government than has its parent body, the Supreme Council. But the same situation exists here that was noted in the case of the Council: most matters of any considerable consequence are canvassed and decided by the party leaders. Consequently, it is impossible for the presidium to exercise real authority in foreign relations, national defense, or domestic policies. Its job is, rather, a more or less perfunctory one involving routine matters and formalities incident to carrying out policies already determined by the Communist party. Of course, the fact that the members of the presidium are for the most part active in the Communist party relieves the strain to some extent. Nevertheless, with the tradition of having the party rather than the agencies of the government decide important policies, it will be extremely difficult to infuse much real vigor into the presidium. On the other hand, one ought not to lose sight of the amount of routine work involved in any government, particularly in a police state, and which in the Soviet Union is handled to an important degree by the presidium.[1]

THE COUNCIL OF MINISTERS

Status. Under the 1936 constitution, a Council of Ministers, once known as Council of People's Commissars, or *Sovnarkom,* bears some similarity to the cabinets of certain other countries. Described by the constitution as "the highest executive and administrative organ of state power," and declared "responsible and accountable" to the Supreme Council for its acts, the group is nominally desig-

[1] For additional consideration of the rôle of the presidium, see J. Towster, *op. cit.,* 263-272, and A. Y. Vyshinsky, *op. cit.,* 329-336.

nated by the two houses of the latter body meeting in joint session. But despite the apparently clear position conferred by the constitution, the body's actual status is somewhat difficult to determine. At times, the Council probably does little more than confirm the decisions already made by the Communist party through its leaders. Certainly it is hardly the supreme executive authority in more than a formal sense; the party machine would leave it no room for such a rôle. On the other hand, inasmuch as some of the ministers are members of the more powerful body, there is actually a certain identity between the two; and it is not always easy to differentiate between the rôle of a minister and the work of a member of the Communist party's inner circle.

Composition. If it is thus difficult to obtain a clear picture of the place occupied by the Council of Ministers, one might suppose that it would at least be a simple matter to keep in mind its composition. The constitution of 1936 makes the categorical provision that the Council of Ministers shall consist of the following: the chairman of the Council of Ministers, the vice-chairmen of the Council of Ministers, the chairman of the State Planning Commission of the U.S.S.R., the chairman of the Commission of Soviet Control, the ministers of the U.S.S.R., the chairman of the Committee of Agricultural Stocks, the chairman of the Committee of Arts, and the chairman of the Committee of Higher Education.[1] It then goes on to specify that there shall be All-Union ministries as follows: defense, foreign affairs, railways, postal and electrical communications, water transport, heavy industry, and defense industry.[2] In addition, it specifies certain Union-Republic ministries: food, industry, light industry, timber industry, agriculture, state grain and livestock farms, finance, internal trade, internal affairs, justice, and public health.[3] It may be noted that the exact number of vice-chairmen is not indicated, though that is comparatively minor in contributing to the hazy picture. More significant is the inclination of the Soviet leaders to accept changes in government structure as new situations present themselves, despite the apparently permanent provisions of the fundamental law; and so it comes about that the ministries as listed in the constitution give one a very incomplete picture of the current

[1] Chap. v, art. 70.
[2] Chap. v, art. 77.
[3] Chap. v, art. 78.

situation. For example, the Ministry of Heavy Industry, noted above, was for a time broken down into a sizable number of ministries, including: electrical industry, ferrous metallurgy, non-ferrous metallurgy, coal industry, machine tool industry, chemical industry, aviation industry, shipbulding, oil industry, and paper and cellulose industry. The Defense Ministry specified in the constitution has also undergone proliferation, and, during World War II at least, could look on the following ministries as its progeny: military supplies, armaments, tanks, mortar armaments, navy, construction, heavy machine-building, and agricultural procurements. Additions have been made to the non-military members of the Council of Ministers, and various agencies have been set up under the Council, but without voting status. Finally, there has been some proliferation in the case of the Union-Republic ministries, though on a smaller scale. The net result is that, instead of approximately 25 members, as one might assume from a reading of the constitution, the Council of Ministers prior to 1953 had more than 50 voting members; however, the reorganization after Stalin's death reduced this to some 30.

Chairman and Vice-Chairmen. The chairman of the Council of Ministers is frequently referred to as the "premier," and in so far as the Soviet Union has an official corresponding to the prime minister of Britain or the premier of France, it is doubtless this officer. Three prominent members of the party have served as chairman of the Council of Ministers during recent years—Molotov, Stalin, and Malenkov. Stalin took the position in 1941, held it during World War II, and continued in office until his death. By employing a prominent member of the party as chairman of the Council of Ministers, it is obvious that a link has been provided between the Communist party and the government which is of the utmost importance in achieving a working relationship. Even when Molotov held the chairmanship of the Council of Ministers, there was a considerable fusion of the two bodies. With Stalin as both leader of the party and chairman of the Council of Ministers, the correlation became even more complete.[1] The number of vice-chairmen of the Council of Ministers has varied somewhat, but there have been as many as 15; and, with each responsible for a group of ministries,

[1] Provision for a Council of Ministers Presidium made up of Malenkov, Molotov, Beria, Bulganin, and Kaganovich, also members of the Presidium of the party, in 1953, serves the same end.

the rôle played in making what might otherwise be an unwieldy system reasonably cohesive is obviously significant.[1]

All-Union Ministers. The Soviet Union is perhaps the only government of any importance which maintains two types of ministers, although in Britain and France there are, of course, ministers who head departments and ministers without portfolio; and the situation is accounted for by the fact that the U.S.S.R. is nominally a federal rather than a unitary state. Certain functions are formally assigned to the central government, while others are given primarily to the constituent republics and other regional governments. In so far as the central government has exclusive jurisdiction, All-Union ministries are maintained. But in fields in which the constituent republics are given responsibility, a different type of ministry is provided. Inasmuch, however, as the federal system seems to operate more in theory than in practice, at least at times, the dividing line between All-Union ministries and Union-Republic ministries is frequently rather tenuous. Certain of the All-Union ministries correspond quite closely to the major administrative departments found in other countries. On the other hand, there are also ministries which grow out of the peculiar rôle of the state in Soviet economic affairs. Not all of the latter are All-Union ministries, but those relating to heavy industries, defense industries, and the production of power are such.[2]

Union-Republic Ministers. The heads of departments referred to as Union-Republic ministries occupy positions in the Council of Ministers equal to those of the All-Union ministers so far as voting goes, although the actual influence exerted by the latter may in certain

[1] On the organization of the Council of Ministers, see S. N. Harper and R. Thompson, *The Government of the Soviet Union*, Chaps. viii and x, and J. Towster, *Political Power in the U.S.S.R., 1917-1947*, 272-295.

[2] The All-Union ministries during the postwar period included: foreign trade, railways, communications, maritime transport, inland water transport, coal industry, oil industry, power stations, electrical industry, ferrous metallurgy, non-ferrous metallurgy, chemical industry, aviation industry, shipbuilding industry, agricultural machine-building industry, armaments, heavy engineering industry, automobile and tractor industry, machine and instrument industry, agricultural stocks, construction of heavy industry enterprises, paper and woodworking industry, machine-tool industry, road and construction machine-building, transport machine-building, food and material reserves, labor reserves, communications equipment industry, construction of engineering enterprises, cotton-growing, and geological survey. Many of these are amalgamated with other ministries in the drastic reorganization which reduced the total number of ministries to approximately 25 following Stalin's death.

instances be greater. It would be a mistake, however, to assume that the Union-Republic ministers all fall below their colleagues in the All-Union ministries in importance. With foreign affairs, armed forces, justice, agriculture, finance, and interior all Union-Republic ministries, it is evident that at least some Union-Republic ministers wield outstanding authority. While the All-Union ministers are in charge of departments which have responsibility for the direct administration of certain activities, the work of the Union-Republic ministers is somewhat more that of coördinators. It is their job to see that the activities of the republics in the fields of public health, finance, justice, internal commerce, and the like are correlated with the broad program of the U.S.S.R. As in the case of the All-Union ministers, some of the Union-Republic ministers correspond to officials to be found in the Western democracies, while othere are different. Ministers of justice, interior, public health, finance, and agriculture suggest almost any conventional government. But ministers of light and food industry, building materials, and timber and paper, as well as other Union-Republic ministers are to be accounted for only by the larger rôle of the state in the economic affairs of the Soviet Union.[1]

Other Members. As pointed out earlier, the Council of Ministers includes various officials who do not head ministries. Planning, for example, is accorded such preëminent recognition in the Soviet Union that it is quite appropriate for the chairman of the State Planning Commission to be given a seat in the Council. There is no ministry of banking, but there is a State Bank whose chairman also has at times a seat although he was apparently dropped in 1953. Emphasis placed on government support of artistic activities accounts for inclusion of the chairman of the Committee of Arts prior to 1953 when this Committee was incorporated in a Ministry of Culture. Finally, there are agencies which are responsible to the Council of Ministers, and which send representatives to acquaint the Council with their work, without, however, such agents enjoying the right to vote. Among such agencies are the Academy of Sciences, the Economic Council, and the State Arbitration Commission.

[1] The Union-Republic ministries prior to 1953 included the following: foreign affairs, food industry, fish industry, meat and dairy industry, light industry, timber industry, agriculture, trade, finance, internal affairs, state security, justice, public health, state control, building materials industry, higher education, cinema, state farms, forestry, navy, and war. The reorganization of 1953 reduced the number.

Functions. Like cabinets in the democracies, the Council of Ministers has a dual rôle. As a group, it is charged with the discussion and adoption of executive policies,[1] while its individual members are the heads of administrative departments. The latter aspect will come up again in the following chapter; so that only functions of a collective nature need be considered here. The Council meets frequently, under the presidency of a chairman, often referred to as premier or prime minister, and who may assume the headship of one of the ministries, as both Stalin and Molotov have done on occasion. Sessions are, of course, secret, and therefore it is difficult to know what goes on. Also because of the overlapping of party and government, it is not easy to determine what decisions are made by the Council of Ministers and what policies are laid down by the Communist party. One will not be surprised to be told that the Council of Ministers is not responsible to the Supreme Council in the sense in which cabinets of Great Britain and France are responsible to their parliaments. To be sure, ministers may be called upon to reply to questions put by the Supreme Council; but the Council does not have to resign because of an adverse vote in that body. Yet in its collective capacity, the Council has a number of specific responsibilities. It drafts and supervises the budget of the central government and oversees the credit and monetary systems. It has general oversight of matters relating to national defense and internal order. It "exercises general control in the sphere of relations with foreign states." [2] It sets up commissions and other agencies to handle various matters involving national defense, industry, and cultural activities. It has the power to abrogate actions of the constituent republics which contravene laws or decrees of the central government.[3] And it is expected to supervise and coördinate the work of not only the central administrative departments, but also all administrative agencies throughout the Soviet Union. Most legislative proposals considered by the Supreme Council originate in the Council of Ministers —indeed the actual drafting of most bills is undertaken by the agents of that body.[4]

1 Constitution of 1936, Chap. v.
2 Constitution of 1936, Chap. v, art. 68.
3 *Ibid.*, Chap. v, art. 69.
4 For a table showing the contribution of the Council of Ministers to decrees and ordinances at various times, see J. Towster, *op. cit.*, 260, note 48. The general subject is treated at length in A. Y. Vyshinsky, *op. cit.*, Chap. vi.

PUBLIC PLANNING

Rôle in Soviet Government. Certainly no modern state has given greater emphasis to public planning than the Soviet Union; the several Five-Year Plans have received much publicity and are in general familiar to people all over the world. The experience of the U.S.S.R. with public planning has, however, been diversely interpreted. Some foreign students have rated such planning as one of the notable achievements of the Communist régime and have urged their own governments to follow a like course. On the other hand, many observers have identified it with everything disliked in the Soviet system, and have stressed evils for which it is alleged to have been responsible. Public planning in Russia has been characterized by defects and also by accomplishments: exactly what the ratio between the two may be depends upon one's point of view.[1]

Development. At the outset, the Communists were too busy with problems of an immediately pressing nature to spend a great deal of time on formal planning. However, even in 1918, a Supreme Economic Council was set up which had among other functions that of planning the future of Russian industrial organization and development. For some time, the situation remained so critical that this agency could not actually do much in the way of planning; every ounce of strength was needed to put down the opposition and firmly establish the régime. But the idea was kept alive; in 1919, Lenin himself drafted a statement to be included in the platform or program of the Communist party and asserting that all aspects of the economic structure must be carefully planned, especially as relating to production, employment, and distribution.[2]

In 1921, the Council of People's Commissars proceeded to implement Lenin's injunction and promise by creating the State Planning Commission, or *Gosplan*—a body modified from time to time since its creation,[3] but remaining the principal planning agency of the government and playing an increasingly active rôle in the U.S.S.R.'s

[1] The most comprehensive study of Soviet planning has been contributed by Alexander Baykov under the title of *The Development of the Soviet Economic System; An Essay on the Experience of Planning in the U.S.S.R.* (New York, 1947).

[2] The rise of the planning movement in Russia is treated in V. I. Mezhlavk, "Development of State Planning in the U.S.S.R.," *Moscow News*, Mar. 4, 1936.

[3] For the text of a decree dated February 2, 1938, which reorganized this agency, see N. L. Hill and H. W. Stoke, *The Background of European Governments* (rev. ed.), 609-611.

operations. At first, the body did little more than compile figures, known as "control figures," estimating the production of various commodities during the ensuing year. Even these were useful to the Supreme Economic Council in deciding on orders to be drafted for the various state factories and trusts. But by 1927 the Planning Commission was able to recommend to the Council of Labor and Defense an elaborate plan which in the following year was put into effect as the "First Five-Year Plan of Production and Distribution." At the same time, there was formulated also a less detailed electrification program covering a period of 15 years. In 1933, a Second Five-Year Plan was drafted. A Third Five-Year Plan, put into operation in 1938, was blocked to some extent by the outbreak of war; after the war a Fourth Five-Year Plan was inaugurated. The Fifth Five-Year Plan was not announced until 1952. All of these plans set forth general objectives in terms of industrial production, socialization, and war preparedness, and to be achieved in a given period of five years.

State Planning Commission. The State Planning Commission (*Gosplan*) is closely related to the Council of Ministers, on which it is dependent for the carrying out of its recommendations. Its members are appointed by the Council, and to that body it reports.[1] The president of the Council of Ministers, too, is a member of the Commission, and the chairman of the latter is a voting member of the Council. Starting with approximately 150 members, the Commission was cut in 1935 to 70; and afterwards the reduction was continued until of late the membership has stood at 11. Something like 1,000 technical experts, however, are attached to the Commission's staff.

The Commission's Organization. The very nature of the difficult assignment given the Planning Commission necessitates an elaborate organization, and the developments that have taken place at frequent intervals in planning concepts and goals have led to many changes.[2] In a recent year, there were as many as 46 major subdivisions.[3] Of these, some, *e.g.*, the Department of the General Plan of National Economy, were performing general functions. One, the Department

[1] For additional discussion of this and other planning agencies, see J. Miller, "Soviet Planning Organizations," *The Slavonic Review*, XVI, 586-592, reprinted in N. L. Hill and H. W. Stoke, *op. cit.*, 605-608.

[2] For a detailed review of these changes, see A. Baykov, *op. cit.*, Chap. xx.

[3] A complete list of these subdivisions and their sections will be found in *ibid.*, 466-470.

of Enterprise Location and District Planning, was based on geographic considerations, with subdivisions as follows: Far East and East Siberia, Ural and West Siberia, Central Asia and Kazakhstan, Transcaucasia, Southern, Central, Northern and Northwestern, and Western. Several subdivisions were intended to coördinate with the Commission the efforts of agencies engaged in scientific and professional work throughout the U.S.S.R.; and among these may be mentioned the Academy of Planning, the Moscow Institute of Planning, the Council of Scientific and Technical Experts, the Central Administration of Economic Accounting, the Institute of Technical and Economic Information, and the Department of Cadres and Section of Planning Colleges. The greater number of the major subdivisions were organized on a functional basis. Here one found departments dealing with fuel, equipment, electrification, engineering, agriculture, trade, culture, chemical industry, air and motor transport, prices, housing and municipal services, health services, foreign trade, and communications. Most subdivisions were in turn broken down into three or more sections, charged with such tasks as planning the migration and settlement of labor, livestock breeding, the press, town planning, nurseries and maternity homes, and broadcasting and television. In going over these sections, it is difficult to find any economic, social, or cultural field not provided for.

Subordinate Planning Agencies. The State Planning Commission stands at the top of Soviet planning machinery, but it should not be assumed that it handles all of the enormous volume of work involved in drafting plans covering almost every phase of human activity in the U.S.S.R. Obviously, plans drafted by a single agency such as *Gosplan* would by their very nature be more or less superficial, even if *Gosplan* had representatives stationed at various points throughout the entire Soviet Union. Under *Gosplan,* and serving as a sort of foundation for it, is a great array of planning agencies based on geographical and industrial lines. Not only does each constituent republic maintain a planning commission,[1] but the autonomous republics, the territories, the *oblasti,* and even each town with a population of over 20,000, must also provide facilities of the kind. In addition, also, to these more general planning agencies, each ministry of the U.S.S.R. and the major administrative departments of

[1] For the organization and duties of the planning commission of the R.S.F.S.R., see *ibid.,* 470-473.

the republics and regional governments are expected to have active planning subdivisions. The trusts which control state industries such as steel production and coal mining all have their planning sections. Finally, there is a State Committee for Material-Technical Supply of the National Economy (*Gossnab*) which assists *Gosplan* in planning distribution of materials and capital equipment.

Integration of Planning Agencies. With the large number of planning agencies, it might be expected that great confusion, even amounting to chaos, would result. Doubtless there is a certain amount of confusion; but the situation is less of a problem than would be the case in the United States, where a considerable amount of autonomy characterizes the relations of the national government, the states, and the local governments. Under the system in the U.S.S.R., every constituent planning agency in a certain geographical area, government department, or state enterprise is definitely responsible to the chief planning organization of that unit. To be more specific, every planning agency in a given constituent republic is subject to the control of the planning commission of the particular republic involved. Hence a plan drawn up by the planning commission in that republic covers every phase of the activity which goes on within that republic, whether activities of the central government, the republic, the district governments, or the local governments. Within a state trust, the same principle prevails. The planning departments of every steel plant, irrespective of location, are responsible to the planning agency of the steel trust, which in turn must report to the ministry of the central government which controls the trust. In addition, the planning agencies of a state enterprise within a geographical area must submit their plans to the general planning body of that area. Thus the plans of a state farm must be sent to the governmental planning body of the political district in which the farm is located, as well as to the planning agency of the state farming system. The result is that the plan finally devised by a *raion* covers every activity within that *raion,* whether strictly governmental or of the enterprise variety; and this holds true on up through the regions, the republics, and to the central government. The plans of the thousands of general planning commissions, ministerial planning agencies, and enterprise planning offices finally come together and are integrated into the master Five-Year Plans drafted by *Gosplan.* At least this is the theory. And as the years have passed, the work of *Gosplan* has admittedly been less and

less of the "castle-in-the-air" variety and more and more based on the concrete problems and capacities of the people of the U.S.S.R. as reflected in the various plans that come up to *Gosplan* from below.

Making the Plans. Under a system as elaborate as that described, it is not easy to discern the exact procedures used in the making of plans that can finally be applied. Certainly it should not be assumed that *Gosplan* simply collects all of the plans made by the thousands of lower planning agencies and then proceeds to bring them together into a hodge-podge. Some of the elements of the subordinate plans do not enter into the national plan, and consequently do not complicate the problem of *Gosplan*; although under a system as highly centralized as that which the Soviet Union maintains in practice, it must be recognized that most of the provisions of the subordinate plans do have a bearing on the national plan. In reality, it is hardly to be doubted that *Gosplan* receives its basic instructions as to policies from the Communist party and the Council of Ministers. In so far as the provisions of the subordinate plans conflict with such policies, they are, of course, thrown out at once. With the basic policy already established in many instances, and known to the constituent republics, ministries, and trusts, much of the work of coördinating planning in keeping with a central over-all policy has actually already been accomplished before the plans reach the *Gosplan.* It might seem that it would be simpler to ignore the district and local governments, the state enterprises, and the other subordinate agencies and proceed with the making of a plan based simply on the decisions of the Communist party and the Council of Ministers. But such planning would be artificial, and hence in the last analysis impracticable. Only by working up from the bottom, and thus ascertaining the capacities, the needs, and the problems of the subordinate agencies, is it possible to frame a plan which can be expected to achieve the goals desired. Even the Communist party cannot ordain that so many tons of steel be produced when the ore and the steel plants are not in existence.

Their Flexibility. While it may seem that the work of the various planning agencies of the Soviet Union tends to be rigid and hence highly artificial, a good deal of emphasis actually has been placed on keeping the plans flexible. A reading of the elaborate Five-Year Plans may not give this impression, since they represent the summa-

tion of the goals rather than a complete statement of the details. By leaving the door open for revision in certain cases, however, and by basing certain of the plans on much shorter periods than the traditional five-year period known abroad—even on periods as short as a month or three months—considerable flexibility is attained.

Executing the Plans. In the early years of planning, the chief emphasis was on drafting the plans, and it was left to the future to see that they were carried out. But experience indicated that even in the Soviet Union plans do not execute themselves, and consequently more and more attention has been given to the carrying out of plans. The *Gosplan* itself gives a good deal of attention to this aspect of planning, both through its central offices and its field representatives; and the ministerial, trust, and local-government planning bodies are perhaps even more important at this point. Much of the responsibility of these agencies lies in seeing that the provisions of the plans are carried through; and this is done through control sections.[1]

THE VARIOUS FIVE-YEAR PLANS

The First Five-Year Plan. As noted above, the State Planning Commission in 1928 drafted the First Five-Year Plan, which stressed the socialization of production and distribution. This plan set into operation an ambitious scheme for building numerous state factories, constructing buildings and dams, extending electrification, developing natural resources, creating collective farms, improving agricultural methods, and adding to the number of Communists. Much of the plan was successfully executed, and after slightly over four years it was officially declared that the general goal had been reached. The drive against private enterprise had been so vigorous that only a small remnant remained in 1932. Something like a million *kulaks,* or well-to-do-farmers, were dispossessed of their land and other property and sent to Siberia, lumber camps, or other out of the way places; many were killed because they refused to coöperate or because they were hated by the local Communist party leaders. At the end of the period, almost a quarter of a million collective farms had

[1] For additional discussion of planning, see *The Soviet Union Looks Ahead* (New York, 1929); *Summary of the Fulfillment of the First Five-Year Plan* (Moscow, 1933); B. Wootton, *Plan or No Plan* (London, 1933); the Webbs, *op. cit.*, Vol. II, Chap. viii; A. R. Williams, *The Soviets* (New York, 1937), 134-158; Maurice Dobb, *Soviet Planning and Labour in Peace and War* (New York, 1943).

been set up and more than half of the peasants had been settled on these farms—though removal of so many able farmers from their land and the lack of incentive to hard work on the part of those living in collectives decreased the production of agricultural commodities and brought another period of insufficient food. In the cultural field, the plan was regarded as successful. Large numbers of schools were opened; the educational curriculum was integrated with the program of the Communist party; the theatre was encouraged; the radio was extended as a means of propaganda; and the membership of the party was carefully examined to weed out those who were not ardent in their attachment to the Communist aims.[1]

The Second Five-Year Plan. The Second Five-Year Plan started in 1933 and in general may be regarded as somewhat less ruthless than the earlier one.[2] More adequate crops were expected to result from modifications in the collective farm system offering the occupants greater incentive; more emphasis was placed upon the manufacture of consumer goods, in contrast to the preponderant attention to heavy industry under the first plan; and the pressure on the liquidation of the *kulaks* was lightened inasmuch as the process had been pretty well completed during the earlier period. Stress was placed on minimizing the differences between rural workers and urban workers; the general standard of living was to be raised; and some variation in wages was permitted on the basis of skill and efficiency. Additional emphasis was placed upon the improvement of cultural life and educational opportunities. Some 95 per cent of all capital production had been socialized by the end of the period, although in many instances the schedules in connection with transportation, mining, and manufacturing were not maintained. Good crops enabled the rationing system to be abandoned to a considerable degree.[3]

Charges of Sabotage. The Second Five-Year Plan came to an end somewhat less auspiciously than it had started, with charges that numerous high officials were doing their best to sabotage the goals set. There were also allegations that persons in the army and navy,

[1] A somewhat biased report of the achievements of this plan was prepared by the Communists and published in English under the title *Summary of the Fulfillment of the First Five-Year Plan of the U.S.S.R.* (1935).

[2] The details of this plan are available in *The Second Five-Year Plan for the Development of the National Economy of the U.S.S.R.*, issued in English by the Communists in 1936.

[3] For a pro-Soviet evaluation of accomplishments, see *The Soviet Comes of Age*, (London, 1938), by 28 of the foremost citizens of the U.S.S.R.

as well as in civilian posts, were in the pay of the Germans and were attempting to wreck the Communist system for the purpose of bringing back a capitalist state.[1] Indeed, the leading Soviet military strategist, General Tukachevsky, with several others, was tried for treason in the form of plotting with the Germans against the Soviet Union, convicted, and summarily shot. And the head of the railroads, the former head of G.P.U., the head of the mining administration, the leading editor, and many others were tried in a series of sensational cases that must go down in judicial annals as among the strangest in history.[2] In most instances, the accused, after being detained in prison, made sensational confessions in court and literally pleaded to be punished.[3]

The Third Five-Year Plan. A Third Five-Year Plan, put into effect in 1938, carried forward many of the objectives listed in the earlier plans. It was perhaps less publicized than the first two plans, especially outside of the U.S.S.R.; but it was regarded as highly significant by the State Planning Commission. This plan paid even more attention to machine-building and heavy industry than the earlier plans, and also stressed national defense. During the first nine months of 1939, the Planning Commission maintained, the U.S.S.R. produced more industrial goods than the Russia of the czars turned out in a decade. According to the official figures, the manufacture of machinery and war implements rose 29.2 per cent during the period indicated, while general production increased 15.6 per cent.[4]

The Fourth Five-Year Plan. The events of World War II interfered with the drafting and implementation of five-year plans, but the Soviet Union came to the end of the war with greater confidence than ever in the value of over-all planning. In fact, it was commonly claimed that the provisions in the Third Five-Year Plan for increasing steel production, stepping up heavy industry, and stressing national defense accounted in large measure for the victory over the

[1] For this view, see B. Ponomarev, *The Plot Against the Soviet Union and World Peace* (New York, 1938).

[2] See D. Collard, *Soviet Justice and the Trial of Radek and Others* (London, 1937).

[3] For general background, see M. Schachtman, *Behind the Moscow Trial* (New York, 1936); F. Heisler, *The First Two Moscow Trials: Why?* (Chicago, 1937); U. Sinclair and E. Lyons, *Terror in Russia? Two Views* (New York, 1938); and E. Varoslavsky, *The Meaning of the Soviet Trials* (New York, 1938).

[4] For a discussion of this plan by a Russian, see V. Molotov, *The Third Five-Year Plan for the Development of the National Economy of the U.S.S.R.* (Moscow, 1939).

German *Wehrmacht*. With the war over, a Fourth Five-Year Plan was inaugurated in 1946, and goals were set up in some fields as far ahead as 1960. This postwar plan was built around two great aims: (1) rehabilitating the areas devastated by the Germans, and (2) augmenting industrialization, especially in the heavy industry field.[1]

The Fifth Five-Year Plan. The Fifth Five-Year Plan, which was not announced until mid-1952, continued the elaborate program in the heavy industries but gave more attention to expanding agricultural production. It aimed at increasing consumer goods by 60 per cent and provided for extensions of the welfare and cultural programs.[2]

THE LAW AND THE COURTS

Soviet Law. Immediately after the revolution in 1917, the old czarist law codes were abolished, because Lenin and his associates considered them irrevocably tied up with the iniquities of the old system. People's courts or tribunals were speedily set up to handle cases needing attention; but these were bidden to decide on the basis of popular will, common sense, and other pragmatic considerations. During this period, it was not permitted to cite decisions of courts under the former régime nor to make use of the imperial codes at all. After the initial bitterness had subsided to some extent, however, it was realized that something more substantial in the way of laws was needed, and various attempts were directed at producing a Communist substitute for the old codes.[3] Revolutionary devices gave way during the 1920's to more conventional codes reflecting both the old concepts of law and the new Communist attitudes. A labor code, a domestic relations code, a civil code, a criminal code, and procedural codes were prepared and adopted in the R.S.F.S.R.; although the rapid changes shortly made them obsolete. Furthermore, they were never too enthusiastically received by the leaders, because they were compromises and embodied capitalistic concepts along with the tenets of Communism. Following the drafting of the constitution in

[1] For a further account of this plan, see A. Bergson, "The Fourth Five-Year Plan," *Polit. Sci. Quar.*, June, 1947.

[2] For the official draft directives of the Fifth Five-Year Plan, see the *New York Times*, Aug. 23, 1952. Summaries and analyses of the various sections will be found in the London *Economist*, Aug. 30, Sept. 6 and 13, 1952.

[3] For further comment, see J. N. Hazard, "Soviet Law; An Introduction," *Columbia Law Review*, Dec. 1936; and *ibid.*, "Jurisprudence," in E. J. Simmons [ed.], *U.S.S.R.; A Concise Handbook* (Ithaca, N. Y., 1947), 166-174. See also J. Zelitch, *Soviet Administration of the Criminal Law* (Philadelphia, 1931).

1936, it was decided to recodify the law on a national basis in such a fashion that it would really incorporate the principles of Communism, and a commission was created to perform such a service.[1] The outbreak of World War II, however, held up completion of the task.[2]

The Supreme Court. There is but one formal court in the Soviet Union which is federal in character, although certain other agencies of the central government may handle matters which have some relationship to judicial administration. The other courts are connected with the constituent republics and local subdivisions.[3] The Supreme Court, which was recognized under the old constitution as well as by the new one drawn up in 1936, is carefully integrated into the structure of the central government and in general is less independent than the Supreme Court of the United States.[4] Its members are nominally elected by the Supreme Council for five-year terms, although there is reason to believe that they are in reality chosen by the leaders of the Communist party. This court is headed by a *plenum* which consists of its president, a deputy president, the presidents of three sections, four of the ordinary judges attached to the court, and the presidents of the supreme courts of the constituent republics; these last are not members of the central Supreme Court, yet sit in its *plenum*. The Supreme Court is organized into sections which specialize in certain types of cases.

Judges. The Supreme Court has numerous judges attached to it.[5] Its ordinary judges are not drawn from the legal profession but, like others among Continental judges, constitute a separate profession. Although membership is by election by the Supreme Council for terms of five years, it is required that previous judicial experience be

[1] An interesting commentary on soviet law is available in W. E. Reppard *et al.*, *Source Book on European Governments*, Pt. ii, 166-186. This is a report by People's Commissar of Justice N. V. Krylenko to the All-Russian Central Executive Committee of the Sixteenth Congress.

[2] For an article dealing with the steps taken in this matter, see J. N. Hazard, "Drafting New Soviet Codes of Law," *Amer. Slavic and East European Rev.*, Feb., 1948.

[3] On the Soviet court structure, see M. E. Kent, "The Court System in the Soviet Union," *Comparative Law Series*, U.S. Dept. of Commerce, Mar., 1939, 130-137; and J. Towster, *Political Power in the U.S.S.R., 1917-1947*, Chap. xii. Some students regard the military and transport tribunals as lower federal courts. See J. N. Hazard in F. Morstein Marx [ed.], *Foreign Governments*, 449.

[4] An act of August 16, 1938, furnishes the detailed provisions as to the organization and jurisdiction of the Supreme Court.

[5] It had 45 judges in 1938, but in 1946 the number was increased to 68.

presented by those chosen. Considering the innate suspicion with which the Communists have viewed professional lawyers and judges, it is not surprising that they have added a feature supposed to offset the influence of a vested group. In the Supreme Court, as well as in the lower courts, they have provided laymen who sit as co-judges and have a considerable voice in decisions. The Supreme Court maintains a panel of 25 such lay judges, formally chosen by the presidium of the Supreme Council, but doubtless in many cases actually by the party organization.

Operations of the Supreme Court. The several sections of the Supreme Court [1] convene in Moscow or in other cities of the Union, and may hold either public or private sessions as they like, although as a rule they meet in public. This court has the authority to review the decisions of the supreme courts of the republics when appealed to it, and may take original jurisdiction over disputes involving the republics. One of its sections tries cases of high treason and other very important criminal cases, while another considers cases involving the conduct of high military officers and hears appeals from the military courts. An appellate section, made up of three judges whose tenure is more or less permanent, devotes itself to questions of great legal significance. The *plenum* sometimes interprets intricate laws or sections of laws, and as an administrative court reviews the acts of governmental authorities of the constituent republics.

The Attorney-General. The attorney-general of the Soviet Union is chosen by the Supreme Council for a term of seven years and has responsibility for the criminal, and to some degree the civil, work of courts throughout the U.S.S.R.[2] He supervises the state attorneys of the constituent and autonomous republics and autonomous territories and the district attorneys of regions, districts, and cities. In addition to having general charge of all criminal prosecutions, the attorney-general and his republic, district, and local representatives have general oversight of all administration of justice.[3] They observe and report on the conduct of judges, police, and court attendants, even to the point of taking action against those who are derelict in

[1] The organization of the Supreme Court is prescribed in Chap. ix of the constitution. A new organization has recently been introduced in five divisions, known as collegia: criminal, civil, military, railroad transport, and water transport.

[2] See Chap. ix of the 1936 constitution. This official is sometimes referred to as the "procurator."

[3] For additional information on this topic, see M. Callcott, *Russian Justice* (New York, 1935).

their duty. Where the courts seem to them to infringe on the field of the party, they have the right to intervene in civil cases to protect the interests of the proletariat. Indeed, the power of this central officer and his local appointees is so great, and has been used so energetically, that it must be assessed as an integral feature of the Communist party.

Lower Courts. Each of the constituent republics has a supreme court corresponding within its borders to the Union Supreme Court. The judges of these courts, who vary in number depending upon the importance of the republic, are chosen by the soviets of the republics for terms of five years.[1] Under these courts there are people's, territorial, and provincial courts which have jurisdiction over both civil and criminal cases, and which are not very different in outward appearance from the similar courts of other countries.[2] Judges of the territorial and provincial courts are elected by the soviets of their areas for five-year terms, and are professionally trained and usually politically prominent. The lowest courts are known as "people's courts," and under the constitution of 1936 their single judges are elected by the voters. These judges receive three-year terms, are not required to have a professional background, and are assisted by two laymen representing the interests of the people. Frequently shifted, and ordinarily sitting for about a week, these laymen are usually factory workers or peasants who have the backing of the local party leaders; and the rôle which they play depends largely upon the time and the place—in theory, each has the same voice in deciding cases as the professional judge and hence may entirely ignore his conclusions. In practice, the laymen apparently are ordinarily guided by the judge and occupy a place somewhat like juries in the United States or England.[3]

Arbitration Tribunals. The U.S.S.R. has given a good deal of attention to arbitration as a device for administering justice, and thus has relieved the regular courts of much of their burden. The labor union set-up maintains agencies for settling disputes over wages and conditions of labor, while other arbitration bodies handle many of the cases arising out of the housing shortage. In addition, there are

[1] See Art. 106 of the constitution.

[2] The lower court system is governed by an act of August 16, 1938. For further details of the administration of justice in the U.S.S.R., see H. J. Berman, *Justice in Russia* (Cambridge, Mass., 1950).

[3] See the Webbs, *op. cit.*, I, 133.

arbitration boards created by the government to deal with questions arising out of disputes between two or more state enterprises not under a single ministry. Other arbitration tribunals handle disputes within a single industry.[1]

Lawyers. As a matter of principle, the Communists have slight use for lawyers, because in their minds they are associated with the capitalistic system; in practice, however, they have had to recognize a necessity for them—although their number has been limited and the scope of their functions severely reduced. Only persons regarded as politically reliable are eligible for the profession; minimum training and experience are specified; fees are fixed under the auspices of the government according to ability to pay; and individual lawyers receive salaries paid out of fees paid by clients to the College of Advocates. Legal standards are fixed and regulated by the courts and by the attorney-general and state attorney. During trials, it is the judge who, as in most European courts, manages the witnesses and asks the questions which seek to get at the underlying facts; and this, of course, relegates the lawyers to a distinctly less prominent place than they enjoy in the United States.[2]

THE POLICE

The Cheka. Despite the emphasis placed upon democratic methods, the equality of men, and the dictatorship of the proletariat, with the eventual withering away of the state, the Soviet government has given a far greater place to the secret political police than is the case in the Western democratic countries.[3] Early in the Communist régime, the *Cheka,* or Extraordinary Commissions to Combat Counter-Revolution, Sabotage, and Speculation, was organized and given a free rein in searching out and punishing the enemies of the Communist party, save in rare instances where the leaders might intervene. The commissions were invariably placed under the direction of active members of the party, and had full right to arrest, examine, try, convict, sentence, and punish; in many instances they simply caused enemies of the régime or suspected enemies to be shot.

[1] See J. N. Hazard, "Russian Law Digest," in *Martindale-Hubbell Law Directory* (1948 ed.).

[2] See D. N. Pritt, "The Russian Legal System," in M. I. Cole [ed.], *Twelve Studies in Soviet Russia* (London, 1933). On the Soviet judicial system in general, see A. Y. Vyshinsky, *op. cit.,* Chap. viii.

[3] For a vivid account of police tactics, see V. V. Tchernavin, *I Speak for the Silent; Prisoners of the Soviet* (London, 1937).

The OGPU. After the revolution had established Communist control throughout Russia, the *Cheka* gave way to OGPU, or the State Political Administration, which enjoyed somewhat less extensive authority but still operated with comparatively few checks; and during the decade or more prior to 1934, OGPU became known the world over for its omnipresence, its savage methods, and its general ruthlessness. Indeed, the organization's head, who himself curiously fell a victim to the purges of the 1930's, was frequently referred to as a "butcher," a "homicidal maniac," and by other terms equally uncomplimentary.

NKVD, MVD, and MGB. In 1934, it was decided to abolish OGPU as a separate unit of government and to place the political police under the People's Commissariat of Internal Affairs, known as NKVD and later MVD. After World War II, a new Ministry of State Security (MGB) was created, and this agency administered the political police, while MVD controlled the regular police. With the amalgamation of the Ministries of Internal Affairs and State Security into a Ministry of the Interior under Beria following Stalin's death in 1953, it seems probable that a new political police force will be organized. Both the regular and special police forces in the Soviet Union are more arbitrary in attitudes and methods than are those in the Western democratic countries, and this doubtless contributes to some extent to their reputation as instruments of terror.[1] Indeed, the general rôle of the police forces is such that the Soviet Union is commonly regarded as a "police state."[2]

[1] See V. Kravchenko, *I Chose Freedom* (New York, 1946).

[2] On the rôle of the Soviet police, see M. Fainsod, "Controls and Tensions in the Soviet System," *Amer. Polit. Sci. Rev.*, June 1950.

CHAPTER XL

THE RÔLE OF THE STATE IN THE SOVIET RÉGIME

Wide Scope of Governmental Activity in Russia. Although its basic philosophy is strikingly different from that of Fascism and National Socialism, Russian Communism is singularly like both the former Fascist régime in Italy and the old system of National Socialism in Germany in that it has given to the government a very extensive mandate in almost every field of human activity. In Russia, the dictatorship is designated a "dictatorship of the proletariat," and the state as such is not openly glorified; for under the Marxian philosophy the state in itself is evil. However, the most that can be said is that in practice the dictatorship is "*for* the proletariat" and that the glory has been seized by the Communist party. There are few if any fields of human interest which the government and the Communist party have not penetrated, and in many of these areas the government has exercised exceedingly vigorous activity. Hence it is not surprising to find that government controls in the U.S.S.R. have a scope which makes even the New Deal in the United States seem somewhat individualistic and *laissez faire*. The family, the social structure, the economic system, education, science, and the arts are all actively subject to government and party control.[1]

Single Responsible Authority. During the early years of the Communist régime, multiple heads were quite common in the case of the central administrative departments as well as in connection with the economic enterprises of the government. However, this did not prove satisfactory, and changes have now been made which have had

[1] For an illuminating treatment of the wide scope of government action in the Soviet Union, see Sidney and Beatrice Webb, *op. cit.*, II.

the effect of placing a single person in charge of each department and enterprise.[1] Where boards and commissions have been retained, they are now under single chairmen or directors. In the case of the state factories and other economic projects, boards have been retained for purposes of "self-criticism" and discussion; but a manager is now given responsibility for the operation of the business from day to day.[2] In early years, the collegial principle was applied also to schools and similar institutions; but even in these fields the position of director has now been reëstablished. In every case the executives are supposed to keep in touch with the workers, the people, and the patrons; for the Soviet system emphasizes this angle also—though it is alleged that the duty is frequently overlooked and that the management of many agencies is actually bureaucratic and arbitrary.

Popular Participation. Communist leaders have always made much of the importance of linking the administrative process with the mass of the people; and at the outset the workers, the peasants, and the soldiers were permitted to organize committees which were given authority over government departments, industrial enterprises, collectivist farms, and the armed forces. It did not take long to demonstrate that this method would not work efficiently, and consequently, as pointed out, a more centralized control was substituted. However, the leaders have continued to stress their belief in the importance of the rôle of the people, and have maintained numerous organizations of workers, peasants, and others to discuss public questions and to offer advice.[3] The large size of the various soviets is probably to some extent a result of this concept. Having little to do other than to delegate their authority and accept the decisions of the leaders, it is quite feasible to make them large and thus give at least an illusion of popular participation. The use of volunteers in the direct process of administration is another interesting example of this emphasis upon direct participation by the people. In Moscow and other centers, thousands of people are at work on public projects and in government offices during their vacation periods and after working hours, although receiving no pecuniary compensation for their efforts.

[1] For a more detailed treatment of this characteristic, see S. N. Harper, *The Government of the Soviet Union*, 110-112.

[2] A vivid, though probably biased, description of the operation of this principle in industrial plants and state trusts may be found in V. Kravchenko, *I Chose Freedom* (New York, 1946).

[3] For good examples, see the Webbs, *Soviet Communism*, II.

ECONOMIC ENTERPRISES

Emphasis on Economic Undertakings. Communism is more interested ideologically in economic and social aspects of life than in government. The emphasis upon economic factors has led to the identification of Marxism with an economic interpretation of history, whereas under the Marxian-Leninist philosophy the state is at best a rather shabby instrument for exploitation of the proletariat and will finally prove unnecessary and "wither away." Considering the economic emphasis, it is quite natural that much attention should have been given in the Soviet Union to state farms, state factories, state mines, state railroads, state steamship lines, state-controlled labor unions, and state-controlled coöperatives of one kind and another.[1]

Communist Concept of Property. There exists a considerable amount of uncertainty in the minds of most non-Russians as to the exact status of property in the Soviet Union. Some profess to believe that there is no such thing as private property there; others ascribe a fairly important rôle to property and to private initiative in acquiring it. If one conceives of property as the means of production, natural resources, transportation facilities, and related interests, it then is true that private property as such no longer exists in the Soviet Union. The land, mineral deposits, waterways, forests, manufacturing plants, mines, banks, transport by land, air, and water, communications, urban housing, tractor stations in the rural areas, and public utilities have all been nationalized or socialized. Even the tools and equipment used in agriculture and small-scale industry are very largely removed from the realm of private property and placed under coöperatives; for in so far as property is not privately owned, it falls into two categories: (1) property belonging to the state, and (2) property controlled by coöperatives. Most of the types of property above enumerated fall in the first category; but there is nevertheless a considerable amount of property in the form

[1] For general treatment of this emphasis, see W. H. Chamberlin, *Russia's Iron Age* (Boston, 1934); V. M. Dean, "Industry and Agriculture in the U.S.S.R.," *Foreign Policy Reports*, June 1, 1938; and G. Bienstock and others, *Management in Russian Industry and Agriculture* (New York, 1944). For a discussion of "the economic basis of the U.S.S.R.," see A. Y. Vyshinsky, *The Law of the Soviet State*, 176–209; A. Baykov, *The Development of the Soviet Economic System* (New York, 1946); M. Dobb, *Soviet Economic Development since 1917* (New York, 1949); and H. Schwartz, *Russia's Soviet Economy* (New York, 1950).

of buildings, tools and equipment, and goods belonging to groups of individuals organized for coöperative purposes.

Though the bulk of property is obviously accounted for by the enumeration given above, there remains a certain proportion of material goods which may be regarded as subject to control by individuals—commonly designated, however, as "personal ownership" rather than as private property. Individual dwelling houses in the villages and smaller cities, and, in so far as they exist, in the urban centers likewise, may come under this personal ownership. Household furniture and articles of clothing or for other personal use are subject to personal ownership. Wages or salaries received from labor, accounts in state savings banks, purchases of government bonds, and products of the plots of ground allocated to individuals on the collective farms are also personally owned. While, however, such plots of ground may be used by the individual for almost any purpose he pleases and the products disposed of privately, the land itself is, of course, not personally owned.[1]

1. AGRICULTURE

The Problem of Food—The Collective Farm Idea. Few problems have given the U.S.S.R. more trouble over the years than that of the production of food. The revolution of 1917 gave the peasants land, but they were so illiterate and apathetic that they scarcely knew what to do with it. Attempts to win their coöperation were many and determined; but for several years the U.S.S.R. found itself literally starving, despite the fact that potentially it is one of the richest agricultural and livestock producing areas in the world, capable not only of feeding itself but of exporting large quantities of food as well. After various experiments had been tried without much success, it was decided in 1928 that the solution of the problem would be the abolition of individual peasant holdings and the establishment of a gigantic system of collective farms; and during ensuing years rural land-owners (*kulaks*) were extensively liquidated by the imposition of heavy taxes, denial of the use of tractors, and sometimes more drastic means, and numerous collective farms (*kolkhozy*) were set up.[2] By 1935, some fourteen or fifteen million peasant families,

[1] For a brief exposition of the status of ownership, see J. N. Hazard's article on "Property" in *Martindale-Hubbell Law Directory* (1948 ed.).

[2] Stalin himself describes this movement in *Building Collective Farms* (New York, 1931).

or approximately 70,000,000 persons, comprising almost two-thirds of the rural population, had been settled on such farms. Indeed, the movement proceeded more rapidly than even the Communist leaders had anticipated, with the result that mechanical equipment proved insufficient to meet the need and much confusion arose. Since then, progress has been less spectacular, although today more than 90 per cent of all peasant families are to be found on collective farms.[1]

Difficulties Encountered. Despite the rapid progress made in bringing the peasants under the collective-farm system, there was stubborn opposition on the part of many who felt that they were receiving little in the way of return. Following 1929, widespread resistance culminated in 1931-32 in a crop failure. Rather than use their livestock for the common benefit, the peasants killed the animals in large numbers and ate the meat, until there came to be a very serious shortage of domestic animals. Similarly, they did not exert themselves to produce crops which would bring them little benefit as individuals.[2] And as a result large numbers were arrested and condemned to hard labor.

The Program Modified. In 1933, it was decided that the system would have to be modified in such a way as to give the peasants more incentive to work, and hence they began to be permitted to hold certain types of personal property, while the farms were relieved from exactions beyond a fixed annual tax, irrespective of how large the crop might be. Each farm worker, too, was given a plot of a third of an acre or so which he could devote to his own purposes, and the produce from which he could dispose of as he liked.[3] In 1950-51, it was concluded that the size of the individual collective farms was too small, and a drastic program resulted in a decrease from a peak of 254,000 to 123,000—while in 1952, there were some 97,000 collective farms.

[1] For additional discussion, see L. E. Hubbard, *Soviet Agricultural Economics* (London, 1939); L. Volin, "Agrarian Collectivism in the Soviet Union," *Jour. of Polit. Econ.*, Oct. and Dec., 1937; W. Ladejinsky, "Collectivization of Agriculture in the Soviet Union," *Polit. Sci. Quar.*, Mar. and June, 1934.

[2] According to official reports (not always reliable), wheat production increased from 26,200,000 tons under the czars in 1913 to 45,100,000 tons in 1939. However, in 1929 it was only 18,800,000 tons. Potatoes ran to 23,300,000 tons in 1913, 45,600,000 in 1929, and 65,600,000 tons in 1937.

[3] In 1937, production on these plots amounted to over one-fifth of all agricultural output in the U.S.S.R. The government regarded this as too high a proportion, since it involved neglect of communal farming, and consequently a minimum of the peasant's time has now been fixed for working on communal land. Still, however, personal farming flourishes.

The Organization of a Collective Farm. Collective farms are organized in various ways, but ordinarily they follow the general pattern common to all enterprises in the Soviet Union.[1] Members, *i.e.*, residents, who have reached the age of 18, irrespective of sex, belong to the farm meeting and gather to discuss problems of production and distribution. Originally, every member did about as he pleased so far as his labor was concerned; but naturally this proved unsatisfactory, and workers are now organized in brigades responsible for various duties: one assumes care of the livestock; another provides fuel; another looks after mechanical equipment; others take responsibility for the various commodities produced.

The farm meeting theoretically chooses a manager and other officers and an executive committee, who make assignments to brigades and otherwise supervise the work. Actually, it is not uncommon for the manager to be selected rather by a government official or party leader. Originally, too, every member of a farm shared equally in the crops; but this has given way to a system under which distribution is made according to the number of days worked and on the basis of responsibility assumed. Moreover, after the regular distribution, improvements are financed out of the surplus; and if the surplus is great enough, a bonus may be given the members. There are one or two farms under each village soviet, and the soviet president is expected to exercise general supervision over them. The *raioni, oblasti*, and republics also have agencies for supervising the farms, and finally the entire collective farm system heads up under the Ministry of Agriculture of the central government.

State Farms. In addition to the many collective farms, there are state farms (*sovkhozy*) directly operated by the government. There are only some 4,000 of these in contrast to the sizable number of collective farms; but they are much larger both in acreage and in number of workers: the average state farm has something like 6,750 acres under crop, while the average collective has about 3,000.[2] The workers on the state farms are employed by the government and

[1] Detailed discussion of the system of organization may be found in G. Bienstock *et al., Management in Russian Industry and Agriculture* (New York, 1944), and N. Jasny, *The Socialized Agriculture of the U.S.S.R.* (Stanford University, Calif., 1949).

[2] Such statistics may be misleading because there is actually a great deal of variation in the size of the collective farms. The average crop acreage of collective farms increased from 1,210 to approximately 3,000 during the period 1950-52. Average gross acreage in 1952 ran to about 10,000.

paid wages just as the workers in the state industrial plants. Most state farms were administered by a special Ministry of State Farms prior to 1953, but in the reorganization following Stalin's death this was absorbed by the Ministry of Agriculture. Some of the municipal soviets also operate large farms. The variation in the type of production is great, as may be assumed from the nature of the Soviet economy. Some of the state farms specialize in the production of grain; others emphasize livestock; while still others go in for industrial crops, such as cotton and flax. Some are located in arid areas where farming problems are particularly difficult. But the per acre production on state farms is distinctly higher than that on collective farms,[1] partly because the state farms have been given more adequate mechanical equipment, partly because agricultural specialists plan their operations on the basis of the latest techniques developed in the farm experiment stations. Approximately one-tenth of all agricultural production in the U.S.S.R. is contributed by state farms.[2]

Machine and Tractor Stations. The ordinary collective farm is not expected to have its own tractors, combines, and other heavy farm machinery. While at the beginning such machinery as existed belonged to farms individually, experiments in 1929 demonstrated the greater effectiveness of traveling tractors and combines. A single tractor or combine could be used to plow more acres or thresh more grain when operated by a separate agency, and, with farm equipment very scarce, this of itself pointed in the direction of a separation of farm and farm machinery.[3] While the collective farm might have no one who knew much about operating or repairing complicated machines,[4] a special farm machine unit could be assigned such experts. Several thousand machine and tractor stations have therefore been set up throughout the Soviet Union to do the plowing, the reaping, the threshing, and other things requiring heavy machinery on the collective farms.[5] The same machinery is sometimes used in

[1] In a recent year, the grain yield per man-day on the grain-specializing state farms was six times as high as on the collective farms.

[2] For an interesting article on these farms, see W. Ladejinsky, "Soviet State Farms," *Polit. Sci. Quar.*, Mar. and June, 1938.

[3] Harvesting machines in the Soviet Union cover about twice the acreage covered in the United States, and tractors are used about four times as many hours per year as in this country. For additional treatment of the agricultural economy, see U. S. Dept. of Agriculture, *Survey of Soviet Russian Agriculture* (Washington, 1951).

[4] Collective farms have a certain amount of machinery which they control.

[5] In 1951, these stations did all of the plowing on collective farms, did three quarters of the sowing, and harvested over 60 per cent of the grain crop with combine harvesters. See *London Times*, Feb. 4, 1952.

connection with the state farms, although the latter are so large that they are likely to have their own facilities.

2. STATE FACTORIES

The Rôle of the Government in Industry. Practically all heavy industry and the greater part of light industry in the U.S.S.R. is carried on by government factories and trusts rather than by private owners. The thousands of manufacturing plants, numerous mines, as well as the large steel and iron works, chemical plants, oil refineries, and electric generating plants, are owned and operated by the government.[1] Individual factories or works belonging in the same category are organized throughout the entire country into what are known as "trusts"; so that there is the steel trust, the oil trust, the timber trust, and others.[2] And some 291 trusts control approximately 80 per cent of all state industrial enterprises.

Organization of State Factories and Industries. These government factories and industries are placed in charge of single executives, who are checked by plant committees made up of the workers or of representatives chosen by the workers in the very large plants.[3] At one time, the committees of workers ran the plants; but this did not prove satisfactory, and at present managers are appointed to handle the day-to-day operations. The committees of workers discuss matters that concern the plant, offer advice to the managers, and otherwise exert indirect pressure on the management. Local soviets have their committees which deal with many of the enterprises, while the constituent republics have ministries charged with supervising light industry, the timber industry, and the food industry. Heavy industry is controlled by a number of ministries in the central government through the numerous trusts mentioned above.

Achievements in the Industrial Field. Prior to 1917, Russia was one of the least industrialized countries in the world. The Five-

[1] A good study of power projects in Russia is B. I. Weitz *et al., Electric Power Development in the U.S.S.R.* (New York, 1937).

[2] Much current information relating to industrial production in Russia is available in *Russian Economic Notes,* issued by the Division of Regional Information of the U.S. Department of Commerce. For a single study, see L. E. Hubbard, *Soviet Trade and Distribution* (New York, 1938).

[3] For additional information, see G. Bienstock *et al., Management in Russian Industry and Agriculture* (New York, 1944); A. Arakelian, *Industrial Management in the U.S.S.R.* (Washington, 1950); M. Fainsod, "Recent Developments in Soviet Public Administration," *Journal of Politics,* Nov., 1949; and J. N. Hazard, "The Soviet Government Organizes for Reconstruction," *Journal of Politics,* Aug., 1946.

Year Plans have all emphasized the necessity of industrialization, and, considering the relatively short time involved, impressive progress has been made. The great tractor factories and steel plants are the creations of the Communists and employ large numbers of workers—a single plant may give employment to 20,000 to 50,000 persons. Other factories may be less elaborate, but in the aggregate they are important. Many difficulties have been encountered. The original system of management was not efficient; a graded wage scale has had to be put into effect as an incentive to the workers; experts have been too few; the peasant has not always shown the mechanical skill essential to large-scale production; and in the case of certain plants, there has been considerable graft and favoritism. In the field of heavy industry, quantities of machinery have had to be imported from abroad. Heavy industries which received the greatest emphasis increased output by 105 per cent during 1941-50 and an additional 34 per cent in 1951; consumer goods rose only by 23 per cent during 1941-50.[1]

3. BANKING

Banking in the Soviet Union is a monopoly of the government and is handled mainly by the State Bank of the U.S.S.R., often referred to as *Gosbank*.[2] This institution maintains several thousand branches scattered over the country and administers ordinary commercial credit under the supervision of the Ministry of Finance. It also floats government loans, issues currency, and receives tax payments. In addition, there is a State Savings Bank, with some 40,000 branches, for receiving and caring for savings of the people. Also there are certain special banks under the Ministry of Finance. One of these provides long-term credits for the state factories and enterprises; another finances improvements in rural areas; another handles credit

[1] For pro-Soviet recitals of what has been achieved, see *The U.S.S.R. in Figures*, issued by the State Planning Commission in 1935; and the statement made by G. M. Malenkov to the nineteenth Communist Party Congress as reported in the *New York Times*, Oct. 7, 1952. For evaluations of a more objective character, see C. B. Hoover, *The Economic Life of Soviet Russia* (New York, 1931); A. Baykov, *The Development of the Soviet Economic System* (New York, 1947); N. Jasny, *The Soviet Economy During the Plan Era* (Stanford University, Calif., 1952); and a survey of European economy made by the E.C.E. as reported in the *London Times*, Feb. 4, 1952.

[2] For extensive monographs on this subject, see A. Z. Arnold, *Banks, Credit, and Money in Soviet Russia* (New York, 1937); M. V. Condoide, *The Soviet Financial System, Its Development and Relations with the Western World* (Columbus, 1952); and L. E. Hubbard, *Soviet Money and Finance* (New York, 1936).

for foreign trade; a fourth furnishes capital for municipal housing and other enterprises. None of these special banks handles cash transactions, operating instead entirely on debit and credit entries.

4. RETAIL BUSINESS

Government Stores. Retail trade, like industrial enterprises, is considered a proper field for government operation, and something like two-thirds of cash transactions are handled by government retail outlets and by local authorities. In general, however, the government has not been keenly interested in retail merchandising, since it is considered far less basic to the Communist program than industrial and agricultural production. The result is that the stores frequently do not have modern equipment, and indeed seem to most foreign observers quite insufficient in number. In the absence of refrigeration and other up-to-date facilities in many stores, too, there is naturally much waste and spoilage. Even more startling, however, is the time required to make purchases. Industrial workers frequently are expected to make their purchases at retail outlets attached to the state factories in which they work. Residents of collective farms usually have commissaries which supply them to the extent of the credit which they have earned; while in towns there are general stores for the inhabitants. In smaller places, a single government store handles most of the commodities offered for sale, but in cities there is some degree of specialization, with one store selling one type of article and another a different type. In larger cities, there are department stores (*univermag*); and in certain places there are so-called "model" stores, such as those belonging to the *Gastronom* food chain. Prices on basic food commodities are strictly controlled by the government, and in general are maintained at a rather reasonable level. In addition, one may purchase other things if one has the money, although prices are likely to be extremely high because of the inadequate supply of consumer goods.

Farmers' Markets. While the goods produced in the state factories and on the state and collective farms are usually distributed by the government stores, it is possible to buy various food products and to some extent other items from private individuals. As pointed out, members of collective farms are permitted to cultivate small plots of ground for their own purposes; and while much of the resulting produce is consumed by the peasants themselves, a con-

siderable proportion is brought for sale to farmers' markets which have been set up in most towns and cities. Ten to 15 per cent of the retail business in the U.S.S.R. is transacted by these markets.

Consumer Coöperatives. The Communist leaders have been less interested in consumer coöperatives than in collective or coöperative farms. Nevertheless, the government has been willing to permit the operation of consumer coöperatives,[1] and the scarcity of food and consumer goods in general has been such that large numbers of persons have been attracted to membership.[2] Indeed, the problem has not been to recruit members, but to supply the demands of the voracious members already enrolled. The coöperatives, it should be noted, are group enterprises, though under state control. Most of the number are to be found in the villages—simple affairs maintaining an average of about three branches each in the surrounding hamlets. But there are several thousand coöperatives in the cities, and these transact more business on a ruble basis than do the numerous village coöperatives. In addition to these rural and urban coöperatives, there are a number of vocational cöoperatives, conducted by certain occupational groups for the benefit of their members. The various coöperatives handle approximately one-fifth of all retail trade in the Soviet Union.

Organization. All consumer coöperatives are organized into a hierarchical system resembling that of the Communist party, the government itself, and the labor unions. Each local society has a meeting of members several times each year for the purpose of discussing local matters; and a president, a control committee, and a representative to the next highest organ, usually the *raion* coöperative council, are elected by the members. The *raion* councils assist rather than dictate to the local societies and in their turn send representatives to the *oblast* or republic union. The whole system heads up in an elaborate organization in Moscow which maintains a permanent Central Union of Consumers Coöperative Societies *(Centrosojus)* and convenes a conference of local delegates several times each year and a larger congress every two years.[3]

[1] In an article on "Association" in *Martindale-Hubbell Law Directory* (1948 ed.), J. N. Hazard writes: "Coöperative societies and unions of such societies have been encouraged, especially since 1946, and play a very important part."

[2] Some 36,000,000 as World War II started.

[3] Much additional information is reported in the Webbs, *Soviet Communism*, II.

5. LABOR

Labor Unions. The Soviet government has encouraged the formation of labor unions representing the interests of the workers in the factories and industrial plants; and something like 90 per cent of the approximately 40,000,000 workers in industry belong to these unions, which engage in collective bargaining, discuss problems with managers, carry on various cultural programs, and administer much of the social insurance program.[1] Many thousand local unions are organized into approximately 200 industrial unions, each of which has a *raion*, an *oblast*, a republic, and finally a central, organization. On top is an All-Union Central Council of Labor Unions, with authority over the entire complicated system and carefully supervised by the Communist party.[2] American labor unions do not regard these Russian groups as real labor unions, maintaining that they have no freedom of action and actually are but instruments of the Communist party for controlling workers.

Status of Workers. The government of the U.S.S.R. exercises rigid control over the employment of its citizens and the standard working week is from 41 to 48 hours. Prior to World War II there was a substantial amount of freedom allowed in choosing employment. Not only were workers permitted to move from job to job, but the turnover rate was one of the highest in the world, perhaps because of the shortage of workers and the bidding of one factory against another. During World War II the situation was tightened up and it has not been materially relaxed since. In 1940 workers were forbidden to leave their employment without permission of the management (although in cases of ill health such approval was to be given), and in 1942, a system was adopted compelling every able-bodied person within certain ages to perform labor, with all males from 16 to 55 years of age and women from 16 to 50 in cities liable to be ordered to take specific jobs. Workers are subjected to various controls which are onerous. For example, the penalty for over 20 minutes' tardiness is up to six months at correctional labor and a fine of one week's

[1] For an example of a collective agreement involving a labor union and a state trust, see the Webbs, *op. cit.*, appendix to Vol. I.

[2] An informing article on this subject is M. Gordon, "Organized Labor under the Soviet," *Foreign Affairs,* Apr., 1938. For a more detailed treatment of the labor unions, see I. Deutscher, *Soviet Trade Unions: Their Place in Soviet Labour Policy* (New York, 1950).

wages. Grievance committees have been established on a wide scale to handle cases of dissatisfaction on the part of workers, and often they find plenty to do. Strikes, while not illegal, are infrequent.[1]

Forced Labor. Although the Soviet Union has, in general, permitted free choice of employment on the part of workers in ordinary times, it has incurred severe criticism because of the labor camps which it maintains in the Arctic areas, Siberia, and other remote places. Many millions of persons are alleged to have been forced to leave their homes and journey under far from pleasant conditions hundreds, and even thousands, of miles to places far-removed from the centers of population, where they are compelled to cut timber, work in mines, and perform other types of labor under exceedingly harsh conditions. The mortality rate is high, and the human misery involved is reported to be even more frightful. The camps, which have sometimes been branded as "concentration camps," are supposed to be manned by those who have committed political offenses or violated major regulations of the Soviet Union, but it is asserted by some writers that widespread abuses have been permitted and that the entire situation is a distinctly vicious one.[2] Official reports do not make clear how many persons have been condemned to such camps, but foreign critics frequently maintain that the number is at least 5,000,000, and possibly as high as 15,000,000.[3] Soviet authorities regard these places as penal institutions, and point to the chain-gang camps in the United States as involving greater violations of human freedom. They, however, fail to explain to the satisfaction of many observers the large numbers of people who have been sent to the camps.

PUBLIC WELFARE

The Soviet Union has prided itself on vigorous interest in public welfare enterprises of one kind or another. The outside world has

[1] For additional discussion, see M. Dobb, *Soviet Planning and Labor in Peace and War* (New York, 1943); E. Smith, *Organized Labor in the Soviet Union* (New York, 1943); R. Somerville, "Problem of Labor Turnover," *Amer. Rev. of the Soviet Union*, June, 1941.

[2] For a severely critical study of forced labor in the U.S.S.R. by Russian Socialist exiles, see D. J. Dallin and B. I. Nicolayevsky, *Forced Labor in Soviet Russia* (New Haven, 1947).

[3] These figures were used, for example, by the British Under-Secretary of Foreign Affairs when discussing the matter during the United Nations meeting in Paris in 1948. Representatives of the U.S.S.R. displayed considerable feeling, but made no denial.

heard more of the OGPU–NKVD–MVD–MGB than of efforts to improve health, of housing, educational facilities, charitable assistance, and similar enterprises, and hence is inclined to judge the Soviet régime by the reputation of the former rather than by the achievements in the latter fields, and it would be inaccurate to assume that public health and educational standards in Russia have reached a point where they equal those in the United States. Nevertheless, considering the seriousness of the problems to be confronted and the almost unbelievably low standards prevailing before 1917, much progress has been made.[1] Indeed, the various programs in this field are more closely tied in with the basic philosophy of the system than is the case in most other countries. Public health and social security activities are not so much services to be rendered to promote individual welfare as they are aids to the building up of a strong society.

Public Health. The medical profession, as well as hospitals and clinics, have been brought under the control of the government, and in the case of the latter have been greatly extended. Not all doctors are in the employ of the government, but large numbers are so, and these furnish medical aid to the members of labor unions, to the residents of collective and state farms, and to other elements of the population. The cost of hospitalization is met in most cases by the government, although it is possible for people of independent means to arrange for private care. An important part of the health program has to do with the protection of children and mothers.[2]

Housing. From the beginning, the Soviet government assumed the function of regulating housing in order to guarantee to the workers places in which to live. The well-to-do were dispossessed of their dwellings, often without compensation or the privilege of retaining a portion for their own use, and the space thus acquired was apportioned among the members of the party and the mass of the workers.[3]

[1] For evaluations, of varying degrees of enthusiasm, see A. R. Williams, *The Soviets* (New York, 1937); M. T. Florinsky, *Toward an Understanding of the U.S.S.R.* (New York, 1939); W. Citrine, *I Search for Truth in Russia* (London, 1936); H. Stekoll, *Humanity Made to Order* (New York, 1937); A. Newsholme and J. A. Kingsbury, *Red Medicine* (New York, 1933); and N. A. Semashko, *Health Protection in the U.S.S.R.* (London, 1934).

[2] For a valuable monograph on this subject, see H. E. Sigerist, *Socialized Medicine in the Soviet Union* (New York, 1937). A briefer account by the same author under the title "Medicine and Health" will be found in E. J. Simmons [ed.], *U.S.S.R.; A Concise Handbook* (Ithaca, N. Y., 1947), 312-319.

[3] For the law covering housing, see J. N. Hazard, *Soviet Housing Law* (New Haven, 1939).

On account of the program of industrialization, large numbers of people have flocked from rural areas into the cities, and for years the housing shortage has been one of the most acute problems faced by the régime.[1] To relieve the situation, the government has done much to encourage the building of new housing units through the establishment of coöperatives, but even with all of the new modernistic structures that have almost transformed some cities, there remains a great shortage. Private ownership of residential structures is permitted, but most housing facilities in the cities are administered by the government. In rural areas, the peasants' houses are often left to ownership by their occupants, although on large state farms collective housing is usually provided.

Family Organization. Perhaps no phase of the Communist program provoked more foreign discussion at one stage than that having to do with the family structure. In the minds of many people, Communism was identical with free love, the communization of women, the separation of children from their parents, and the breakdown of the family. Lenin was much interested in the family problem, and as recently as 1939 Stalin gave the newspapers an interview in which he commented on the Communist views with regard to the subject.[2] In foreign circles, there has been much exaggeration of the Communist program relating to the family, with emphasis upon the negative rather than the positive aspects. It is true that the Communists desire to remove from the family certain of its *bourgeois* attributes; they do not regard the family unit as sacrosanct, to be maintained at all costs; and therefore in early days divorce proceedings were made comparatively simple, although, as indicated below, latterly made more difficult. Sir David Kelly, British ambassador to the Soviet Union during 1949-51, has written: "In all matters relating to morals of the family Russia has become definitely reactionary and far the most puritanical country known to me." [2]

Government Activities Relating to the Family. Large numbers of day nurseries have been provided by the government to care for the children of workers; orphanages exist in considerable numbers to offer protection to children who have lost their parents; and there are numerous pre-school institutions relieving parents of the training

[1] Between the censuses of 1926 and 1939, the urban population more than doubled, reaching 56,000,000 in the later year. By 1952 it exceeded 70,000,000.

[2] See *New York Times*, Dec. 23, 1951.

of their children at tender ages.[1] Beyond this, however, the government has not taken from parents their responsibility for their children. Divorce has been made more difficult than during the early years of the régime, until there is now little difference between the Soviet Union and many American states in this respect.[2] The right of inheritance has been reëstablished in the case of personal property. While the family as known in certain other countries may have been weakened by some of the Russian state programs, it is still a vigorous institution.

Social Security. The government has interested itself in various aspects of social security, although, because of the country's poverty and the many other problems demanding attention, it has done less in this field than some expected.[3] Pensions are provided for aged people [4] and for workers disabled before they reach the age of retirement. Workmen's compensation is extended in the case of accidents; but unemployment insurance, although offered until 1928, has been dropped on the ground that there is no unemployment in Russia and that anyone who does not work is simply a drone who follows such a course on his own initiative. Much of the social insurance program is administered through the labor unions and mutual benefit societies among collective farmers. Receiving funds from employing organizations and the state, the unions provide old-age, sickness, and disability insurance.

Vacations. Considerable attention is paid by the government to permitting the workers sufficient free time to participate in cultural programs and to engage in various recreational programs. Week-end vacations are more generous than in many countries, and summer vacations are fairly liberal. Soviet newspapers frequently print articles, inspired by the government, which point to the slavery in which American and English workers are alleged to live because of the

[1] For the program in this field in Moscow, see E. D. Simon *et al., Moscow in the Making* (London, 1937).

[2] Divorce is regulated by a law dated July 8, 1944. For the requirements, see the article on the subject by J. N. Hazard in *Martindale-Hubbell Law Directory* (1948 ed.). For the several stages in the development of divorce legislation, see R. Mauer, "The Development of Social Institutions," in E. J. Simmons [ed.], *U.S.S.R.; A Concise Handbook* (Ithaca, N. Y.), 288-310.

[3] For detailed discussions of this aspect of the Soviet program, see W. Citrine, *I Search for the Truth in Russia* (London, 1936); and M. Dobb, *Soviet Planning and Labor in Peace and War* (New York, 1943).

[4] Old-age pensions of from one-half to two-thirds of wages are paid men over 60 years of age after 25 years of service; women qualify at 55 years of age after 20 years of service.

prevailing long hours and the short vacations provided.[1] Many of the claims made, however, do not seem well substantiated. Indeed, the picture presented by certain Russian exiles of labor conditions existing on a widespread scale in the U.S.S.R. is far from a bright one.[2] It none the less is interesting to observe that many of the palaces and spas of the wealthy during the old imperialistic days have been taken over by the government and converted into resorts for workers; on the shores of the Black Sea, for example, some former palaces are now used by workers on vacation, while others have become sanitaria for the care of the tubercular.

CULTURAL AND EDUCATIONAL ACTIVITIES

Contrast between Basic Concept in the Soviet Union and the West. There are few areas in which the basic difference between Russian Communism and the Western democracies is more clearly apparent than in cultural and educational activities. In the eyes of the Soviet Union, the theatre, the movie house, the schools and universities, the ballet, the composer of musical compositions, the sculptor, the writer, and the journalist, indeed all who engage in artistic and cultural activities, must come under the control of the government. The theatre is not intended primarily to entertain; the educational institutions do not exist alone to provide intellectual training and social stimulus; the composing of symphonies is not regarded as a matter of individual creativeness;[3] the journalist is not conceived of as a craftsman who writes what he is moved to set down on paper. This is not to say that personal enjoyment and creative urge are ruled out by the Soviet authorities, but only that such activities are considered far too significant to be left to private initiative. To a greater or less degree, all cultural and educational activities are regarded by the Communists as important instrumentalities of the state to be used for the common good. If properly directed by the state, they can make for a unity of thought and motive of far-reaching significance for the entire Communist program. Many foreign observers have found it difficult to understand the actions of Soviet leaders in removing world-renowned musicians and

[1] See *New York Times*, Aug. 27, 1939.

[2] See, for example, D. S. Dallin and B. I. Nicolayevsky, *Forced Labor in Soviet Russia* (New Haven, 1947).

[3] For a report dealing with a government decree establishing musical standards, see A. Werth, "Musical Chairs Again," *Manchester Guardian Weekly*, July 29, 1948.

artists from their posts, and often have assumed that such actions represented merely another example of irrational harshness. Actually, it may be doubted whether the procedures involved are based on such personal considerations; for what would seem unwarranted interference and persecution under Western democratic cultural systems becomes a routine administrative technique under a set-up where cultural activities are conceived of as important instrumentalities of the state. Moreover, while the U.S.S.R. considers cultural agencies appropriate for state control, it should be noted that it does not insist upon a single national cultural pattern. On the contrary, the numerous racial elements throughout the Soviet Union are permitted to use their own languages and, at least within reason, to maintain their own cultural traditions.

Writers and Journalists. It is common for representatives of the Soviet Union to complain of the character of books, magazine articles, and newspaper stories on Russia appearing in the Western democracies. Indeed they not infrequently deliver bitter jeremiads, and sometimes even go so far as to present vigorous protests through diplomatic channels because of what they regard as outrageous attacks on their country and its system. When informed that such works are individual contributions and ordinarily not controlled by the government, Soviet agents are not satisfied and profess inability to understand how such a situation can be permitted to exist. To the Soviet Union, the tradition of freedom of speech and of the press so highly prized in the United States and Britain simply does not make sense. When asked why the Soviet Union denies such freedoms, a Russian ambassador to the United States is reported to have become very indignant, maintaining that they *do* exist in the Soviet Union. Indeed, upon further questioning, he argued that freedom of the press is actually far more genuine in his country than in the United States, because—so he contended—in the United States the press is controlled by a few capitalists who print only what they please, whereas in his own country the newspapers and journals are "free to print what the government provides." As this very well illustrates, concepts on the subject in the two countries differ so widely that there is hardly any common ground for discussion. Paper and printers' ink are far too valuable in the Soviet Union to be used for purveying stories of love-nests, intrigue, and sensational crimes. Publications may contribute to entertaining the people to some ex-

tent; but their primary purpose is more serious—that of serving the interests of society.

It is no accident, therefore, that newspapers and periodicals in the Soviet Union are either directly or indirectly controlled by the government and directed in detail as to how they shall use their space. Party and government agencies prepare copy which is distributed to the press throughout the country; and after some rewriting to fit local needs, what is thus furnished is invariably used. When one reads articles in *Pravda, Izvestia,* the *Moscow News, Red Star,* and various other newspapers and journals, one knows that the conclusions are those of the Communist party and the government. In the case of books, the relationship between contents and government may be somewhat less intimate, but certainly it is expected that authors will follow a line acceptable to the Communist leaders. On matters relating to public affairs, no deviation from the established policy would be tolerated; while in the case of purely literary works, the authorities reserve the right to object to the general tone, the ultimate influence on readers, and the net contribution to the goals of the party.

Cultural Standards. From what has been said, it might be assumed that, so far as cultural activities may be considered a criterion, the Soviet Union occupies a distinctly benighted position.[1] Actually this may or may not be the case, depending upon one's basis for judgment. It cannot be denied that the Communist party and the government departments have given far more attention to such matters than the czars ever dreamed of. Under the imperial régime, it is true, a somewhat brilliant scene was maintained in the capital and in the immediate vicinity of the court, but the rank and file of the people lacked the remotest contact with such activities. On the contrary, the Soviet authorities have given considerable impetus to the widespread extension of cultural opportunities. Moscow remains the center and far surpasses other places in cultural life, but the regional and local governments are required to support various programs of the sort. Every state factory, state farm, state mine, and other state agency must use part of its income for providing cultural opportunities for its members. Theatres have been

[1] For extended discussions of cultural programs in the U.S.S.R., see W. M. Mandel, *A Guide to the Soviet Union* (New York, 1946), Chaps. xvi-xx; and E. J. Simmons [ed.], *U.S.S.R.: A Concise Handbook* (Ithaca, N. Y., 1947), Chaps. xxii-xxvi.

constructed in most of the larger places,[1] and even the collective farm usually has quarters set aside for movies and group entertainment. The ballet, always dear to the Russian people, has been retained, although with rather a different emphasis. Under programs organized by public authorities, painting, music, sculpture, and many handicrafts attract large numbers of people.

There can be little question that more people in Russia are participating in cultural activities than ever before. How great success has been attained in developing and maintaining high standards is another matter. While official statements have depicted the Soviet Union as a paradise for those interested in the arts, various observers, including Brooks Atkinson, former dramatic critic of the *New York Times,* who spent some months in the Soviet Union just after V-J Day, have been devastating in their criticism. And from time to time, Soviet officials have given some indication of their own dissatisfaction by withdrawing recognition from various well-known artists and writers; indeed, in 1947-48 displeasure was expressed by orders that a new approach be adopted.[2]

Education. The central government has a Ministry of Higher Education;[3] the republics have ministries of education; the party has a bureau which concerns itself with education; and the *raion,* municipal, and village soviets must maintain committees on education. It is not surprising therefore that since the beginning of the Communist régime, and particularly during recent years, education has received wide attention.[4] The contrast with the czarist days is singularly striking. At the present time, virtually all educational institutions from the nursery to the graduate and professional schools are operated by the public authorities. Attendance at the common schools has been made compulsory, and large numbers are enrolled in the secondary schools—the total number of pupils in elementary and secondary schools now approaches forty million.[5] Several million children below school age are cared for in kindergartens and

[1] Theaters numbered 825 in 1941, and 898 were promised for 1950. Movie houses run to 30,000.

[2] See the *Literary Gazette,* Dec. 24, 1947, quoted in the *New York Times,* Jan. 26, 1948.

[3] This was created in 1946. In the reorganization of 1953 this was made part of a Ministry of Culture.

[4] See B. Pares, *Moscow Admits a Critic* (London, 1936); the Webbs, *op. cit.,* II; Beatrice King, *Changing Man; The Education System of the U.S.S.R.* (New York, 1937).

[5] In 1945, 32,000,000 students were reported; in 1950, 37,000,000.

nursery schools, while various adult education projects report some ten million enrolled. Universities and professional schools to the number of some 880 have shared in the general activity, and recently have had more than a million students.[1] Technical schools, numbering some 3,500, enroll 1,200,000 more. All in all, literacy has been brought up from 20 per cent or less to more than 80 per cent.

The 1936 constitution guarantees education as a right of the people. Educational facilities up through the seventh-year schools are provided without cost to those who attend;[2] while the government, the *Komsomols*, and other organizations assist worthy youths in large numbers to meet the living and incidental expenses connected with attendance at the higher schools, including the universities and technical schools. In a number of ways, too, the educational system is geared to the economic order; for example, training in the various institutions may carry with it the right to receive more than the minimum wage after graduation. Military schools, journalistic institutes, and teacher-training institutions ordinarily receive their students from the ranks of the *Komsomols* inasmuch as it is felt that the key professions involved should be reserved for Communists; but the other schools are open to Communists and non-Communists alike—since 1935, even the children of survivors of the old bourgeoisie may be admitted.[3] Until World War II, education in the Soviet Union was coeducational; but at certain levels segregation has now been put into effect.

The Curriculum. With the schools tied so carefully into the program of the government and of the Communist party, it is to be expected that there would be greater uniformity in curriculum than in the United States. Education is not taken lightly in the Soviet Union; the whims of the fathers and mothers in the local areas have very little to do with the running of the schools. Recreation is recognized as a valid part of education, but the elaborate athletic programs

[1] In 1945-46, there were 772 institutions of higher learning, with 560,000 enrolled. In 1950, the respective numbers were 880 and 1,247,000.

[2] Prior to World War II, all education from kindergarten through graduate and professional schools was furnished without payment of tuition. A modification has subsequently been made which requires certain categories to pay tuition beyond the seventh-year schools. However, Red Army veterans and their children and students with two-thirds of their marks "A" and the remainder "B" still qualify for free tuition.

[3] For additional discussion of Soviet education by a Russian official, see M. I. Kalinin. *On Communist Education* (London, 1950).

so common in the United States are not to be found. Instead of reading stories about the birds and the trees, the children of the Soviet Union learn their letters by perusing a text entitled "I Want To Be Like Stalin." [1] And right on up through the intermediate school, high school, college, and graduate and professional school all students must undergo instruction having to do with the government and basic principles of the U.S.S.R. Elective privileges may be accorded in the matter of certain courses; specialization is, of course, permitted at the university and technical school levels; but whether one is to be an accountant, a scientist, a doctor, an engineer, a tractor expert, or a government employee, it is required that courses dealing with the principles of Communism be taken. Such a system may be regarded as sheer indoctrination, violating perhaps the most fundamental tenet of education as conceived in the Western democracies. But the Soviet Union makes no apologies for it.[2] Indeed it is common for writers in periodicals of the U.S.S.R., while extolling their own clearly and frankly motivated system, to ridicule the educational set-up of the United States as unintegrated and without purpose.

[1] This has been translated by George S. Counts and published in an English edition under the above title (New York, 1947).

[2] For additional discussion of current cultural trends, see P. E. Mosely [ed.], "The Soviet Union since World War II," *Annals of the Amer. Acad. of Polit. and Soc. Sci.*, May, 1949. Educational problems are dealt with by N. Hans in a section entitled "Recent Trends in Soviet Education." An excellent treatment of the press, the radio, and related fields will be found in A. Inkeles, *Public Opinion in Soviet Russia: A Study in Mass Persuasion* (Cambridge, Mass., 1950).

CHAPTER XLI

REGIONAL AND LOCAL GOVERNMENT

CONSTITUENT REPUBLICS

The major subdivisions of the Soviet Union are known as constituent republics. Starting out with only the Russian Socialist Federated Soviet Republic, the number has grown through the years until there are currently 16 in all, as follows: (1) the Russian Socialist Federated Soviet Republic, (2) the White Russian or Byelorussian Socialist Soviet Republic, (3) the Ukrainian Socialist Soviet Republic, (4) the Turkmenian Socialist Soviet Republic, (5) the Uzbek Socialist Soviet Republic, (6) the Tadzhik Socialist Soviet Republic, (7) the Azerbaidzhan Socialist Soviet Republic, (8) the Kazakh Socialist Soviet Republic, (9) the Kirghiz Socialist Soviet Republic, (10) the Georgian Socialist Soviet Republic, (11) the Armenian Socialist Soviet Republic, (12) the Karelian-Finnish Socialist Soviet Republic, (13) the Estonian Socialist Soviet Republic, (14) the Latvian Socialist Soviet Republic, (15) the Lithuanian Socialist Soviet Republic, and (16) the Moldavian Socialist Soviet Republic.[1] As in the case of the states comprising the United States, there is little equality among these republics so far as area or population are concerned. Some have tremendous areas but sparse populations; others have large territory and sizable populations; still others do not stand out on the basis of either area or population.

The R.S.F.S.R.: 1. Predominant Position. Among the political divisions, one is so extensive in area, so large in population, and so predominant in influence that it overshadows all of the others; the

[1] For an analysis of the variegated population of the U.S.S.R., see C. Lamont, *The Peoples of the Soviet Union* (New York, 1946).

Russian Socialist Federated Soviet Republic is even more of a giant than New York or Texas in the United States. First of all the constituent republics to appear on the scene, and therefore having a history closely identified with that of the U.S.S.R. from the latter's beginning, this R.S.F.S.R. includes over 75 per cent of the entire Soviet Union and extends from eastern Europe across much of two continents to the Pacific. On the west, it takes in the national capital, Moscow; the capital of the czars, Leningrad, formerly known as St. Petersburg and later as Petrograd; and Stalingrad, the industrial city on the Volga which witnessed the most decisive action between the Russian and German forces during World War II. The former East Prussia, detached from Germany, has likewise been placed under its control. On the south, the republic extends to the Black Sea and includes the Crimea, so often figuring prominently in the European history of the old days. On the north, it reaches far beyond the Arctic Circle and can boast a coastline of approximately 5,000 miles on the Arctic Ocean, extending from Petsamo adjacent to Norway in the west to the extreme east, where at the Bering Strait it is only 56 miles from Alaska. In Asia, the R.S.F.S.R. also shares a border with China, Mongolia, and Manchuria extending for some 3,000 miles. This vast area includes some of the most fertile food-producing land to be found anywhere in the world, along with important deposits of iron, coal, oil, gold, and other valuable raw materials; its timber resources, too, are perhaps not equalled elsewhere. Huge, sparsely settled, semi-arid, and fiercely hot wastes are set over against Arctic tundras stretching drearily for thousands of miles.

Moreover, the population of this peculiarly Russian republic is hardly less impressive than its territory. Well over 100,000,000 people dwell within its borders. Eighty-odd million of these are Great Russians; but there are numerous other racial elements, ranging from a handful of Lapps in the Kola Peninsula, through the Finno-Ugrian groups of the Volga which number several millions, beyond to the five autonomous republics with their people of Turco-Tatar origin, to the mountain people of the Caucasus who have been described as "a veritable modern Babel," [1] and ending with the various Mongol and Turco-Tatar peoples of Siberia. Approximately 30 racial minori-

[1] See C. Lamont, *The Peoples of the Soviet Union* (New York, 1946), for this characterization (p. 43), as well as for a detailed treatment of the population of the entire Soviet Union.

ties have been formally recognized in the establishment of autonomous republics, autonomous regions, and national districts within the R.S.F.S.R. But many other less important racial elements are scattered over the length and breadth of the Russian Republic, constituting in all perhaps as polyglot a racial mixture as is to be found.

2. Subdivisions. The Russian Socialist Federated Soviet Republic is so large that it is divided into major areas known as *oblasti* or regions (there were 48 of these recently), which in many instances are more important in both extent and population than some of the smaller constituent republics. Certain of these *oblasti* bear names familiar in foreign countries—for example, the Molotov *Oblast,* located just west of the Ural Mountains; while others are hardly known outside of the Soviet Union. Some of the larger ones were broken up as recently as 1946 and smaller ones created. In addition to the *oblasti*, the R.S.F.S.R., like the old state of Prussia in Germany, has other component parts which might be likened to the enclaves and exclaves of the latter. While the population is predominantly Slav, there are also large numbers of other racial stocks, and the more important of these have been permitted to organize themselves into autonomous republics. Still less sizable racial groups have been allowed to set up autonomous regions and national districts. Of autonomous republics, there have recently been 12, with the Tatar and Bashkir republics, each with more than 3,000,000 inhabitants, the largest.[1] Autonomous regions have recently numbered six, and include Altai, Khabarovsk, Krasnoyarsk, and Stauropal.[2] National districts have recently aggregated 11—one of the number, the Taimyr, with under 10,000 inhabitants.[3] The Russian Republic further has six territories (*krai*), which are in process of being developed and eventually may attain the status of *oblasti.* Finally, at still lower levels there were recently in this republic alone 2,525 *raioni* (districts), 754 urban soviets, 306 towns with district status, and 41,042 rural soviets. So enormous is the structure of government that a total of 806,744 persons recently served as members of the various soviets or councils.

[1] Other autonomous republics include: Buryat-Mongolian, Kabardin, Chuvash, Daghestan, Komi, Mari, Mordovian, North Ossetian, Udmursk, and Yakut. See W. P. and Z. K. Coates, *Soviets in Central Asia* (New York, 1952).

[2] Other autonomous regions are Krasnodar and Maritime.

[3] Other national districts include: Agin Buryat Mongol, Chukotsky, Evenki, Komi-Permiak, Koriak, Nenets, Ostyago, Ust Ordin Buryat, and Yamal-Nenetsky.

3. Constitutional Basis. The first constitution of the R.S.F.S.R. was adopted as early as June, 1918, and in practice was considered the constitution of the Soviet Union for a few years after the expansion beyond the original republic began. This constitution served, too, as a model for the first constitution of the U.S.S.R., drafted in 1923.[1] The preamble, or first section, gave expression to the underlying philosophy of the Russian revolution, and is usually included among the landmarks of the Soviet régime. The next four, out of a total of 17 chapters, recited the rights of the laboring and exploited peoples. A second section dealt with the general principles to be followed by the Russian Republic, and a third provided in some detail for the central and local governmental structure, including an All-Russian Congress of Soviets of Workers', Peasants', Red Army, and Kazaks' Deputies, a *Sovnarkom* (cabinet), and local soviets. A fourth section dealt with elections, electoral rights, and the recall of deputies, while a fifth section gave some attention to financial matters. A brief sixth section provided for the emblem and flag of the R.S.F.S.R. Though this constitution was hardly regarded as something to be adhered to in an unchanged form—Russian constitutions in general have much less stability than those familiar in some of the Western democracies [2]—it nevertheless remained in force until 1937. With the drafting of a new constitution for the U.S.S.R., it became necessary to plan a complete overhauling of the R.S.F.S.R. constitution, or to draft a new one, because of the intimate relations existing between the two governments. A new Russian Republic constitution was therefore adopted in January, 1937, embodying the basic revolutionary principles of the older one, but reflecting different terminology and governmental structure as appearing in the new U.S.S.R. instrument. More attention was given to certain rights to be achieved as time passed, and the election of members of the various soviets, or councils, at the republic, *oblast,* and district levels was placed on a direct basis rather than on an indirect one as before. The 1937 constitution is still nominally in operation; but developments of intervening years have caused many of its detailed pro-

[1] The text of this constitution may be found in English in various books, including W. R. Batsell, *Soviet Rule in Russia* (New York, 1929), 81-95.

[2] The Soviet Union apparently regards a constitution in a light somewhat different from other countries. Certainly there is nothing like the attitude to be found in the United States. One reason is that Soviet constitutions are usually quite detailed and provide for matters which would be taken care of by ordinary law, or perhaps even executive orders. in the United States and Britain.

visions to become obsolete; so that a simple reading of the text no longer gives an adequate or correct picture of the current constitutional situation.

4. The Supreme Council. The most important agency of government in the Russian Republic is the council or soviet which convenes in Moscow for a rather brief period four times each year. In contrast to the Supreme Council of the Soviet Union, this body is unicameral. But though a constituent republic instrument, it has a membership exceeding 700, and therefore approximates the size of the more popular chamber of the national legislative body. Included in its membership are both members of the Communist party and others approved by the party.[1] A sizable number are prominent national figures, since the Soviet Union sees no objection to permitting its leaders to serve in more than one legislative body.[2] One notes a greater proportion of younger deputies than in legislative bodies in the United States; and of course the worker has a distinctly larger place, with the lawyer and business man conspicuously absent. Women, too, are more numerous.[3] The exact rôle of the Council is difficult to ascertain. The brief sessions give an impression of superficiality rather than of a truly deliberative body. Nevertheless, it is probably not fair to consider the Council merely a rubber stamp. In many instances, it obviously contents itself with ratifying what has already been decided or done; but it also seems at times to display a certain vitality, as by caustically criticizing actions of the administrative departments and insisting upon changes. The Council elects a chairman, a presidium, and an executive committee, corresponding in general to the officials and bodies of the same names in the Soviet Supreme Council, and exercising a good deal of power in the affairs of the republic. A considerable amount of the Council's authority is, indeed, delegated to and exercised by the presidium and executive committee.

5. Administrative Departments. With its population of more than 100,000,000 and its very extensive area, the Russian Republic

[1] Out of the 766,563 members of soviets or councils at various levels in the R.S.F.S.R. in 1948, 385,527, or 46.8 per cent, were members of the party. Doubtless the proportion of party members in the Supreme Council of the R.S.F.S.R. was higher than the general average.

[2] Stalin and Molotov, among others, are elected to soviets or councils at almost if not actually all levels down to the urban soviet.

[3] Out of the 766,563 members of the various soviets or councils in the republic in 1948, 267,088 were women.

naturally has to give much attention to administrative problems. Its ministries, located in Moscow, with field offices in various parts of the republic, are very large agencies, with elaborate organizations and numerous staff members. Indeed, some of the administrative agencies of the R.S.F.S.R. actually surpass those of the U.S.S.R. in size. Among current ministries are those dealing with foreign affairs, armed forces, finance, justice, education, public health, public welfare, internal affairs, culture, agriculture, and light industry.[1]

Supreme Councils of the Other Republics. Each of the other constituent republics has a supreme council, elected by the voters of the republic every four years,[2] and with every 150,000 people entitled to one representative. As in the R.S.F.S.R., these supreme councils meet regularly, usually four times a year, and after giving attention to general policies delegate much of their authority to presidia and executive committees, which then are available when occasion demands. These councils, too, elect a president or chairman, a secretary, and other officials and organize into committees.

Authority of the Republics. Under the quasi-federal system in effect in the U.S.S.R., the constituent republics enjoy a large measure of authority.[3] However, in such fields as foreign trade, transport, monetary system, and communications they have surrendered their power to the Union government, and they are actually subject to control by the Union authorities in many other respects.[4] All fundamental policies are laid down by the Communist party, and, irrespective of any power which the constituent republics may supposedly enjoy, they are naturally guided by these policies. Nevertheless, it would be a mistake to assume that the constituent republics have no importance; for in many more or less routine matters the Union government allows them a considerable amount of leeway. They are

[1] For the elaborate organization of one of these commissariats in the R.S.F.S.R., see the decree relating to the People's Commissariat of Communal Economy of 1937, issued by the All-Russian Central Executive Committee and the Council of People's Commissars of the R.S.F.S.R. A translation is included in W. Anderson [ed.], *Local Government in Europe* (New York, 1939), 443-446.

[2] See Chap. viii of the 1936 constitution, especially Art. 90.

[3] Aside from functions solely reserved to the central government as listed in Art. 14 of the constitution, the constituent republics are legally free to exercise such powers as they desire.

[4] See Art. 14 of the 1936 constitution. Prior to 1944 they had no authority to organize military formations or to handle foreign affairs. An amendment added in 1944 conferred such power subject to limits set by the U.S.S.R. in the constituent republics. Two of the constituent republics hold membership in the United Nations: Ukrainia and White Russia.

particularly active in supervising the governments of the regions, districts, cities, and villages, upon which they may impose their will as far as they like in so far as the Union authorities do not have contrary purposes.

Administrative Agencies. The constituent republics are, of course, particularly important as units for the administration of those functions which have not been conferred by the constitution upon the Union government. All maintain eight or more administrative departments presided over by ministers, and with representatives of the central government attached. Ministers commonly encountered deal with education, justice, internal affairs, agriculture, finance, trade, communal economy, health, and public welfare. In addition, there is, as explained in an earlier chapter,[1] a planning commission responsible for planning within the republic and at the same time both contributing to the work of the central planning commission and depending upon that agency for basic guidance.

Civil Service. The major republics employ large numbers of workers in various capacities. The higher classes of these are supposed to possess certain specified educational and professional qualifications; and though thus far there has been a considerable gap between theory and practice, progress toward higher standards is being made as more trained people are turned out by the various institutions that have been set up for the purpose. The highest officials in the republics are usually active members of the Communist party and bring to their departments the intimate relationship with the party which is a striking characteristic of the Soviet system.

THE *OBLAST*

General Nature. The *oblast* has taken the place of the old Russian province, although it is not now found throughout the entire country.[2] Except in the Russian and Ukrainian Republics, the constituent republic is immediately above the *raion* or district. The size, both in area and population, of the Russian and Ukrainian Republics is such that it would be almost impossible to have the *raion* represented directly in the soviet of the republic.[3] Moreover, some ad-

[1] See p. 869 above.

[2] The term *oblast* is used also in connection with the autonomous regions. However, the administrative *oblast*, or region, referred to here is quite distinct from the autonomous *oblast*.

[3] For the provisions relating to *oblasts* in the R.S.F.S.R., see Chap. viii of the constitution of 1937, especially sects. 92-94.

ministrative structure is essential to serve as an intermediary between the ministries of these large constituent republics and their numerous *raioni*. The average population of the *oblasti* is something like 5,000,000, which places them on a level with most of the constituent republics; but they vary a great deal in size, with populations ranging from about 1,000,000 to 10,000,000.

The *Oblast* Soviet. The qualified voters are charged with electing members of the *oblast* soviet, or council, for three-year terms. With populations varying so widely, it is not considered feasible to lay down any hard and fast rule with respect to the number of persons to be given a representative, and hence electoral districts vary from 15,000 to 80,000. *Oblast* soviets usually meet four times a year, and their organization is more or less the counterpart of that of soviets at other levels. All have a president or chairman, a presidium, an executive committee, a secretary, and several standing committees—the president being a full-time official.

***Oblast* Functions.** The *oblast* has general oversight over all of the district and local governments situated within its area and may veto virtually any action or proposal of a *raion,* municipality, or village. Theoretically, indeed, its government has almost unlimited authority; actually, it is constantly subject to control by its constituent republic and by the central government. Under this limitation, there are some 15 fields in which its government carries on activity, including public health, public welfare, education, finance, agriculture, defense, administration of justice, and distribution and production of commodities.[1]

TERRITORIES, AUTONOMOUS REPUBLICS, AUTONOMOUS REGIONS, AND NATIONAL DISTRICTS

On the same general level as the *oblasti* are territories, autonomous republics, and autonomous regions. Unlike the situation familiar in the United States, however, where corresponding areas are directly under the control of the national government and separated from the states, in the U.S.S.R. all are included within the constituent republics. As a matter of fact, most of them are to be found within that sprawling republic known as the R.S.F.S.R.[2]

[1] See Sec. 92 of the 1937 constitution of the R.S.F.S.R.

[2] In 1951, 29 out of 35 autonomous republics, autonomous regions, and national districts were within the R.S.F.S.R.

Territories. Territories (*krai*) in the Soviet Union serve the same general purpose served in other countries. Ordinarily they exist in sections where the population is sparse, and where consequently it would not at present be feasible to set up any elaborate system of government. Under the comprehensive planning characterizing the Soviet Union, some territories are being featured as centers of various industrial projects, and it is expected that as population grows the political status of such areas will change from territory to a higher category. Territories have their own soviets, or councils, which in some instances are based on election districts with as few as 1,500 inhabitants.

Recognition of Racial Equality. While the *oblasti* and territories are based primarily on administrative considerations and serve as administrative subdivisions of a constituent republic, the autonomous republics, autonomous regions, and national districts have been created as a result of the recognition which the U.S.S.R. extends to various racial groups. There are some 185 distinct races, nationalities, or tribes in the U.S.S.R., speaking approximately 145 different languages or dialects and adhering to 40 or more religions. The constitution of 1936 declared: "Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social, and political life, is an indefeasible law. Any direct or indirect restriction of the rights of, or conversely any establishment of direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law." [1] However, as in many other fields, there seems to be a considerable gap between principle and practice.[2] Nevertheless, laws in the Soviet Union are published in 16 different languages, schools are conducted in at least 70, and books are printed in some 110. Moreover, in order to give some scope to the aspirations and efforts of the numerous racial and national elements in the population, many such groups have been set up as separate political areas. The largest have been organized into constituent republics, such as the Russian, Ukrainian, and White Russian; less sizable ones enjoy the status of autonomous republics, autonomous regions, or national districts.

[1] Art. 123.

[2] Evidence seems to indicate that seven minority groups, including 1,300,000 persons, have been banished or liquidated during recent years. These include the Chechens, Ingush, Volga Germans, Crimean Tartars, etc.

1. Autonomous Republics. There have recently been 16 autonomous republics: 12 in the Russian Soviet Federated Socialist Republic, two in the Georgian Soviet Socialist Republic, one in the Azerbaidzhan Soviet Socialist Republic, and one in the Uzbek Soviet Socialist Republic. Such autonomous republics vary in population from the Tatar and Bashkir, with more than 3,000,000 inhabitants each, to the Nakhichevan with less than 150,000.[1] Yet each is entitled to send 11 deputies to the Council of Nationalities of the Supreme Council of the Soviet Union. Each maintains a system of government resembling that of a constituent republic, although in many instances on a less elaborate scale; and the soviets, or councils, are made up of representatives of election districts varying from 3,000 to 20,000 in population. Each autonomous republic has its own constitution.

2. Autonomous Regions. There have recently been nine autonomous regions, of which six are in the R.S.F.S.R.[2] In general, these regions, varying in population from just over a quarter of a million to somewhat less than 100,000, are distinctly less populous than the autonomous republics. However, it should be added that it is not always a simple matter to determine the basis on which they have been organized, inasmuch as some of the larger autonomous regions are more populous than smaller autonomous republics. Each autonomous region, however, is entitled to send five deputies to the Council of Nationalities of the Supreme Council; and their soviets are made up of representatives chosen on the basis of one for every 1,500 to 3,000 people.

3. National Districts. The national districts are the least important of the racial subdivisions. There were 10 of them recently, and each sends a single representative to the Council of Nationalities of the Supreme Council of the Soviet Union. For the most part, national districts have less than 100,000 inhabitants, and some are very tiny, with less than 10,000.[3] Here again, however, it is not safe to rely

[1] These figures apply to all inhabitants within an autonomous republic, not simply to the racial group which controls. In some of the autonomous republics, there actually are more people of other racial groups than of the supposedly dominant one. For example, in the Mordovian Autonomous Republic 37.4 per cent of the people are Mordovian and 57.3 per cent Russian.

[2] This does not include regions in territories. The R.S.F.S.R. includes six autonomous regions and three regions in territories.

[3] Taimyr National District has a population of some 8,000; Koriak and Yamal-Nenetsky National Districts have 12,500 and 12,753 inhabitants, respectively.

on population alone, since the Komi-Permiak National District, with more than 200,000 inhabitants, actually is more populous than most of the autonomous regions and indeed even surpasses the very smallest autonomous republics. The soviets, or councils, of the national districts are made up of representatives on the basis of one for every 300 to 3,000 inhabitants.

THE *RAIONI*

General Nature. In czarist days, Russia was divided into provinces, counties or cantons, and rural districts. The Communists have reorganized local government to a large extent, and have substituted new areas for both provinces and counties.[1] In the R.S.F.S.R. and the Ukrainian S.S.R., and elsewhere in the constituent republics, the unit standing immediately above the rural *selosoviets* and the small municipal soviets and below the *oblasti* is the *raion,* or district. The more than 3,000 of these throughout the Soviet Union [2] vary greatly in area and population, but the average population is approximately 45,000, or slightly larger than that of counties in the United States. Large cities—that is, cities with a population of at least 50,000—are not included in the *raioni* despite the fact that they may be surrounded by them; such cities, on the contrary, are directly responsible to the constituent republics in all republics except the Russian, where they are under the *oblasti.* The typical *raion* includes from 20 to 25 *selosoviets,* and in one case out of three a single small urban soviet which is not large enough to enjoy separation from *raion* control.

The *Raion* Soviet. Prior to 1937, the *selosoviets* and municipal soviets elected representatives to the *raion* or district soviets, but the 1936 constitution provides that the members of the *raion* soviet shall instead be elected by the voters themselves by secret ballot and for three-year terms. Inasmuch as under the previous system the *raion* soviet was frequently too large to permit it to be an effective deliberative body, the 1936 constitution sought to apply a remedy by enlarging the unit entitled to representation. Under the old system, the village soviets chose one representative for every 300 inhabitants, while the urban soviets could choose a delegate for every 60 voters, or about every 125 inhabitants. Because of variation in population

[1] Local organs of state authority under the constitution of 1936 are discussed at length in A. Y. Vyshinsky, *The Law of the Soviet State,* 473-496.

[2] The R.S.F.S.R. has recently maintained 2,525 of these districts.

among the *raioni*, the new plan does not lay down any categorical electoral basis. But the general rule is one member for every 1,000 people, with 25 members in *raioni* under 25,000 population and in no case more than 60 members. Meetings are required at least six times each year.

Organization. The organization of the soviet of the *raion* is similar to that noted at other levels. There is a president or chairman, a presidium, an executive committee, a secretary, and a series of standing committees to function in special fields.[1] The president is often influential in directing business, while the presidium and executive committee may in larger *raioni* perform most of the work, inasmuch as the membership of the soviet itself is too large to permit effective action. Every *raion* soviet must maintain standing committees to deal with agriculture, public education, finance, public health, local industries, social maintenance, trade, and municipal economy; while other committees may be set up as desired.

Authority of the *Raioni*. The *raioni* have a large measure of control over the village and urban soviets within their boundaries; they may refuse to approve almost anything that these local authorities have undertaken. In addition, they have authority to act on all sorts of matters relating to the district; theoretically, there is virtually nothing that they cannot do within the limits of the *raion*. However, the same rule applies here as elsewhere, and in the last analysis *raioni* may act only in so far as what they do is acceptable to the superior agencies of government and to the Communist party. Even in the case of the budget, it is necessary for the *raioni* to submit proposed drafts to the higher authorities for approval, although in practice this is ordinarily largely a matter of routine.

***Raion* Civil Service.** The functions of the *raion* require the services of numerous persons, particularly in the case of the more populous districts, and provision has been made for the employment of experts and clerical workers in six or more administrative departments. These *raion* civil servants are required by law to have certain educational training and to meet minimum standards in the way of experience; although in many instances the law is not observed, largely perhaps because of lack of qualified persons. As training

[1] For the official provisions concerning the organization of *raioni* in the R.S.F.S.R., see Sec. 96 of the R.S.F.S.R. constitution of 1937. Parts of this are translated in W. Anderson [ed.], *Local Government in Europe*, 438-442.

facilities have been improved, some progress has been achieved in bettering personnel; and probably this trend will continue. In general, employees of the *raioni* are distinguished by their youth; few are much over 30 years of age, and of course many are active in the Communist party.

URBAN SOVIETS

The Place of the City in Russia. One of the striking features of the last few decades in the U.S.S.R. has been the growth of cities. Older municipalities have added to their size, and many new ones have sprung up, at times almost overnight. Moscow and Leningrad, with populations exceeding four and three millions respectively, would be large cities in any country, and there are numerous other places which can claim considerable size, including more than 70 of over 100,000 population and at least ten or more of half a million. Approximately 1,200 places are classified as cities, though some have no more than 10,000 people.

Variations in Representation. With cities regarded as more dependable than rural districts, the Communist party during the early years sought to give urban population a decided advantage over rural population in the selection of republic and Union soviet members. However, to a considerable degree, the 1936 constitution corrected this favoritism. Under its provisions, the soviets of Moscow and Leningrad are based on either districts or vocational groups having 3,000 people, while other cities have an election base of from 100 to 1,000 persons. In large industrial plants, there may be dozens of these electoral units—the tractor factory at Stalingrad has well over 100—all organized on the basis of departments, offices, services, and the like. Small plants may have only a single unit.

The Municipal Soviet. The municipal soviet, or council, tends to be a large and unwieldly body, although by increasing the ratio of people to members, the 1936 constitution contributed somewhat to solving what has for some time been a problem.[1] Even under the new constitution, however, municipal soviets may run to 100 members or more if the city is at all sizable, with totals in the largest cities mounting to several hundred. The fact, moreover, that each

[1] For an excellent study of the Moscow Soviet prepared by a group of English students of local government, see E. D. Simon *et al.*, *Moscow in the Making* (New York, 1937). Also see J. Garelick, *A Soviet City and Its People* (New York, 1950).

municipal soviet has not only regular members but "candidates," *i.e.*, alternates, to the extent of an additional one-third adds to the unwieldiness. The overgrown aspect of city soviets has made it necessary to entrust much of their authority to executive committees, commonly of about a dozen members (in Moscow, 15).[1]

Organization. In addition to the executive committee and presidium just mentioned, municipal soviets have a president or chairman, a secretary, and a number of committees. The rôle of president is frequently very important; for a vigorous member of the Communist party is often given the position in order to make for integration between the local government and the party—although with approximately half of the municipal soviet members also members of the party, such integration has, at least until recently, been less of a problem in the cities than in the rural regions. All municipal soviets maintain permanent or standing committees or sections. In the smaller cities, these are as follows: public education, public health, local industries, municipal economy, trade, finance, and social maintenance. Larger cities have other committees, dealing with cultural programs, administration of justice, sanitation, and other matters.[2] As in the soviets at other levels, committees include both members of the soviet and outside representatives, perform important functions, and in some respects bear a resemblance to the committees of English borough councils.

Municipal Employees. Cities in the Soviet Union naturally give employment to large numbers of workers of one kind or another; in certain cases, they may employ more people than the districts and regions in which they are located. Thus far, no great emphasis has been placed upon recruiting experts, although during the past few years this situation has been improved to some extent. Most employees have been taken for short periods from the ranks of the workers, and consequently they have had no special background for the public tasks which they are expected to perform. A curious practice of the municipal soviets is the use of volunteers for performing public duties. Known as *subbotniki,* or Saturday workers, because they give their holidays to the municipality, these are unpaid and

[1] For a description of a municipal soviet, see H. N. Brailsford, *How the Soviets Work* (New York, 1927).

[2] Moscow has had some 28 of these committees, each with a membership of from 40 to 100 or more.

ordinarily, of course, have no special training for their work.[1] It is estimated, however, that at any one time there are not fewer than 50,000 such volunteers in Moscow, and almost as many in Leningrad.

Wards. Cities having as many as 100,000 inhabitants, and some others that have received special authorization, divide themselves into wards, which also maintain soviets. Moscow has ten such soviets and Leningrad eight. In a few instances, municipal wards are not even within the limits of the city, while in others they may be based on racial minorities rather than on geographical areas. It is possible for election units to choose the same persons to represent them in both the ward soviet and the municipal soviet, although this is not commonly done. The purpose of the ward soviets is to decentralize, to bring the government in the larger cities into more intimate relations with the rank and file of the people, as is the case in the villages, where the electors meet frequently for discussion of all sorts of public questions.

The size of the largest cities is such and social organization so complex that even this decentralization has not accomplished what it was hoped to achieve, although it may have served a useful purpose.[2] One difficulty is that even the ward soviets are often too large for satisfactory functioning. In Leningrad, the smallest has more than 300 members, while the average runs to approximately 500, with one such soviet having more than 1,000 members; and these numbers do not include the "candidates." Ward soviets are organized like others: a president takes an active part in directing proceedings; a presidium acts for the soviet in many instances; and committees are provided. And such soviets are concerned primarily with public works, although other activities may also come in for attention.

Scope of Municipal Powers. On paper, municipal soviets are given what sometimes seems to foreign students an extraordinary amount of freedom in handling local affairs.[3] Actually, they are subject to constant check by agents of the central government, of the constituent republics, and even of the subordinate areas of government. If representatives of the higher authorities do not like what

[1] For additional information relating to these volunteer workers, see the Webbs, *Soviet Communism*, I, 58.

[2] See the statement by Kaganovich quoted by the Webbs in *Soviet Communism*, I, 56.

[3] For a list of municipal functions, see Chap. ii of the decree relating to city soviets issued by the Central Executive Committee in 1933. A translation of this document is included in W. Anderson [ed.], *Local Government in Europe*, 431-437.

cities are doing, they do not hesitate to indicate the fact, and even to displace decisions of the municipal authorities with their own. Nevertheless, the municipal soviets have been quite active and in certain fields have carried on programs which compare favorably with those to be found in any home-rule city in the United States.[1]

THE VILLAGE

Status. The U.S.S.R. is first of all a country of villages, though its urban growth during recent years has been spectacular. Villages are more a feature of the U.S.S.R. than of the United States for several reasons, one of which is the tendency of the rural population to collect their shelters in a single locality rather than to live on isolated farms. How many villages there are is not known; though a prewar official estimate of 599,890 villages and hamlets is on record. Some are so tiny that it is scarcely possible to think of them as important politically except as segments of larger areas. The Webbs estimated, however, that some 400,000 are large enough, either alone or together with other hamlets, to have a village meeting.[2] With so many divergences in other respects from section to section, it is to be expected that villages will vary widely. In the more sparsely settled and arid areas, the average such unit probably has no more than 100 inhabitants, whereas in the fertile regions of the Ukraine and other sections the average may be 20 or more times as large. In these latter areas, villages of from 5,000 to 10,000 persons are not uncommon.[3]

Village Meetings. In smaller villages, the voters assemble six or eight times a year to discuss communal problems, as well as once every three years to elect representatives to the *selosoviets*. Far from being an innovation of the Communists, these primary assemblies have been a feature of Russian political organization for a long period; and their significance is considerable, even though, despite their long history, they have failed to accomplish as much as might be expected in the direction of expertness in self-government.[4] They

[1] Several of these functions are discussed by B. W. Maxwell in W. Anderson [ed.], *op. cit.*, 404-411.

[2] *Soviet Communism*, I, 28.

[3] Local government before 1917 is discussed in S. Astrov, *Municipal Government and the All-Russian Union of Towns* (New Haven, 1929); and in T. J. Polner *et al.*, *Russian Local Government During the War and the Union of Zemstvos* (New Haven, 1930).

[4] A fairly detailed treatment of village government by B. W. Maxwell is included in W. Anderson [ed.], *op. cit.*, 411-420.

are permitted to discuss various problems of a political nature; although naturally many of the matters to which they give attention relate rather more to practical affairs pertaining only to the local scene. It is not uncommon, too, for them to debate questions of regional, or even national, import; although here again care must be taken not to criticize policies which the authorities in the Communist party have decided upon for the operation of the government as a whole. Resolutions may be put and adopted in regard to public affairs; although most debate ends without going that far, and any resolution adopted must be transmitted to the higher authorities, which have power to take action. One of the most important effects of these village meetings is doubtless the influence exerted on the representatives to the local soviet. When these hear an extended discussion of a given matter and know that the majority of the voters favor a certain course, it is difficult for them to ignore the point of view when they sit in the local soviet, particularly when they know that they may be recalled by their neighbors if they fail to give satisfaction.

The Village Soviet. Larger villages have their own *selosoviets*, or councils, while smaller ones and hamlets are grouped together for the purpose of maintaining such bodies jointly. It has been noted that there are probably more than half a million villages; but there are only some 70,000 *selosoviets* on the basis of one for every 100-250 persons (not voters) in the area, with every election district entitled to at least three seats irrespective of population.[1] In addition to the regular representatives, candidates or apprentices are chosen in a ratio of one to three.

Authority. Theoretically, the *selosoviet* has virtually unlimited authority over the village or villages which it covers. A cursory glance at the decrees which lay down the authority of the *selosoviets* leaves the student, however, somewhat confused; for it is difficult to reconcile the elaborate lists of subjects placed within the scope of these local bodies with the general character of the Communist system. The explanation is, of course, that the actual situation is different from the paper plan; although it would be a mistake to assume that the *selosoviets* do not embody more vigor than is to be noted in the case of local governments in some other countries. Communist psychology demands that the *selosoviets* be given wide leeway in the

[1] There are some 41,042 of these rural *selosoviets* in the R.S.F.S.R.

powers which they *may* exercise, but that higher authorities also have the right to veto anything not in keeping with the policies of the district, province, republic, or central government. Local soviets may enact ordinances on a wide variety of subjects for regulating the conduct of the villagers; they may carry on virtually any public enterprises they like; they have important functions in connection with the collective farms; they may act in regard to coöperatives; they may create courts; and they can even at times control the actions of the agents of higher administrative departments. But in practice few *selosoviets* begin to make extensive use of their theoretical powers. In general, the central government knows that it is perfectly safe to confer wide authority because of the backwardness of the rank and file of the people.[1]

Officers. Each local soviet chooses a president, a secretary, and a varying number of other officials, there being one full-time official for every 50 to 75 families. Officials hold office, however, for only two or three months, during which time they are relieved of their duties on the collective farm, or, if they are not members of such a group, are paid for their services out of funds raised by taxation. Among other duties, they supervise roads and operate other public enterprises, assist the local court, and maintain order. Presidents of *selosoviets* are frequently chosen from the ranks of the party members, and consequently serve to integrate the local government with the Communist party; about two-thirds of the number have been party members.

Committees. Each *selosoviet* is required to set up an executive committee and such other committees as the soviet of the constituent republic of which it is a part may order. In the Russian Republic, at least eight committees must be established by each *selosoviet:* public education, finance, trade, public health, local industries, social maintenance, agriculture, and general communal life. Membership on such committees is not restricted to members of the local soviet, for it is felt that as many other persons as possible should have the experience growing out of such service. Three times each year the *selosoviets* are expected to hold meetings open to all electors,

[1] A somewhat out-of-date, but still useful, description of village political organization may be found in K. Borders, *Village Life Under the Soviets* (New York, 1927), Chap. vii.

and on these occasions they are required to explain what they have done and why.

President or Chairman. The president or chairman of the *selosoviet* corresponds to the mayor of a city in the United States, and probably has greater authority than most mayors.[1] He is supposed to bring matters before the *selosoviet* for consideration and, in general, to take an active part in the body's proceedings. When the *selosoviet* is not in session, he may, together with the executive committee, act in its name. He is given the power to issue various orders and decrees relating to local matters and has general oversight over the administrative process within the area. While, however, he has a right to order things done, his position is such that he needs to lead rather than dictate. As the late President Kalinin once told a group of presidents: "A weak chairman of a village soviet tries to do everything through administrative orders; and the weaker he is, the more frequently does he resort to this method. On the other hand, the more politically developed a chairman of a village soviet is, the more authoritative he is among the collective and individual farmers, the less frequently does he have to resort to administrative methods, to the employment of methods of coercion." [2]

[1] The officers of the village soviets are prescribed in Art. 100 of the constitution.

[2] Quoted from the Webbs, *Soviet Communism*, I, 34-35, which refers to the *Moscow Daily News*, Sept., 1933.

PART FOUR



LATIN AMERICAN AND

FAR EASTERN GOVERNMENTS

CHAPTER XLII



THE GOVERNMENT OF ARGENTINA

Students of comparative government prior to the 1930's ordinarily limited themselves to a study of the political institutions of Great Britain, France, Germany, and Italy, with the Soviet Union, Switzerland, and possibly one or two additional minor European countries also thrown in. But the increasing awareness of the importance of the Far East, the implementation of the Good Neighbor Policy by the United States in Latin America, and the broadening influence of World War II has led many, at any rate, to extend their horizons. Europe is still considered important, but it is no longer accorded the monopoly which it enjoyed a few years ago.

Basis for the Selection of Argentina. If the time available for comparative government courses in the universities permitted, it would be desirable to include several Latin-American governments in this text. In addition to a country made up primarily of European racial stock, it would be profitable to consider a country whose population is to a large extent Indian. Brazil might well be brought in, since it involves the most extensive area and the largest population and is of great commercial importance. Mexico, located as it is immediately to the south of the United States and a popular place for American visitors, has substantial claims. However, under existing circumstances it seems feasible to find space for only a single government, and that of Argentina has been selected. The political institutions of Argentina have probably presented more stability over a period of a century than those of any other Latin-American country. Few if any other governments show so well the combined impact of European and American political ideas. Finally, it seems appropriate to give some recognition to the strong feeling of nationalism, the

general progressiveness of spirit, the ambitious leadership, and the somewhat striking individuality which have characterized Argentina and the Argentinian people for a considerable period.

CONSTITUTIONAL DEVELOPMENT

Internal Disturbances Following Independence. For many years after independence was won from Spain in 1810, Argentina was greatly handicapped in its development by internal disturbances.[1] Indeed, disputes between those who wanted a strongly centralized government and those who favored a federal form, with considerable autonomy for the provinces, raged from the winning of independence to about 1880—a period of more than half a century.[2] Unfortunately this difference of opinion was not confined to verbal polemics, but frequently manifested itself in physical violence and bloodshed. The federalist leader, Juan Manuel de Rosas, defeated the unitary chief, General Juan de Lavalle, in 1829 and, ironically enough, shortly thereafter made himself the dictator of the country. For more than 20 years, this colorful but autocratic buccaneer controlled the new country's destinies, sometimes as governor and again as captain-general, but always with force. Toward the end of his career, Rosas quarreled with one of his followers, General José de Urquiza, who proceeded to invoke the aid of Brazil and Uruguay in raising an army to oppose Rosas; and early in 1852 Rosas was defeated and a provisional government established under Urquiza, although Buenos Aires was permitted to set up an independent government.

In 1861, General Urquiza was defeated by General Mitre, who proceeded to unite the provinces under his leadership. However, peace lasted only until 1865, when a war broke out with Paraguay, continuing until 1870. Shortly after this, there was trouble between the provinces and Buenos Aires which finally led to military measures and ended in the federalization of Buenos Aires municipality in 1880. After 1880, disturbances became less common and the republic had an opportunity to develop its extraordinarily rich resources.

[1] On the history of Argentina, see R. Levene, *History of Argentina* (Chapel Hill, 1937), J. F. Rippy, "Argentina" in A. C. Wilgus [ed.], *Argentina, Brazil, ana Chile* (Washington, 1935); F. A. Kirkpatrick, *History of the Argentine Republic* (New York, 1936); and V. F. Rennie, *Argentine Republic* (New York, 1945).

[2] For a study of this conflict during the years 1820-1852, see M. Burgin, *Economic Aspects of Argentine Federalism* (Cambridge, 1946).

A steady stream of emigration set in from European countries, and population grew by leaps and bounds. During the last half-century, Argentina has probably enjoyed greater stability than any of the other Latin-American countries, notwithstanding the series of political changes of revolutionary, or at least semi-revolutionary, character which have taken place since 1930.

Beginnings of Constitution-making. During the years from 1810 to 1819, the provisional government operated under two acts known as "provisional statutes," passed in 1811 and 1815 respectively. Even, however, before independence was definitely won from Spain, a constitution was drawn up by a congress which met in Buenos Aires in 1819.[1] But this instrument was not regarded as entirely satisfactory, with the result that a constitutional convention was summoned to meet in Buenos Aires at the end of 1824. The constitution framed by this convention was submitted to the provinces in 1825; but in the opinion of many citizens it conferred too great authority on the central government, and consequently a majority of the provinces refused to ratify it. Therefore Argentina operated for another generation under the constitution of 1819, although the dictatorship of Rosas actually paid little attention to such a detail as a constitution. With Rosas thrown out in 1852, it was judged time to proceed with the drafting of another constitution, and for this purpose a convention assembled in the city of Santa Fé in 1853. Without recourse to the provinces, this body proclaimed a new constitution of federal character in May of that year.[2]

The Constitution of 1853. The constitution framed in 1853 was modified by important changes in 1860 and was amended in detail from time to time during the period 1860-1948.[3] But it remained generally in force as the constitution of the republic until 1948, when President Perón summoned a constitutional convention charged with "revising and reforming the constitution in order to suppress, modify, add, and correct its dispositions for the better defense of the rights of

[1] The most adequate study of political institutions in Argentina is A. F. Macdonald, *Government of the Argentine Republic* (New York, 1942).

[2] On the events leading up to this convention and the convention itself, see S. P. Amadeo, *Argentine Constitutional Law* (New York, 1943), Chaps. i-ii.

[3] For its text, see R. H. Fitzgibbon [ed.], *The Constitution of the Americas* (Chicago, 1948); Andrés Mariá Lazcano y Mazón, *Constituciones Politicas de América*, 2 vols. (Habana, 1942); E. Wallace [ed.], *The Constitution of the Argentine Republic* (Chicago, 1894); also the appendix in A. F. MacDonald, *Government of the Argentine Republic.*

the people and of the welfare of the nation." It is a fairly liberal document which divides the power between the central government and the provinces and establishes three independent branches in the central government: an executive, a legislative, and a judicial department. It resembles the constitution of the United States in that it provides for a president elected indirectly rather than directly by the voters. Of course, this constitution and its amendments comprise only the formal part of the constitutional system.[1] Many important acts of Congress, decisions of the courts, and customs must also be taken into account in arriving at an understanding of the basis of Argentinian government.[2]

The Constitutional Revision of 1949. In elections held in December, 1948, 158 delegates were chosen to a constitutional reform convention which was given the authority not only to propose but to adopt constitutional changes. The *Peronistas,* after a vigorous campaign, succeeded in electing 109 of the 158 delegates, and this gave them a free hand in making such modifications as President Perón desired. After stormy sessions, followed by a walkout on the part of the Radical party delegates, who alleged "steam-roller tactics," the convention gave its approval to the carefully-guarded proposals of the President by a vote of 101 to 0. There is some confusion as to the meaning of some of the changes made, such as those relating to citizenship and nationalization, and it will require experience to assess their full significance. But aside from this, there is little that is particularly novel in the revisions, although their net impact may prove important. To begin with, the revised version of the constitution incorporates the ideas which President Perón has expressed on frequent occasions with regard to the duties and rights of workers, the status of the family, and benefits to be provided for the aged. Adequate remuneration of workers, proper housing, clothing, and food for the people, and the protection of motherhood are some of the items covered. A rather general statement is included in the very controversial field of land reform, and natural resources (including minerals, coal, and gas) are declared the property of the Argentinian

[1] A detailed discussion of the constitutional system will be found in S. P. Amadeo, *op. cit.*

[2] For books dealing with these factors, see L. S. Rowe, *Federal System of the Argentine Republic* (Washington, 1921); A. W. Weddell, *Introduction to Argentina* (New York, 1939); J. W. White, *Argentina* (New York, 1942); R. Josephs, *Argentine Diary* (New York, 1944); F. J. Weil, *Argentine Riddle* (New York, 1944); and N. Mackenzie, *Argentina* (London, 1947).

people. Of particular concern to foreign investors is a provision authorizing the nationalization of all public services and permitting the government to deduct from the price to be paid "sums in excess of a reasonable profit" which the original owner has received through the years; and this would seem to allow the taking over of properties at little or no cost to the government. Citizenship by naturalization may be had after two years of residence and seems required of foreigners who remain in the country over five years. Formerly limited to a single term at a stretch, the president is now immediately eligible for reëlection; moreover, he is elected directly by the voters on the basis of a simple plurality. The powers of the president are modified to some extent, and of course in the direction of extension. The terms of deputies and senators are changed to six years in both cases, instead of four years and nine years respectively, and half are elected every three years. Senators are now to be elected, as in the case of deputies, directly by the voters instead of by the provincial legislatures. The size of the Chamber of Deputies is fixed on the basis of one deputy for every 100,000 people. Finally, the number of ministries, formerly limited to eight, is increased to 20.[1]

POLITICAL PARTIES AND ELECTIONS

Background. The people of Latin-American countries are likely to display less permanent loyalty toward a political party than is the case in the United States and Britain, though the record of individuals may be quite consistent. To some extent, this is the result of Latin temperament, which in Argentina is to be observed in comparatively pure form because of the very small number of people of Indian, Negro, Oriental, or Anglo-Saxon racial background. Colorful personalities play an even larger rôle than in the United States and account in no small measure for the succession of changes in political parties. The commanding influence of military cliques must always be considered, since it is not an uncommon occurrence for such a group to stage a *coup* which displaces one set of government officials in favor of another. Finally, one must take into account the marginal economic position occupied by most of the Latin-American countries, resulting in upsets which at times are almost catastrophic in their effect on the daily lives of large numbers of people. Argentina is

[1] For the complete text of the revised constitution, see *Nueva Constitucion Argentina* (Buenos Aires, 1949).

perhaps more fortunate in this respect than her neighbors, but she too is somewhat dependent on the international demand for meat and grain, though less so than formerly.

Recent History. The net result of this set of circumstances is that the status of political parties has varied a good deal, even within a comparatively short period. Going back to the early 1930's, one finds a multiple-party set-up in Argentina. In 1934, to take a specific year, 21 different parties were attempting to win the support of the voters. Some of these were relatively unimportant; several had a more or less local character; and a number might be regarded as of the fly-by-night order; but, even so, the multiplicity of parties was conspicuous. In 1934, nine parties had representatives in the Chamber of Deputies. But it should be noted that the practical effect of so many political parties was distinctly less weakening than in the Latin countries of Europe. The National Democratic party in 1934 counted 71 out of 158 members of the Chamber of Deputies, which gave it sufficient strength to control without a coalition with other groups. To illustrate the rapid changes in the political scene, it may be pointed out that within a decade of the year just selected as an example of the multiple-party system, a significant revolution led by General Pedro P. Ramírez threw out the existing government in 1943 and abolished all political parties. But this régime lasted only a few months, and in 1944 army officers staged a *coup* which placed General Farrell in charge of the government. Colonel Juan D. Perón emerged as the power behind the throne and in 1946 was elected president. Political parties were again recognized in 1946 and the National Democrats, Radicals, and Socialists resumed activity. However, the régime of Perón became more and more a personal one, and new political groups, built up around the figures of the president-leader and his ambitious wife, assumed the central position.[1] The older parties were not actually banned, but they found it increasingly difficult to make headway against the *Peronistas*. In the elections held in 1948 and 1951, some 55 per cent and 66 per cent respectively of the vote was polled by the *Peronistas*, and the National Democrats, Radicals, and Socialists all made poor showings. It could hardly be said that Argentina had gone from a multiple-party to a one-party system; but the increasingly authoritarian character of the govern-

[1] See R. J. Alexander, *The Perón Era* (New York, 1952), and R. H. Fitzgibbon, "Argentina After Eva Perón," *Yale Rev.*, Autumn, 1952.

ment brought at least some of the features of a single-party system for the time being into the political scene.[1]

Conservative Parties. Several political groups with rightist status have been active in Argentina through the years, sometimes occupying a position of commanding influence and again finding themselves reduced to a secondary place. The most important of these has been the National Democratic party (*Demócratas Nacionales*), which came into power following the revolutionary *coup* of 1930. A more reactionary group of less importance, the Rightist National Alliance, was frequently regarded as the Argentinian version of National Socialism or Fascism—at least its principles have been described as "Neo-Nazism." [2] The Rightist National Alliance was made up of certain of the large land-holders and the wealthiest industrialists and strongly resisted the desires of the rank and file of the people for land reform and greater social advantages. The National Democratic party has been more opportunistic, and while this policy has at times permitted it to hold the reins of government, there may be considerable question as to whether this has not seriously weakened it of late. By seeking to carry water on both shoulders and attempting to convince the propertied classes of its true conservatism, while at the same time trying to attract the industrial and agricultural workers by promises of reform, it has found the going increasingly difficult, until in the elections of 1948 it did not even put up candidates in most localities. The first two heads of the government after the National Democrats came into power in 1930 were generals, and it was not until 1938 that a civilian acceptable to the army was placed in the presidency.[3]

Liberal Party. Despite its name, the Radical party (*Unión Cívica Radical*) is really a liberal party which has sought to gain the support of the laborers, the rural workers, the small land-owners, and the middle class by advocating social and economic reforms. Perhaps the most controversial plank in the platform of this party has been one aimed at a wider distribution of land, which throughout the history of the country has been held by a very small proportion

[1] The *Peronistas* have been charged with using tactics associated with the Nazi and Communist parties of Europe.

[2] *New York Times*, Mar. 14, 1948.

[3] This was Dr. Ortiz, who entered politics as a Radical and served as a councilman of Buenos Aires in such a guise. For a somewhat critical portrait of Dr. Ortiz, see C. Beals, *The Coming Struggle for Latin America* (New York, 1938), 319-321.

of the population. The rural dwellers have a deep desire to own land, and the Radicals capitalized on this by promising a far-reaching program of reform. During the years prior to 1930, the Radical government did purchase areas of land from the land-owners, sometimes on a voluntary basis but again through exerting pressure, for breaking up into small holdings, but the government's program was not very effective in general. A more ambitious program had been drafted, and this perhaps more than anything else led to the revolution of 1930. The Radical party also supports organized labor in its demands, favors various schemes of social insurance, and believes in the extension of democratic principles. The Radical party has included in its membership some of the leading intellectuals of the republic.

Hipólito Irigoyen. The leader of the Radical party for many years was Hipólito Irigoyen, who served as president of the republic from 1916 to 1922 and from 1928 to the revolution of 1930, when he was exiled. Dr. Irigoyen was one of the most remarkable political figures in the world during the first third of the present century, and is still almost worshipped by many Argentinians who come from far and wide to visit his tomb in Buenos Aires. A nephew of General Julio Roca, who united the country in 1880 and served as its president from 1880 to 1886 and 1898 to 1904, Dr. Irigoyen received his political training as the secretary of that important figure in Argentinian history. He acquired such political shrewdness and so great a hold over the rank and file of the people that he attained a status much like that which more benevolent political bosses have occupied in the United States. He fought vigorously for universal suffrage during his younger days, supported land reform in his later days, refused to allow the gold supply of the country to be drained away to foreign countries, and would not permit Argentina to become involved in the first World War. His conviction was that Argentina should devote herself to the solution of her own problems rather than permit herself to be drawn deeply into international affairs. As president, he scandalized conservatives by leaving important diplomatic communications unread and unanswered for months at a time, while spending hours every day receiving peasants, laborers, and domestic servants who brought him their problems. Despite his educational advantages and family background, he considered himself one of the common people, and even while president lived

with his aged French mistress in a bathless flat located over a fruit store in the center of Buenos Aires.[1]

Antipersonalists. Following the election of M. T. de Alvear in 1922, a split took place in the Radical party which has resulted in serious weakening of the liberal group. Alvear and his followers did not like the intimate association of Irigoyen with the Radical party and consequently organized the Antipersonalists. After the death of Irigoyen, the split continued, though Alvear swung over to the main wing of the Radical group. During recent years the Antipersonalists have included the more conservative section of the liberal group. Indeed they are so conservative in their views that they have often joined forces with the National Democrats.

The Socialist Party. The Socialist party has for some years been a much more effective force in Argentinian affairs than its American counterpart has ever been in the affairs of the United States.[2] While it has never been able to win control of the central government, it has elected substantial delegations to the national Chamber of Deputies and has succeeded in dominating the government of certain of the provinces and municipalities. Itself enjoying exceptionally able leadership, it has regarded weak leadership as largely responsible for the failure of the Socialist movement in the United States to attain substantial proportions. The party maintains elaborate headquarters in Buenos Aires, where it owns a sizable building, prints a daily newspaper with a wide circulation, and issues large numbers of books and pamphlets. It has adopted a general set of principles, a minimum general program, an agrarian program, and a municipal program.[3]

Suffrage and Elections. Although women voted for the first time in the election which was held in 1951, the suffrage is possessed by practically all adult males. Interestingly enough, too, foreigners who have resided in the country as long as two years may vote in local elections. Elections are held less frequently than in the United States, inasmuch as the president is elected for a six-year term, senators for six-year terms, and even deputies for six-year terms. With the president and the senators now chosen by direct election the voter

[1] For a biographical study of Irigoyen, see Horacio B. Oyhanarte, *El Hombre* (Buenos Aires, 1934).

[2] In the elections held in 1948, the Socialists ranked next to the National Democrats in strength.

[3] For the principles and program as well as the organization of the party, see *Estatutos del Partido Socialista,* issued at intervals by the secretary-general of the party and published at the Casa del Pueblo in Buenos Aires.

has to designate not only the members of the Chamber of Deputies from his district but also his choices for president and senator; and this he does in the case of deputies under a "list" system of proportional representation affording party representation proportionate to the number of votes received by the various parties. Local elections are held also, but even in these the voter has nothing like the task that confronts the voter in the United States[1]

Campaigning. Elections are exciting affairs, particularly in the cities, where mass meetings, demonstrations of one kind and another, posters, and divers sorts of literature are in order. More use is probably made of posters than in the majority of places in the United States. In some localities, feeling still runs high on election day, and there may be broken heads and even bloodshed before the polls close, although for the most part elections are orderly enough. As a rule, election results are duly accepted by all concerned. Certain liberals, however, allege that the governments which have controlled the country since 1931 have frequently used pressure and taken unfair advantage in order to counteract the sentiment of the majority of the people.[2]

THE EXECUTIVE BRANCH

The Presidency. The executive branch of the government is headed by a president, formerly chosen by an electoral college, but since 1949 elected by direct popular vote.[3] The president is chosen for a six-year term, and, contrary to practice before 1949, is now eligible to succeed himself immediately. Presidents have frequently been party leaders, although more recent ones have usually been army officers. The president is paid a fairly adequate salary, receives allowances for entertainment and travel, and is given the use of an apartment in the *Casada Rosada,* or Pink House, which houses not only the executive offices but many of the administrative departments as well.

Presidential Powers. How much authority a president of the Argentine will actually exercise depends in large measure on the particular person who holds the office. President Irigoyen certainly

[1] A good discussion of elections may be found in A. F. Macdonald, *Government of the Argentine Republic,* Chap. vi.

[2] Even the State Department of the United States seemed to subscribe to this sentiment during the period 1945-1946.

[3] There is no full-length study of the presidency in English. For an Argentinian publication, see O. R. Amadeo, *El presidente argentino* (Buenos Aires, 1917).

enjoyed large powers which he did not hesitate to wield: he was the leader of the government in the framing of policies, the drafting of legislation, and the administration of public functions—although because of his lack of interest in external affairs he allowed that sphere of his authority largely to lapse. President Agustín Justo (1932-1938) seemed to certain observers to be something of a figurehead much of the time. Certainly he was not as vigorous a president as Dr. Irigoyen, and it is probable that in large measure he was controlled by the wealthy property-owners who instigated the revolutionary movement of 1930. President Juan D. Perón certainly has made full use of the authority of the office, and indeed is regarded by some as exercising dictatorial powers.

The president has the right to make appointments to certain public positions—in the case of higher judicial posts, with the consent of the Senate. He has general oversight over foreign relations, receives and dispatches ambassadors and ministers, and either directly or through the ministry of foreign affairs undertakes negotiations with other governments. The president may address Congress, call special sessions for the consideration of important matters, and present legislative proposals for enactment. He also has general responsibility for public administration and is commander-in-chief of the military forces. Under the revised constitution, he likewise may proclaim a state of siege, declaring martial law to be in force.

The Vice-President. In addition to a president, the Argentinian constitution makes provision for a vice-president, chosen in the same manner and for the same term as the president. As in the United States, the vice-president presides over the Senate and succeeds to the presidency in case of a vacancy in that office.

The Cabinet. The president is assisted by a cabinet made up of 20 ministers or department heads. During most of the year, the cabinet meets once each week or at the call of the president; and it considers such matters as the president may wish to have discussed. Its sessions are informal and secret, and opinions expressed by the members are advisory rather than binding, the president giving them such weight as he pleases: much depends upon the incumbent—an active president may inspire the cabinet to follow the policies which he believes best for the nation, whereas a figurehead may lean heavily on his cabinet's advice. Moreover, it should be observed that the cabinet is primarily an agency of the executive department rather

than an instrument of the legislative department; it does not resign simply because unable at any given time to control a majority of the members of Congress. Nevertheless, the relations between the cabinet and the legislative branch are closer than in the United States; for ministers have the right and the duty to attend sessions of Congress for the purpose of participating in the discussion of business, although without voting. Congress may call upon a member of the cabinet for an explanation of his policy and conduct and make it rather embarrassing unless he can answer satisfactorily.

THE LEGISLATIVE BRANCH

The Chamber of Deputies. The lower house of the legislative branch is known as the Chamber of Deputies.[1] It consists of some 150 members—157 in 1946 and 149 in 1951—elected from multiple-member districts based on population, with every 100,000 people entitled to one representative. Deputies are chosen by direct popular vote and have terms of six years, although for the sake of continuity only half of the terms expire at any one time.

Capitol Building. The Chamber convenes in one wing of the *Palacio del Congreso*, or capitol building, which is somewhat like that at Washington, although on a smaller scale. The building stands at the head of a famous avenue, the Avenida de Mayo, extending for about a mile between the capitol and the Plaza de Mayo; and few legislative structures have a more commanding location. The chamber in which the deputies meet is arranged in the form of a semi-circle, with a raised dais in front for the president of the chamber, flanked on either side by the two secretaries. Immediately in front of the *presidencia* is a table for the clerks and employees who keep a record of what goes on for publication in the journal and daily proceedings, while in front of these officials are seats arranged in a semi-circle facing the deputies and provided for the ministers. The seats of the deputies are divided into three sections by two aisles leading to the space occupied by the ministers, with the deputies seated from right to left according to the degree of conservatism, or the reverse, of their political beliefs.

The Senate. The upper house of Congress is designated the Senate, and is a comparatively small body of 34 members.[2] Each of

[1] For a detailed study, see J. V. González, *El senado federal* (Buenos Aires, 1919).
[2] On the legislative branch, see M. Romero, *El parlamenta* (2 vols., Buenos Aires, 1902).

the 16 provinces, irrespective of population, is entitled to two senatorial seats, now filled by direct popular election, but prior to 1949 by choice of the provincial legislature. The federal district containing the capital also is allowed two senatorial seats, now filled by direct popular vote. Senators hold office for six years, one-half coming up for reëlection every three years; so that, like its counterpart in the United States, the Senate is a continuous body. The Senate occupies the other wing of the capitol building and has commodious quarters, with lounging rooms, lobbies, restaurant, conference rooms, and a library. The chamber is somewhat like that of the Chamber of Deputies except that, with the number of members smaller, the arrangement of seats is somewhat less formal. The vice-president of the republic presides; there are the usual provisions for secretaries and attendants; and members have desks rather than merely seats.

Organization and Procedure. In addition to *presidencias* and secretariats, each house has a system of standing committees, each specializing on certain types of bills. Bills are introduced either by a minister at the instance of the government or by private members; and while government bills do not enjoy an absolute monopoly, they have recently at least been given distinct priority. As a rule, debate is reasonably free, and especially in the Chamber of Deputies is likely to be fiery, with members speaking eloquently, greeting the speeches of their fellows with applause, jeers, or even physical demonstrations. Normally, the Senate is more decorous than the Chamber, yet it by no means considers itself a rubber stamp.

Functions. The lawmaking power of Congress extends over those fields given to the federal government by the constitution, including foreign and interstate commerce, foreign relations, acts regarded as detrimental to the national welfare, the livestock business, some aspects of public health, much of the field of public education, social legislation, and the like; and general laws are passed by the Congress on these subjects, although much legislation is included also in presidential and ministerial decrees. Congress votes the annual budget, lays taxes, and authorizes the borrowing of money. In addition to sharing general lawmaking power with the Chamber of Deputies, the Senate has the special function of confirming major appointments of the president and ratifying treaties with foreign governments. All in all, the Argentinian Congress is a fairly important branch of the government and takes an active part in public affairs.

Even after the revolution of 1930, the members of the two chambers did not hesitate to investigate the conduct of government departments and officials and to voice their criticisms of improper conduct in no uncertain terms. Under President Perón, the rôle of the legislative branch certainly has been curtailed; yet it seems to remain more than nominal.

PUBLIC ADMINISTRATION

Administrative Departments. The central government maintains 20 ministries charged with responsibility for general public administration in the following fields: interior, foreign affairs, treasury, justice, national defense, air, war, navy, agriculture, education, public works, economy, security, industry and commerce, labor and planning, transport, public health, communications, political affairs, and technical affairs. There are also certain boards and commissions. But there is not the maze of independent administrative agencies so characteristic of public administration in the United States.[1]

Organization of the Departments. Each department is headed by a single executive designated a minister, receiving appointment from the president, and holding membership in the national cabinet. Ordinarily selected from among active members of the political party which has elected the president, and definitely partisan in their interests, these department heads are responsible to both the president and Congress, but primarily to the former. The several provinces look with jealous eye at the men appointed to these important positions and resent it if they are not given their full share of representation. Consequently, in making his selections the president not only must have regard for personal relations and political activity, but must take into account, as far as possible, geographical considerations as well. Depending upon their burden of administration, the departments are divided into divisions, sections, and bureaus.

Functions of Ministers. It is quite obvious that a department head cannot as a rule have the background and experience necessary for performance of the more technical functions of his department. To be sure, in the case of the military departments, the reverse may be true; it seems to be a tradition, too, that the minister of agriculture shall be a prominent rancher; and the minister of justice is usually a

[1] For additional information on the system of public administration, see A. F. Macdonald, *op. cit.*, Chap. xi. Prior to 1948, there were only eight major departments, but secretariats with virtual departmental status were maintained.

professional lawyer. By and large, however, ministers content themselves with the same rôle that is assumed in the United States: they are executive officials who coördinate the work of the several internal divisions of the ministry, they make appointments, they act as connecting links between the president and the department and the legislative branch and the department, they represent the department on public occasions; but they leave details, especially of a technical character, to the trained officers and employees of the department.

The Civil Service. Public employment in the Argentine enjoys considerable prestige, with the result that there is no lack of candidates, despite the fact that salaries are low in comparison with those in the United States. In the absence of any unified civil service system, there is considerable diversity in standards among the several departments. Some require relatively superior educational background and general ability, and recruit on what amounts to a competitive basis; others remain under a spoils system not unlike that familiar to students of government in the United States.

Standards of Public Service. It seems probable that standards of public service are higher in the Argentine than in some of the other Latin American countries, with greater stability, more progressiveness, and a wider outlook than encountered in certain countries. Nevertheless, corruption and localism are recurrent in both the national and local governments. The scandal involving the minister of agriculture in 1935 indicates how high corruption sometimes extends in the government; and it is, of course, more prevalent in the lower reaches where there is less limelight. Localism may be illustrated by the singular excitement and fiery opposition which in the 1930's attended the extension of refrigeration of meat to certain interior sections of the country. Large numbers of inhabitants wanted their meat fresh from the slaughterhouse and maintained that chilled meat was a menace to public health!

Ministry of Agriculture. Considering the fact that Argentina depends to a large extent upon two great agricultural products, *i.e.*, wheat and meat, despite the recent emphasis on industrialization, it is not strange that the ministry of agriculture should assume great importance. The ministry maintains ten schools located in different parts of the country and specializing in general farming, viticulture, and arboriculture. It also operates a number of experimental farms which are very active in their efforts to improve livestock strains, to discover

remedies for livestock diseases, to find better varieties of wheat and other grains, and to develop methods for dealing with blights, animal pests, and other things that affect the harvest. Divisions of agronomy, zoölogy, mines, geology and hydrology, commerce and industries, land, colonies and immigration, and meteorology are to be found in the ministry.

Ministry of the Interior. The ministry of the interior is functionally far more comprehensive than the department of interior in the United States. It has direct charge of the sizable police and fire departments of the federal district; it oversees the government of the territories and can intervene in a province if there is disorder of more than ordinary local character.

Ministry of Transport. Argentina is traversed by a network of railroads, and most of these, long controlled by English capital, have recently been placed under government ownership and operation,[1] with administration in the ministry of transport. Highways are of increasing importance, for no system of railroads can adequately bring the ranches into communication with the cities and shipping points. The construction of highways is both a national and a local function, but because of the unusual difficulties connected with it, the central government is obliged to assume a large measure of responsibility for other than local roads. The great pampas which cover most of two or three of the provinces have virtually no gravel deposits and no rock, which means that materials have to be transported long distances. The national director of the republic's division of highways has visited the United States for the purpose of studying highway engineering and has given as much impetus to the road-building program in Argentina as he could; but the fact that construction costs are approximately twice what they are in the United States has made progress somewhat slow.[2]

Ministry of Justice. The ministry of justice has wide authority over the administration of justice throughout the republic and does much to integrate the work of all the courts and prosecutors.[3] All laws and decrees enacted by the national congress or issued by the president or the ministries are published by this division.

[1] This program was not completed until 1948.

[2] An elaborate plan calling for 30,000 miles of arterial highways under control of the national government and 600,000 miles of provincial highways has been drawn up.

[3] Prior to 1948, justice and education were joined in a ministry of justice and public instruction.

Ministry of Education. The ministry of education gives its attention to the school system and to public libraries, museums, and an academy of fine arts. Attached to the ministry, too, is a National Council of Education which directly administers approximately 5,000 elementary schools in Buenos Aires, the territories, and the federal district, as well as more than 100 elementary schools in some of the more backward provinces. Secondary education is directly under the federal authorities throughout the republic, although the majority of secondary schools are private institutions. The more than 50 public secondary schools are operated directly by the ministry, and even the 70 or more private institutions of the kind are regulated very carefully and in great detail by federal authority. Sixty-four normal schools, four national industrial schools, 65 special trade schools, and 18 commercial schools also are administered by the ministry of education. Although receiving financial support from the central government, the six national universities have until recently handled their own affairs, even to the selection of rectors (or presidents) and deans. However, a new law sponsored by President Perón makes the president of the republic responsible for the selection of university heads; and this would appear an entering wedge for more governmental control. In addition to the schools which it directly controls, the ministry of education exercises some supervision over provincial schools and is active in programs of medical assistance to school children, nutrition clinics, open-air schools, and other welfare projects throughout the country.

Public Education. Elementary schooling is compulsory, and consequently facilities are quite elaborate—there are more than 14,000 elementary schools, more than 50,000 teachers, and approximately 2,000,000 pupils in attendance.[1] Secondary education is comparatively limited and in theory is reserved for only the especially capable, although it is alleged that political influence and personal considerations actually play a large part in determining admission to the government colleges. If entrance is denied—and there are many more applicants than places—parents can, of course, send their children at their own expense to private schools, although most of these lack the prestige atached to the government schools. The total enrollment in secondary schools is less than five per cent of that in the elementary schools, and it would seem far less than it

[1] See the *Reports* of the National Council of Education.

might wisely be. As a rule, only those who expect to continue to a university degree are admitted to the secondary schools, which have a regimen materially stiffer than that of similar schools in the United States. Universities have approximately 88,000 students, with the largest number enrolled in the University of Buenos Aires.

THE COURTS

Federal Tribunals. The federal court system is organized in three grades corresponding to those in the United States. At the top is a Supreme Court which sits in Buenos Aires,[1] numbers five judges appointed by the president with the consent of the Senate, and devotes itself for the most part to appellate work coming to it from the lower federal courts and from the highest courts in the provinces. However, this court also has some original jurisdiction, including hearing disputes between the provinces and the provinces and the federal government. Likewise, it theoretically can declare federal statutes unconstitutional, as is done by the Supreme Court of the United States. In practice, however, it usually exercises the power, and sometimes other powers as well, under serious limitations.[2] Next below the Supreme Court are eight federal courts of appeal, each containing three judges appointed by the president with the consent of the Senate. Endowed with appellate jurisdiction in cases brought to them from the lowest federal courts, these tribunals relieve the Supreme Court of a considerable burden.[3] Federal courts of first instance are provided on a district basis throughout the republic, and, as in the United States, are presided over by single judges, appointed by the president.[4] Cases involving infraction of federal laws, as well as important civil cases in which the parties come from different provinces, are disposed of by these courts, subject to appeal to the higher tribunals.

Provincial Courts. All of the provinces have their own system of courts, in general following the pattern familiar in the states of our own country. At the top is a supreme court composed of several judges and confining itself very largely to hearing appeals. Beneath

[1] For an authoritative study of this court and its rôle, see S. P. Amadeo, *Argentine Constitutional Law* (New York, 1943), 49 ff.

[2] Thus President Perón had the Supreme Court judges impeached and thrown out of office because they dared to oppose him.

[3] See S. P. Amadeo, *Argentine Constitutional Law*, 56-57.

[4] There are some 25 of these courts.

are numerous courts of first instance, organized on a district basis, with a single judge, and handling important criminal and civil cases in first instance as well as appeals in minor cases from the lowest courts. Finally, there are the local courts, which handle the multitude of petty misdemeanors and small civil cases. Inasmuch as the ministry of justice has general oversight over the entire judicial system of the republic, provincial courts are somewhat less independent than are state courts in the United States.

LOCAL GOVERNMENT

The Provinces. Argentina is a federal state, and in addition to the central government there are 16 provinces, each maintaining a full-orbed government. These provinces display considerable local pride and manifest not a little rivalry for prominent places in the affairs of the republic. Because, too, they were established on a basis of historic lines rather than on a basis of population, they present a very diversified picture. One of the number, *i.e.*, Buenos Aires, contains about 30 per cent of the population of the republic—its population exceeds 4,000,000—while six have less than 200.000 inhabitants each. Only three have as many as 1,000,000—Buenos Aires, Santa Fé, and Córdoba; and only Entre Rios and Tucumán fall in the half-million to a million class. Considering the extremes of population, it is not surprising that the five provinces mentioned have far more influence in the central government than do the others.

Provincial Government. Each province has its own system of government, with a governor, a provincial legislature, and provincial courts. The governors receive their posts at the hands of the voters rather than from the central government, although the constitution permits the latter to intervene if local conditions become chaotic; and during recent years such intervention by the federal authorities has been frequent, with "interventors" sent in by the president to supplant the provincial governors. Provincial legislatures vary in size, depending to some extent upon the population of the province, and are popularly elected. When the federal government appoints an interventor, the rôle of the provincial legislature becomes, of course, very limited.

Provincial Powers. Under normal conditions, the provinces have general supervision over local problems, although there has been a trend in the direction of giving the central government additional

CHAPTER XLIII



GOVERNMENT IN JAPAN TO 1945

Why Study Japanese Government? The growing significance of the Far East in world affairs (especially for the United States) suggests that in any survey of "modern foreign governments" for American readers, at least one political system operating in that area should receive attention. Selection of a system to be treated most usefully, however, offered a problem. Far outdistancing all other Far Eastern countries in area, population, resources, and contributions to civilization is, of course, China; and China, over the centuries, has been fertile in political ideas and by no means barren of political institutions of their kind. Government in the divided and unhappy China of today, however, is in a highly precarious and baffling state. A more or less Westernized system hopefully instituted by the Kuomintang, or Nationalist party, after the establishment of the Republic in 1912, driven to refuge in Formosa under the impact of civil war, is in danger of becoming merely a matter of history; while the political organization prepared by the Communists and applicable to Chinese territory on the continent is in such a formative stage as to make anything like objective consideration of a detailed character difficult.

For purposes of this book, devoted principally to governments of major nations, only one alternative remained, *i.e.*, the government of Japan. But here, too, there were complications. Down to a decade ago, Japan, then a recognized world power, had a full-orbed, integrated, and apparently stable government which challenged the attention of political and other social scientists the world over. Then, however, came a violent upset. Plunging unwisely into the greatest of all wars, the Empire went down to defeat, with its system of

authority.[1] The provinces are charged with maintaining law and order, and consequently have their own police forces and courts. They assume responsibility for elementary education, and in certain cases also provide special schools. They have considerable freedom in connection with public works, construct local roads, and erect public buildings. In the fields of public health, public morals, and public welfare, their authority in general corresponds to that of the states in the United States.

The Federal District. Following the practice of many other countries, Argentina has set up a federal district containing the national seat of government and largely controlled by the central authorities, although sending two senators and a number of deputies to the federal congress. Consisting of the city of Buenos Aires (not to be confused with the province of that name), this district has a population exceeding 3,000,000, or almost 20 per cent of the total for the republic.[2] The city is the center of the republic in government, business, culture, society, and education, and holds a position of leadership not frequently equalled. Indeed, it is one of the most progressive cities in the world; and in so far as municipal planning, subways, public buildings, parks, and fine avenues are criteria, it makes most of the cities of the United States and Europe seem rather backward. Its executive department is headed by an *intendente municipal,* or mayor, appointed by the president of the republic with the consent of the federal Senate. Its police, fire, and education departments are directly under the appropriate ministries of the central government, but it has a municipal council, *consejo deliberante,* made up of 22 members elected by the taxpayers for terms of four years; and the building erected by this council to house its own chamber, banquet hall, and committee rooms, as well as the offices of most of the city administrative departments, is one of the most modern municipal structures in the world. The council has jurisdiction over public works, health, sanitation, recreation, municipal finance, and public morality.[3]

[1] On the powers of the provinces, see S. P. Amadeo, *Argentine Constitutional Law* (New York, 1943), Chap. vi.

[2] For additional discussion of this district, see A. F. Macdonald, *op. cit.,* Chap. xxiii.

[3] For further details on Buenos Aires, see the pamphlet prepared by the Pan American Union as part of its *American City Series,* entitled "Buenos Aires, Metropolis of the Southern Hemisphere."

The Territories. A considerable portion of the national domain is so sparsely inhabited that it has not been feasible to organize it into provinces, and the areas have been divided for governmental purposes into a number of territories having a total population of less than 1,000,000. These territories have governors appointed by the president of the republic; while certain of their functions, such as education, are administered directly by the ministries of the central government.

Municipal Government. In addition to Buenos Aires, Argentina has several sizable cities and a fairly large number of small cities, although outside of the federal district it is predominantly rural. Rosario, in the province of Santa Fé, has something like half a million inhabitants and is a great commercial city 189 miles up the Paraná River from Buenos Aires. Avellaneda, an industrial suburb of Buenos Aires, claims some 300,000 inhabitants. Córdoba, located in the province of that name, has approximately 300,000 inhabitants; while La Plata, Tucumán, Santa Fé, Mendoza, Lanús, and Bahia Blanca have at least 100,000 each. Municipalities have at their head an *intendente municipal*, who corresponds to the mayor of a city in the United States and receives his post at the hands of the voters. Elected municipal councils serve as legislative bodies, and have power to appropriate money for public uses, levy certain taxes, provide for public works, maintain elementary schools, and regulate local health, sanitation, morals, and safety.

government intact to be sure, yet confronting almost total reconstruction on lines predetermined by the victors; shorn of much of its territory; and during the period 1945-52 reduced to physical impotence under foreign occupation, with military government superseding, or at all events dominating, civil. A main purpose of the conquering powers, nevertheless, was from the first to encourage and supervise the development of a new and more liberal government for the islands; and by fairly rapid stages such a government has been created and in 1951 entered into a treaty with most of the powers which recognized its position among the nations of the world. Japan, therefore, has been selected for treatment here, not only because its government of a decade ago was in its way one of the most significant in the world, but because there is now a new government of at least equal interest and importance. Emphasis will be placed on this new government; but for an understanding of the changes which it involves, the old one must also be reviewed.[1]

What Is Japan Today? Geographically, there have been in the last hundred years as many as four Japans: (1) the Japan prior to the Sino-Japanese war of 1894-95, consisting essentially of the four main islands, the Kuriles, and the Riukius; (2) the "Greater Japan" from 1910 until World War II, including additional islands such as Formosa together with Korea; (3) the Japan of 1941-45, inflated by the conquests and annexations of the earlier years of World War II; and (4) the deflated Japan of today, reduced by defeat to simply the four large islands and a few near-by smaller ones. An empire of 260,000 square miles in 1939 has been reduced to a purely insular state of something like 145,000 square miles—considerably less than the area of California. Always large for the area occupied, the population of the islands more than doubled between 1873 and 1945; at the latter date, it was 78,000,000, and as the country goes into the postwar period the figure is placed in excess of 80,000,000, considerably more than half of the current one for the United States.[2]

[1] Excellent general studies of prewar Japan include E. H. Norman, *Japan's Emergence as a Modern State* (New York, 1940); N. Ike, *The Beginnings of Political Democracy in Japan* (Baltimore, 1951); E. Lederer and E. Lederer-Seidler, *Japan in Transition* (New Haven, 1938); J. F. Embree, *The Japanese Nation; A Social Survey* (New York, 1945); and especially R. Benedict, *The Chrysanthemum and the Sword* (New York, 1946). A similar study emphasizing the present and future is H. Wakefield, *New Paths for Japan* (New York, 1948).

[2] Population densities are in the proportion of some 400 per square mile for Japan to 45 for the United States.

On the whole, the islands have only meager resources. Abundant forests yield plenty of wood, and the surrounding seas have made of the Japanese the greatest fishing people in the world. But with "a mountain in every landscape," only a little over 15 per cent of the land area is under cultivation, with hardly five per cent additional likely ever to be tilled; and though three-quarters of the population still live by agriculture, "farms" rarely exceed two or three acres and produce as much as they do only because of double or triple cropping. As in Britain, food must be imported if the people are to live. In minerals, too, Japan is poor, with some coal and iron, but mostly low-grade, and with only insignificant reserves of oil. Over the past half-century, there has been significant industrialization; and with population pressing ever harder on means of subsistence, industry and trade will in future have to carry an increasing share of the load. Yet some industries, *e.g.,* manufacturing munitions and building war craft, have been virtually wiped out by defeat in the war, and trade is increasingly threatened by paralysis of the Chinese market and growing Western competition. Under such conditions, the new postwar political régime starts off heavily handicapped; whether it takes firm root and endures will depend in no small degree upon whether it proves able to assure the millions living under it a tolerable existence.[1]

POLITICAL DEVELOPMENT TO 1889

Cultural Background. The origins of the Japanese people are veiled in obscurity; no written records have survived from farther back than the eighth century, B.C., relatively late in the nation's development. To be sure, native historians carry the story back to 660 B.C., when a certain Jimmu Tenno (Emperor Jimmu) is supposed to have started a dynasty of rulers continuing without a break to the present Hirohito. From masses of traditions and legends emerge, however, only three or four established facts about the people's beginnings—(1) that the Japanese are a mixed race, (2) that the process of intermixture took place long before historical times, (3) that the main contributing elements were two invading streams, Mongoloid and Malaysian, flowing independently into the islands from the west via Korea and from the archipelagoes to the

[1] The best treatise on the country and its resources is G. T. Trewartha, *Japan; A Physical, Cultural, and Regional Geography* (Madison, Wis., 1945).

south, respectively; and (4) that after the blending of these and other elements once occurred, the Japanese stock was never much affected by later infusions. In the civilization or culture gradually developed were significant native elements, notably (1) a body of beliefs and rituals known as *Shinto* ("the way of the gods"), and eventually of great political significance because of its emphasis on the emperor as descended from the sun-goddess and therefore himself possessing a quality of divinity, and on Japan as the land most favored of the gods and destined to rule the world; and (2) *Bushido* ("the way of the warrior"), a code of behavior for what came to be a highly respected and influential class, the *Samurai,* or professional warriors. But cultural elements were drawn also extensively from abroad—written language, forms of literature and art, Confucianism, and Buddhism, from China, and in much later days many of the things from the West that made of Japan by the opening of the twentieth century an essentially modern nation. From first to last, the Japanese, unlike the Chinese, have always been easy imitators and borrowers, although without ever themselves becoming other than Orientals.

Earlier Political Arrangements. On the political side, Japan, down to the middle of the nineteenth century, presented three main aspects. Topping all else was the basic, pivotal position of the emperor—a matter so deeply ingrained in Japanese habits of thought and action that, despite all of the drastic changes exacted by the Western victors after World War II, it was deemed best to leave the country with an emperor, even though shorn of prestige and power. Evolving undoubtedly from one of many tribal chieftainships in early days, the emperor acquired unique headship of the nation—patriarchal, as if the father of a great integrated family, and theocratic, as possessing a divinity rendering disloyalty on the part of subjects not merely treason but sacrilege. In later modern times, however, the emperor's position had become one of much prestige, but little power; because, unwittingly, earlier emperors had raised up a rival authority, the *shogun,* whose domination of affairs becomes the second political aspect to be noted. Starting as far back as 1192, when the emperor of that day bestowed on a member of the Minamoto family the military title of *shogun* ("great barbarian-subduing general"), the shogunate became hereditary and grew in power until long before the nineteenth century the emperor was found dwelling in the historic capital of Kyoto surrounded by a splendid court and amid a

mysterious atmosphere of ritualism, but with the *shogun* at the rival capital of Yeddo (the later Tokyo) in possession of whatever actual authority a feudal structure of society permitted. And the third political feature to be noted becomes this matter of feudalism. Through the long process by which originally independent tribes and clans were welded into a nation, practically the whole of the country fell into great fiefs held by *daimios,* or feudal lords—held nominally of the emperor, although in later times actually of the *shogun;* and these lords (the country's people of wealth) had vassals, and they sub-vassals, with the mass of the inhabitants merely serfs on the great domains precisely as in mediaeval Europe. The *samurai,* in their armor and coats of mail, even corresponded, at least roughly, to the mediaeval knights.[1]

Transformation in the Late Nineteenth Century. The Japan of the period immediately preceding 1941, however, was not of this sort. The emperor was still there; but there was no *shogun,* and no feudalism, except as the feudal spirit had survived the abolition of feudal institutions. Politically, the change had come shortly after the country, at the middle of the nineteenth century, had given up its long maintained policy of rigid seclusion and had accepted diplomatic and commercial intercourse with the outside world; and principal phases of it had been (1) the outright abolition of the shogunate; (2) a "restoration" of the emperor to his historically rightful position; (3) announcement by a youthful new emperor of intention to give the country a national assembly or parliament; and (4) voluntary abandonment of the feudal régime, with fiefs converted into provinces. The cardinal date was 1868, when the last *shogun* abdicated and the restored emperor took up his residence at the "eastern capital"; and these events, soon followed by the abolition of feudalism, became initial steps or stages in perhaps the most extensive and remarkable series of changes ever carried out in a particular country in so brief a period, unless possibly in the U.S.S.R. after the revolution of 1917. The basic character and culture of the Japanese people were not altered; but in a multitude of practical fields—transportation and communications, industry, commerce, military organization, government, and what not—a hitherto isolated

[1] On the political system prior to 1868, see H. S. Quigley, *Japanese Government and Politics* (New York, 1932), Chap. i.

and more or less stagnant nation was brought abreast of the times in which it found itself living. The great political transformations mentioned set the pace and supplied the impetus; to a very large extent, it was the push and drive of a reinvigorated government that carried the program through. And the motives for the political reorganization arose out of the hard facts of a practical situation. Japan was now going to be an active member of the family of nations; as such, she would have to be in a position to hold her own, not only by availing herself of the inventions and facilities that made Western nations strong, but by being able to integrate and harness her full strength, political, military, and economic. No longer could she afford dual government of emperor and *shogun;* there must be unity. No longer would a loose feudal arrangement, with the central government dependent upon mere feudal requisitions upon more or less reluctant vassals for money and soldiers, serve her purposes.[1]

The Constitution of 1889: 1. Preparation. Over the past 60 years, the Orient has become fairly familiar with written constitutions; China has had several. But the first ever drawn up in that part of the world was put into operation in Japan in 1889. That this familiar device of Western democracies would find a place in the island empire's new arrangements was reasonably assured after the Imperial Oath of 1868 promised a national parliament. The step, however, was regarded as a serious one, and there was no unseemly haste about taking it. On the contrary, 20 years were consumed in making ready for it; and one may doubt whether the fundamental law of any country was ever prepared with greater care and caution. In China, there has later been use of the Western device of constitution-making by popularly elected convention. In Japan, however, there was no thought of anything like that, and the task was simply delegated by the emperor to a leading statesman of the day and later prime minister, Marquis Ito. Associating with himself a small group of advisers, this "father of the constitution" started preparatory work in the early seventies and during the eighties advanced from stage to stage until near the end of the decade a completed text was ready for imperial approval. Western as well as Japanese political writings were studied, and in the early eighties the group

[1] The changes here touched upon are described more fully in H. S. Quigley, *op. cit.*, Chap. ii.

paid extensive visits to Western countries, including the United States, Great Britain, France, and Germany, where governments were viewed in operation and long discussions held with officials, scholars, and other experts. Things seen and heard in the more democratic countries were regarded with interest, but in the end the country that seemed to Ito to have most to offer was Germany; and as the new frame of government took form, it bore evidence of German influence on every page—influence, however, not of the institutions of the federally organized German Empire (federalism was to have no place in Japan), but of the integrated, constitutional, yet essentially absolute, systems of the German states, particularly Prussia.[1] Meanwhile, as plans gradually matured, practical steps were taken at Tokyo to introduce in advance a good deal of the new machinery for which the constitution was going to provide. Thus with a view to a future House of Peers, the nobility was reconstructed in 1884 in five grades (princes, marquises, counts, viscounts, and barons); in 1885, a cabinet was created, with Ito as first premier; and in 1888 a Privy Council was added as the highest body of imperial advisers—so that, by 1889, when after close scrutiny and some changes by the emperor and Privy Council, the long impending constitution was ready to be promulgated, the central institutions of government for which it provided were substantially in existence except only for the elective branch of Parliament. On February 11, 1889, the new instrument was handed down by Emperor Mutsohito as a gift to his people.[2]

2. Characteristics. Partly because of being supplemented by a group of organic laws, promulgated at the same time and covering such matters as the House of Peers, succession to the throne, elections, and finance,[3] the constitution of 1889 was a brief document—

[1] A later Japanese writer on constitutional law, Nakano, considered 46 articles of the constitution's 76 influenced by the Prussian constitution and 18 by the constitutions of other German states.

[2] When in the United States, Marquis Ito evinced a good deal of interest in *The Federalist,* and when, after the Japanese constitution was promulgated, he wrote and published a book entitled *Commentaries on the Constitution of the Empire of Japan* (Tokyo, 1889 and 1906), he well may have been influenced somewhat by the American model, although he certainly had not been by the form of government which it expounded. At all events, both volumes serve to show what a new frame of government meant to those who had made it. Ito's book is widely available in English translation.

The text of the Japanese constitution of 1889 will be found in H. S. Quigley, *op. cit.,* 336-343; N. Kitazawa, *The Government of Japan* (Princeton, N. J., 1929); and in various other places. For full discussion, see H. S. Quigley, *op. cit.,* Chap. iii, and K. Colegrove, "The Japanese Constitution," *Amer. Polit. Sci. Rev.,* Dec., 1937.

[3] Most of these documents are reprinted in H. S. Quigley, *op. cit.,* Appendix.

hardly more than half as long as that of the United States. Another reason for over-all brevity was, however, the characteristic terseness of its 76 articles, many filling only a line or two of print, and usually couched in such broad and general language as to give some point to arguments of certain Japanese leaders after 1945 that the existing instrument was capable of being interpreted and applied so as to yield the country a democratic system of government without any new constitution being made at all. At first glance, the document did indeed present some appearance of liberalism, for although the basic note was struck in the very first article, reading "The Empire of Japan shall be reigned over and governed by a line of emperors unbroken for ages eternal," the second chapter contained a fairly comprehensive bill of rights, provision was made for election of the lower branch of Parliament by the people, judicial independence was guaranteed, and ministers were declared responsible for advice given the emperor. Orthodox Japanese commentators, nevertheless, always conceded that the instrument was not, nor intended to be, "liberal" in any Western sense of the term; some even boasted that it had been drawn up without any contact with the people. And certainly, as matters worked out, it lent itself readily enough to government of decidedly illiberal, and eventually even authoritarian, character, with no change made in its phraseology whatsoever. To be sure, a formal procedure for amendment was provided, involving two steps or stages: (1) proposal of a change to the Diet "by imperial order," and (2) adoption of the change by a two-thirds vote in both houses. But no amendment was ever either proposed or adopted. Of course, this does not mean that constitutional changes were never made. On the contrary, the actual operating constitution, like that of the United States, expanded and grew luxuriantly through the years, by interpretation, by statute, and by usage. Most often the method was the enactment of new laws extending far out and beyond the constitutional text, sometimes more or less in direct line but amplifying and making new applications, sometimes in effect amending by ignoring and even by violating presumptive intent. And all this could be done with impunity. There was no Supreme Court to call a halt, nor any other authority to say nay to the "constitutionality" of any measure passed or step taken as long as carrying imperial assent.

PREWAR JAPANESE GOVERNMENT—THE CONSTITUTIONAL SIDE

No system of government as actually operating is ever comprehended completely within the four corners of a written constitution; and nowhere was this ever better illustrated than in prewar Japan, where indeed there may almost be said to have been two governments—one regular, formal, constitutional, the other unknown to constitutional and organic laws, yet hardly the less important on that account. Any comment on Japanese government as coming down to the recent war period must take some notice of both elements in the picture.

The Emperor: 1. Actual Rôle. On the formal, constitutional side, the starting point is almost necessarily the pivotal position of the emperor; the constitution itself put this in the forefront by devoting the first 17 articles to it. The matter, however, is invested with a good deal of difficulty; because if contrasts of theory and fact make the situation of the British sovereign sometimes hard to understand, such contrasts as presented by the Japanese emperor down to 1945 are doubly baffling. On the one hand, the constitution declared him head of the Empire and in unqualified terms endowed him with power to control sessions of the Diet, issue ordinances, command the army and navy and determine their organization and strength, make war and peace, conclude treaties, wield the power of pardon and amnesty, and to do other things as well. On the other hand, it is well established that all such functions were actually performed, not by the emperor directly, but only in his name, and that therefore the emperor personally had extremely little to do with the conduct of public affairs or the making of high policy. For the entire sequence of steps and decisions culminating in the Pearl Harbor attack, for example, it would appear that Emperor Hirohito had no personal responsibility—except in the somewhat negative (though of course not unimportant) sense that if he had chosen to assert himself to stop them, they presumably would not have gone forward. Speaking generally, the emperor acted (where action by him was required at all) only in accordance with advice; and neither in the connection mentioned nor in any other does it appear that he ever refused to act as advised. At the most, he might achieve some real discretion only when advice coming to him from different sources—cabinet, Privy

Council, the Supreme Military Command, and the like—was different and conflicting.

2. Ultimate Absolutism. In a country with different traditions, a titular chief executive so situated would likely be set down as possessing only nominal authority if not indeed as a mere figurehead. But this cannot be done in the case of the prewar Japanese emperor. For not only was he the patriarchal and theocratic head and focal center of the Japanese nation, but all orthodox Japanese constitutional authorities held him to be legally absolute, uniting in his person the full sovereignty of the state, if not himself in effect being the state. To be sure, this conception—fostered by the constitutional fathers as a means of transforming earlier feudal loyalties into a national loyalty, and later encouraged by militarists and imperialists as a means of evading popular control—was built up almost entirely after 1868, and therefore came relatively late. To be sure, too, in the first quarter of the nineteenth century there grew up a liberal school of mostly younger writers (chiefly professors in universities) which regarded the emperor as not embodying the essence of the state, but as being merely an organ of the state, and therefore as ruling, not with absolute authority, but only as supreme representative of the nation, composed of emperor and people as a unity.[1] But those who professed such heretical views were made to feel the weight of official displeasure—were deprived of their positions, saw their books burned, went to jail, or in other manner fell upon evil days; and when wartime came in 1931, the old orthodox view of the emperor as not only "sacred and inviolable," as the constitution declared, but possessed of all public power (however it might actually be exercised), was as firmly lodged as ever in the national mind.[2]

[1] The able jurist and law professor Tatsukichi Minobe was a leader in this venturesome line of thinking.

[2] On the emperor's position, see further H. S. Quigley, *op. cit.*, Chap. v. All other significant parts of the prewar governmental system are treated in succeeding chapters of this same book, which may thus be cited once for all. Other useful works on the Japanese government of the time include R. K. Reischauer, *Japan; Government—Politics* (New York, 1939); E. O. Reischauer, *Japan Past and Present* (New York, 1946); and C. B. Fahs, *Japanese Government: Recent Trends in its Scope and Operation* (New York, 1940). Attention must be called also to the following scholarly articles by K. Colegrove, all in the *Amer. Polit. Sci. Rev.* of the dates indicated. "The Japanese Emperor" (Aug. and Oct., 1932); "The Japanese Privy Council" (Aug. and Nov., 1931); "Parliamentary Government in Japan" (Nov., 1927); and "Powers and Functions of the Japanese Diet" (Dec., 1933, and Feb., 1934).

Ministers and Cabinet. The next element in the government to be mentioned—the cabinet—is hardly less baffling than the emperorship. The constitution said nothing about a cabinet. But, as indicated earlier, such a body was formed in 1885 as a step preparatory to the new régime; and when the constitution was put into operation, its continuance was simply taken for granted. Throughout ensuing decades, there commonly were from 12 to 15 ministers, each ordinarily in charge of a department such as foreign affairs or finance, and with a prime minister at their head. There was no requirement that they be members of the Diet, and usually some were not. But general arrangements were a good deal like those in Great Britain or France, with all ministers gathered into a cabinet, meeting weekly or oftener, and endeavoring to maintain at least outward unity or solidarity. If, however, it was intended that there be a cabinet, there was no intention that there be a *cabinet system* in the Western sense. To be sure, all imperial acts were required to be countersigned by a minister, and ministers were required to "give their advice to the emperor and be responsible for it." [1] But the catch came in this latter provision. Responsible to whom? The constitution did not say (precisely as its Prussian model did not); doubtless it was intentionally left ambiguous on the point. And in practice, responsibility was always vague and dispersed and certainly extending considerably more in the direction of the emperor than in that of the popular branch of the Diet as would have been required if the British system had been followed.[2] By persistently thwarting a cabinet's program, the House of Representatives could sometimes make existence intolerable for a cabinet and compel it to resign; and plenty of cabinets over the years retired under this sort of pressure, with others surviving only after dissolving the Diet and ordering new elections. No parliamentary reverse, however, could force a cabinet out unless it chose to yield; and altogether "cabinet government," if there can be said to have been such, was very shadowy.

The Privy Council. Interposed, however, between cabinet and emperor was another body known as the Privy Council—created in 1888, as Ito explained, to serve as the emperor's "highest body of advisers." Little need be said about it here, except to remark that,

[1] Art. 55.

[2] In his *Commentaries*, Ito spoke of the cabinet as being responsible *directly* to the emperor and *indirectly* to the people—whatever that might mean.

composed of some 26 industrial magnates, diplomats, generals, admirals, and other men of distinction appointed by the emperor for life, and therefore weighted, especially in later days, with bureaucrats, plutocrats, militarists, and imperialists, the body—before which practically everything of importance was likely sooner or later to come—was inevitably a bulwark of conservatism and reaction, and as such a formidable impediment to the development of anything resembling true democratic government. For a time before 1931, certain relatively liberal cabinets seemed to make some headway toward reversing the Privy Council's ascendancy; but after the tightening up which accompanied the militarist Manchurian *coup* of the year mentioned, the effort flickered out.[1]

The Diet: 1. The House of Peers. As plans grew for a system of government under the projected constitution of 1889, it was taken for granted that, in the spirit of the imperial promise of 1868, a place would be provided for a popularly elected legislative body. At the same time, a legislative body was to be constructed, too, from the new peerage as reorganized in 1884. The upshot, therefore, was a Diet, or Parliament, composed of two chambers—a House of Representatives and a House of Peers. As existing during ensuing decades, the House of Peers was a body of some 400 members, not more than about half of whom, however, were actually peers in the sense of belonging to the nobility. All princes and marquises were included on an hereditary basis; and each of the three lower orders (counts, viscounts, and barons) elected from its total number certain fixed quotas to sit. Outside of this, there were two main groups of members, one consisting of persons specially appointed by the emperor in presumed recognition of services of various kinds to the country, and the other composed of persons elected by the 200 largest taxpayers in the various provinces (one or two from each province) for terms of seven years. Although certainly not so constituted as to be very liberal politically, the chamber was by no means so largely hereditary as the British House of Lords, some 90 per cent of whose members sit by virtue only of being the sons of their fathers. It was a highly mixed body, partly hereditary, partly appointive, and partly elective, with the appointive element likely to be the ablest and most active.

[1] For the imperial rescript fixing the Privy Council's functions, see H. S. Quigley, *Japanese Government and Politics*, 353-358.

2. The House of Representatives. The House of Representatives was a body of some 450 members chosen in all cases directly by the people for four years, subject to curtailment by parliamentary dissolution. Like everything else relating to the electoral process, the suffrage was left by the constitution to be regulated by separate law, and between 1889 and 1925 the matter was dealt with in a series of four main statutes.[1] Throughout, the suffrage was confined to men; for although the country was the scene of an ardent woman suffrage movement which by 1930 was thought to be about half way along the road to victory, the House of Peers always blocked votes for women, even in local elections. The minimum voting age also was always 25 rather than 21. Outside of sex and age, the only significant qualification imposed was in terms of payment of direct taxes; and the straitened circumstances of the great mass of Japanese two generations ago is evidenced by the fact that under an original tax qualification of only 15 yen (about $7.50), barely 450,000 men out of a national population of perhaps 38,000,000 could qualify. Laws of 1900 and 1919 progressively lowered the tax requirement, and finally in 1925 it was eliminated altogether, leaving the country with full manhood suffrage and a total electorate of between 12 and 13 millions. Among interesting features of the electoral system as it stood on the eve of World War II were the choice of from three to five members in each electoral district, but without proportional representation except as minorities benefited from the elector being allowed to vote for only one candidate; the requirement of an electoral deposit of 2,000 yen (about $700 under prewar rates of exchange) by candidates, to be forfeited unless they received a number of votes determined by application of a mathematical formula; prohibition of the use of radio and of the canvassing of voters in campaigning; and a system of legal restriction of campaign expenditures, which, however, did not prevent Japanese elections from being expensive and also among the most corrupt in the world.

The Diet's General Position. A Westerner observing the Diet at work in the splendid building not so long ago constructed for it in the heart of Tokyo would have found much to remind him of legislative organization and procedures in Britain and America (particularly the former)—in the House of Representatives, a speaker chosen by the House, committees selected by party caucuses

[1] The Law of Election of 1925 will be found in H. S. Quigley, *op. cit.*, 378-410.

and elected by the House, bills introduced either by the government or by private members (with chances of passage about 10 to one in the former's favor), three readings, closure, questioning of ministers, and what not. In most such respects, indeed, the model was the British House of Commons, and it was followed fairly closely.[1] Beyond this, however, the parallel fails; because the Japanese Diet had not such power and importance as either the British Parliament or the American Congress. Only a few evidences need be adduced. At the outset, a clue is given by the fact that, as a rule, the Diet was in session only about three months out of a year (the minimum period required by the constitution); more to do and more discretion in doing it, would certainly have required longer sessions. One of the reasons why there was not more to do was the very full use made of the government's ordinance power, in lieu of regular legislation; and this suggests another element in the Diet's unsatisfactory procedure. In Britain, as we saw earlier, all proposals for expenditure must originate with the government and be introduced in Parliament by a minister; Parliament can reduce any item though not increase it; and no expenditure can be incurred by the government except by express parliamentary authorization. At Tokyo, things were different. On the one hand, any group of 30 members in the House of Representatives could initiate proposals for expenditure; but, more significant, many large categories of expenditure could be neither raised nor lowered by the Diet without ministerial assent; and, still more important, if in any year the Diet failed to approve a budget (as occasionally happened), the government had full power to continue operating during the ensuing year on the budget of the year before. Thus the power of the purse, so vital to parliamentary control in a country like Britain, rested but lightly in the hands of Japanese parliamentarians.[2] Finally, may be mentioned the most basic weakness of all (already alluded to in a different connection above), *i.e.*, the absence of any effective responsibility of ministers to the popular parliamentary branch. As has been said, ministries were sometimes forced out by prolonged parliamentary opposition; but on the other

[1] Broadly, the same held true for the House of Peers, which enjoyed full legal parity with the House of Representatives, no measure becoming law except by being enacted in identical form by both houses.

[2] The Diet did not lack legal authority to deal with matters of finance so much as experience and ability in this complex field.

hand they need not yield unless they chose, even when soundly beaten on some bill or policy of prime importance. All in all, the Diet's position (especially that of the House of Representatives) was weak. During the same period (particularly the twenties) in which the cabinet seemed to be making headway in its rivalry with the Privy Council, it was widely believed that Parliament too was gaining; and perhaps it was. After 1931, however, it began slipping; and in the next decade it found itself pushed far into the background by forces of militarism, imperialism, and totalitarianism which were fast making Japan an essentially fascist state.

ELEMENTS OF EXTRACONSTITUTIONAL GOVERNMENT

1. The *Genro*, or Elder Statesmen. If one stopped with the constitutional organs of government thus far surveyed, he would have only a very imperfect idea of how prewar Japan's affairs were managed; because to no small extent, actual direction and control came from sources wholly outside of the written fundamental law. Three or four elements or agencies of informal, extraconstitutional government must therefore be brought to view; some of them eventually furnished General MacArthur and his advisers fully as difficult problems as any presented by the constitutional machinery itself, even the emperorship. At one time, top rank would have been given an informal and varying group of experienced and influential men known as the *Genro,*[1] or Elder Statesmen; for after the generation that laid the foundation of the new Japan passed off the scene, the emperor turned for much advice to important figures in the new national life, calling them into consultation whenever important steps were to be taken, *e.g.,* a new prime minister selected, war declared, or an important treaty made. There was nothing official about the arrangement; there might even be uncertainty at any particular time as to precisely who were to be regarded as belonging to the group; everything rested solely on usage. But until at least well after World War I, there was no more fertile source of influence on governmental policy—influence, it may be added, always patriotic and often intelligent, but seldom liberal. Dwindling in numbers, however, the *Genro* finally became extinct, the last survivor—the Marquis Saionji—dying in 1940 at a ripe old age. Hence when World War II's prob-

[1] The term *Genro* means "old and experienced statesman."

lems came up for settlement, the Elder Statesmen were no longer in the picture.

2. The Supreme War Council. The regular constitutional government was, of course, fully organized on the military side. With the abolition of feudalism, universal military service had been introduced, with the result of a strong national army. A powerful navy, too, was built up. And there were the usual ministries of war and navy, which by long established usage were always headed, not by civilians—as are corresponding departments in Great Britain and the United States—but always by military and naval men of high rank. On top of the regular machinery and completely dominant over it developed, however, a particularly powerful agency of extraconstitutional government in the form of a Supreme War Council, embracing, to be sure, the heads of the two defense departments, but consisting chiefly of a board of field marshals and fleet admirals, the chiefs of army and navy general staffs, and other generals and admirals designated by the emperor. In the beginning, there was some subordination to civil authority. But as early as the eighties the high military began asserting an increasing independence, and gradually there developed a basic civil-military dualism which long before World War II became one of Japan's most conspicuous and unfortunate characteristics. For such a development, there was no constitutional warrant—save as (in line with the constitutional methodology commented on earlier) militarists simply took advantage of the fundamental law's silence to twist it to their own purposes. At all events, the theory came to be that, with the emperor supreme commander of the armed forces and empowered to determine their organization and strength, the Supreme War Council acted in his name, had right of "direct access" to him, and was properly independent of all civil control: a civil government headed up in the emperor; so did a military government; but the two were separate and independent. All this, as has been said, was quite outside of the constitution; and thus as to everything relating to armies, navies, and military policy, the top military took its place in the expanding extraconstitutional government. Indeed, the resulting dualism deeply affected the country's foreign relations, often leading to situations (as in the Manchurian affair of 1931-32) in which the civil government spoke with one voice and the military with quite another, to the confusion and frustration of foreign diplomats and their gov-

ernments. Needless to say, the militarists were always ultra-nationalistic and wholeheartedly anti-democratic.[1]

3. Big Business—The *Zaibatsu*. In the course of its rapid industrial development during the second half of the nineteenth century, encouraged and often subsidized by the government, smaller businesses were absorbed by larger ones until "big business" became one of the country's outstanding features. Many establishments took the form of giant trusts or corporations, founded and carried on by rich and influential families; by 1941, for example, the Mitsui family, with Baron Mitsui at its head, operated one of the world's largest concerns, controlling 150 subsidiary corporations and transacting 15 per cent of the nation's business. Other *Zaibatsu* ("money cliques"), as they were called, included the Mitsubishi, the Sumitomo, and the Yasuda, with the South Manchuria Railway Company and later a Manchuria Industrial Development Corporation presenting similar characteristics. And each penetrated into practically all forms of business, owning and operating factories, banks, railways, steamship lines, mines, forests, dockyards, utilities, insurance businesses, and what not. For present purposes, the significance of these colossal business interests is, of course, their close connection with and frequently powerful influence upon the government.[2] They were the big taxpayers; often they risked their money in support of government enterprises; always they were advance agents of empire abroad; and, interlocked by marriage as they often were with the Privy Council and House of Peers, they inevitably expected to be consulted on public policies and to have their voices heard. Initially, they might hesitate over the cost of some bold venture, as that in Manchuria in 1931; but usually they fell into line, and often they ended by becoming the military's strongest ally in imperialistic enterprises. Certainly they went all out for Japanese dominance of the Far East as planned and very nearly achieved by the army and navy leaders. By any standard of measurement, they constituted another powerful element in Japan's extraconstitutional government.

4. Political Parties. In the same general category may be placed political parties, which indeed in some instances were very closely affiliated with leading *Zaibatsu* and largely supported by them. Parties first appeared in Japan during the earlier eighties of the past

[1] K. Colegrove, *Militarism in Japan* (Boston, 1936).

[2] It used to be a saying in Japan that no one could tell where Mitsui left off and the government began.

century, when, under sometimes curious names, a dozen or more sprang up, merged, split, and otherwise shifted, with little effect on government, since as yet there were no elections and party groups comprised mere petty personal followings drawn from the upper social classes. Only after parliamentary institutions were introduced in 1889 did they broaden their base (although even then they long had only a very limited electorate to draw upon). Only after 1889, too, did the government give up trying to curb and suppress them, gradually perceiving that organizations of the kind need not necessarily be subversive, but might prove sources of support as well as of opposition. Gradually, indeed, the idea was accepted that ministers, instead of keeping aloof from all party activities in the interest of impartial administration, might properly be drawn from among party leaders, adhere to and endeavor to carry out party programs, and stand or fall according to the fortunes of parties or party coalitions. Through a long series of transmutations which it would be wearisome to relate, there eventually emerged two major parties which largely divided the politically responsive people's allegiance between them during the last two decades before World War II. One was the *Seiyukai* (Friends of Politics Association), the other *Minseito* (People's Political Party). Actually there was no great difference between the two; cynically inclined Japanese customarily regarded them very much as the followers of Henry Wallace in the United States regarded Republicans and Democrats during the campaign of 1948, *i.e.*, pretty much a matter of tweedledum and tweedledee. Both professed to be liberal, without in either instance much claim to such characterization—although with the *Minseito* having somewhat the better case. Both drew their funds mainly from the *Zaibatsu*—the *Seiyukai* from Mitsui, the *Minseito* from Mitsubishi. Both were essentially bourgeois, with little real support from the masses. In so far as there was any genuine difference, the *Seiyukai* was stronger among the landowners, the *Minseito* among industrialists; and the *Seiyukai* was more imperialistic, backing with greater enthusiasm the militarists' program of expansion in Manchuria and North China. But the two together left the way wide open for some great party of truly popular character; and for a time, particularly in the later twenties, there seemed some reason to believe that such a party would actually arise. The manhood suffrage law of 1925 brought into the electorate some 9,000,000 agricultural workers and factory employees, com-

monly contemptuous of *Seiyukai* and *Minseito* alike; and presently there sprang up all over the country little farmer, labor, farmer-labor, and other proletarian parties, which needed only to pool their strength to give the country a party that in time might really challenge the older parties and even achieve the significance of the Labor party in Britain. But there were serious impediments—shortage of funds, jealousies among leaders, lack of articulate class consciousness, disagreements over the attitude to be taken toward communism—and although, with a new Social Masses party leading, the proletarian groups captured as many as 37 parliamentary seats in the election of 1937, no very impressive progress was made.[1] In so far as parties, party programs, and party techniques contributed to the country's extraconstitutional government in prewar days (and they did so heavily), it was the two major parties, operating under as straight a two-party system as that of the United States, that had significance.

PREWAR AND WARTIME DEVELOPMENTS

Such, in outline, was the governmental set-up in Japan a score of years ago or less. The main purpose remaining to be served by these closing chapters is to offer some information concerning the new constitutional and political system introduced in the country since the surrender of 1945. Before this is undertaken, however, some attention must be given certain developments which transformed the Empire, by the date of Pearl Harbor, into a state hardly if any less totalitarian than its Axis associates, Germany and Italy.

The *Coup* of 1931 and Its Aftermath. The story begins with a military *coup* and advances to the full ripening of a militarist régime, extraconstitutional except as the militarists insinuated themselves into the constitutional structure, took it over, and made the constitutional and extraconstitutional in effect one. The *coup* occurred when, on the night of September 18, 1931, with neither knowledge nor approval of a liberal-minded cabinet happening then to be in office at Tokyo, the army launched an attack in southern Manchuria ostensibly to curb Chinese disorders, but in reality to bring that valuable frontier area of North China under full Japanese control. Efforts of the United States and the League of Nations to

[1] The best account of Japan's popular parties—which, after suppression during World War II, have contributed to the rise of the postwar parties of today—will be found in K. Colegrove, "Labor Parties in Japan," *Amer. Polit. Sci. Rev.*, May, 1929.

promote an adjustment totally failed; and the Sino-Japanese war now started continued unbrokenly, except for a precarious truce in 1933-37, until 1945, meanwhile merging in 1941 into World War II. From a political viewpoint, the significant thing was the rule of Japan by a militarist government during the whole of the period. Within three months, the relatively non-imperialist *Minseito* cabinet of Wakatsuki and Shidehara was supplanted by a *Seiyukai* cabinet which succumbed to military domination after Prime Minister Inukai's assassination; and in close, though somewhat shifting, alliance with the *Zaibatsu* and bureaucrats, the militarists took over. War was carried into all North China; the League of Nations was abandoned; the London Naval Treaty, restricting armament-building, was denounced; popular reverence for the emperor was given fresh stimulus; the government itself passed so completely into militarist hands that the traditional civil-military dualism almost disappeared.

Political Parties Suppressed. Moreover, with an ambitious and arrogant clique known as the Young Officers setting the pace, militarist-capitalist-bureaucratic forces, as the country advanced into the late thirties, addressed themselves to two main objectives. The first was to build a "New Order for Eastern Asia," with the Far East linked up under a Japanese hegemony exercised from Tokyo; and while, as first announced by Prince Konoye in 1938, only Japan, Manchoukuo, and China were embraced, by 1940 the grandiose scheme envisaged the inclusion of all southeast Asia as well—in short, the entire Far East. This, of course, was the project that most aroused the United States and other Western democracies to the advancing Japanese menace and led directly to war in 1941. The second objective was a "New Structure of Government" for Japan herself, in which representative institutions should yield to a new type of organization on essentially fascist lines; and naturally a first step toward realization of this idea was to rid the country of political parties and edge all politicians out of positions of influence in favor of professional bureaucrats and soldiers. Dispensing with the parties promised to be a matter of no great difficulty. Already they were lacking in any general popular support; strong men, militarist and otherwise, boasted of having no connection with any of them; their leadership was honeycombed with indifference and disloyalty; and, when, in 1940, Prince Konoye accepted the premiership only on condition that they be eliminated from the scene, their doom was

sealed. In July, two factions into which the *Seiyukai* had split agreed upon complete dissolution of the party; a month later, *Minseito* took a similar step; and after these two voluntary liquidations, it was a simple matter for the militarist-controlled government by decree to suppress all proletarian parties, bracketing with them, indeed, all similar associations and pressure groups and even such ostensibly innocent organizations as Rotary clubs.

The Imperial Rule Assistance Association. In the fascist countries of Europe, similar suppression of parties left standing, of course, in conformity with the pattern of the one-party state, a single party monopolizing the field—the National Socialist party in Germany, the *Partito Nazionale Fascista,* or Fascist party, in Italy. Japan, on the other hand, was left partyless; and, speaking strictly, no one-party régime ever established itself in that country. There did come into existence, however, a super-organization vaguely regarded in other countries as a party and in truth bearing not a little resemblance to one. This was the *Taisei Yokusankai,* or Imperial Rule Assistance Association. Plans for this organization were laid by a Preparatory Committee on the New National Structure appointed by Premier Konoye in August, 1940, and with members ranging all the way from notorious militarists and fascists to a president of peasant coöperative societies, who, interestingly enough, served as chairman. By intent, the new Association was to be a huge, nation-wide organization filling the void left by the parties and lending itself in a multitude of ways to implementing the contemplated new order (an instrument, Premier Konoye asserted, for the people's support of imperial rule); and very elaborate machinery was worked out, with the premier (or some one designated by him) as president; with full quotas of advisers, managing directors, directors, and the like; with a central collaboration council in Tokyo; with five main bureaus, divided into sections, among which one noted such units, familiar in Germany and Italy, as a propaganda section, a youth section, and a culture section; and with a hierarchy of councils functioning as branches down through the provinces, municipalities, and village communities. Although some attempt was made to "examine" all proposed legislation before it was submitted to the Diet, the Association was never an actual institution of government. Rather, it was a giant propaganda machine designed to popularize governmental actions and in so doing give the people the illusion that they were having

some share in determining policies, while at the same time so preempting the field that organizations difficult to control would be less likely to spring up. Propagandist activities lent the Assistance Association somewhat of the aspect of a political party, and the impression was heightened when, in the "partyless" Diet elections of 1942 (the last held during the war) most candidates ran under the organization's banner, although in spite of government backing only 81 per cent of those elected actually did so. But the energies of the Association seem to have been consumed more largely in stimulating production, assisting with rationing, holding war bond rallies, and furnishing general support for morale. All in all, the device appears to have been only moderately successful, and fears of some, mainly politicians, that it would end by supplanting the Diet proved ill-founded. Its top-heavy structure was a number of times overhauled; and after the 1942 elections revealed it to be in considerably less than full command of the situation, a special Imperial Rule Assistance Political Society was set up to supplement its activities in the political sphere, with a further People Rise to Action organization added in desperation in 1944 as the lengthening shadow of military defeat fell over the land. Moreover, by 1945, regular political parties were beginning to be revived, and indeed in the spring of that year a Dai Nippon Political Association, constructed essentially on party lines, made its appearance, although proving one of the first organizations to be suppressed when the Allied occupation began.[1]

Character of Wartime Government. When in 1941, the die was cast for provoking war with the Western democracies, Japan had for years been dominated completely by the triple coalition of militarist extremists, *Zaibatsu* magnates, and nationalistic bureaucrats. To be sure, these elements had not always seen eye to eye; in particular, the *Zaibatsu* had been loath to accept militarist control over the great enterprise of the day—the development of a national economy suited to war. By the autumn of 1941, however, the stage was set for the militarists to emerge in undisputed control and, completely confident of Hitler's ultimate triumph in Europe, they quickly —under the leadership of one of the extremest of their number, General Tojo, as premier—carried the Empire into world-wide war.

[1] For an excellent survey of political developments in later prewar and early wartime Japan, see K. Colegrove, "Totalitarian Government in Japan," in H. Zink and T. Cole [eds.], *Government in Wartime Europe and Japan* (Boston, 1942), Chap. ix.

For nearly four years thereafter, there was all of the regimentation that might have been expected during war in such a country with such a background. But there were no organic changes in the formal governmental system: by regular procedures, the Tojo cabinet was succeeded in 1944 by a cabinet under General Kuniaki Koiso, and this in turn in 1945 by one under Baron Kantaro Suzuki, still in office at the time of the surrender; even the Diet remained on the scene, meeting frequently, although of course far in the background. At all events, when on September 3, 1945, the Allied powers found themselves in a position to occupy a defeated Japan, they were confronted by a country with a full-orbed government still actively functioning—one in which certain extremists, discredited by military disaster, had fallen from positions of influence, but with its destinies still in the hands of the militarist-capitalist-bureaucratic combination that long had guided them.

CHAPTER XLIV



THE NEW JAPANESE GOVERNMENT

ALLIED OCCUPATION AND MILITARY GOVERNMENT

Allied Preparation for a Japanese Defeat. Allied preparation for the anticipated surrender took two main lines. On the one hand, terms to be imposed, initially drafted by the United States government, were discussed among the Allies and announced, first in rather general form at the Cairo Conference of December, 1943, and later in greater detail at the Potsdam Conference of July, 1945, where such principles were laid down as surrender with no conditions attached, restriction of Japanese territory in future to the home islands, complete and permanent disarmament, establishment by free action of the Japanese themselves of a democratic and responsible government, and allied occupation of all Japanese territory until such time as the victors should have become satisfied that all of their objectives had been fulfilled. The second line of preparation related rather to the nature, organization, and policies of the occupation to be undertaken; and on this, research groups in the U. S. Department of State, and later various interdepartmental committees, started work as early as 1942, with studies and discussions continuing as the war progressed. At all stages, but particularly toward the last, the war in the Pacific was an American war; and from the first it was taken for granted that general management of the occupation and enforcement of the terms of surrender would be essentially an American function, although not without some collaboration from at least Great Britain and China, and, as belatedly developed, also from the U.S.S.R., which entered the Far Eastern conflict only during its final week. In point

of fact, practically the entire program as planned and carried out emanated from Washington.[1]

The Machinery of Occupation. If followed into all of its ramifications, the machinery of occupation eventually set up, which functioned until 1952, would be a complicated matter to describe. For present purposes, however, only a few facts about top organization need be mentioned. To begin with, all insular Japan constituted a single occupation area. As only a former Japanese dependency, Korea was treated separately under a two-zone arrangement (American and Russian) which caused plenty of trouble. The occupation of Japan proper, however, from the first had the advantage of unity and uniformity, so conspicuously lacking not only in Korea, but also in four-zoned Germany. In the second place, the key figure in the Japanese occupation was, of course, General Douglas MacArthur, who, while the war was still going on, was both United States commander in the Far Eastern theater and supreme commander of all Allied forces in that theater; and subsequently occupied a triple position, being (1) still, as a theater commander, chief of United States forces in the Far East, (2) SCAP, or Supreme Commander for the Allied Powers, and (3) United States representative on and chairman of the International Allied Council sitting at Tokyo for advisory purposes; and as his actions were observed and reported, it was not always easy to determine which of his "three hats" he was wearing at a given time. A third fact is that the occupation was an international operation; and in pursuance of this aspect of it, not only were the occupying forces contributed to some minor extent by Allies other than the United States (chiefly Great Britain and the Commonwealth countries, with the U.S.S.R. refusing to participate), but two international bodies were associated with it in the form of (1) a Far Eastern Commission, embracing representatives of 11 Allied nations and sitting in the old Japanese Embassy in Washington, and (2) a smaller Allied Council already mentioned as located in Tokyo. Endowed with only advisory functions, and perpetually harassed by disagreements among its members, the latter agency proved of but slight importance. Through its power to review both directives sent from Washington to the Supreme Commander and actions of the Supreme Commander himself, the Far Eastern Commission, on

[1] W. C. Johnstone, *The Future of Japan* (New York, 1945); W. Fleisher, *What To Do With Japan* (Garden City, N. Y., 1945); T. A. Bisson, *Prospects for Democracy in Japan* (New York, 1949).

the other hand, had some significance; although the general fact remains that nearly everything planned and done in administering the occupation and preparing the Japanese people for a changed future sprung from directives issued on authority of the president of the United States, supplemented by decisions which, within certain limits, the Supreme Commander was himself empowered to make. Finally, on the scene of action, General MacArthur operated directly through a chief of staff heading up a SCAP General Headquarters composed of various staff divisions—governmental, legal, economic, and the like—headed mostly by military officers but staffed largely by civilians, both predominantly American. In the field, military government was almost entirely in the hands of a relatively self-contained Eighth Army, under the general direction, of course, of the Supreme Commander.[1]

General Lines of Reconstruction Policy. Japan in modern times passed through two periods of particularly rapid and far-reaching political, economic, and social change. The first was the decade starting with the "restoration" of the emperor in 1868; the second was the years following the surrender of 1945. On the first occasion, change was voluntary; on the second, largely otherwise, with the blueprints drawn, not in Tokyo, but in Washington, and embodied basically in two voluminous directives to General MacArthur within the first three months after the surrender. At the same time, the recent program of change was not simply clamped down on a helpless Japan and relentlessly enforced by fiat. On the contrary, the Japanese government was itself drawn into the operation, and not without considerable opportunity for discretionary action. For, contrary to what had been earlier expected and planned for at Washington, Japan, as already mentioned, emerged from the war with her entire governmental system intact; and as a result of quick rethinking of the problem, it became a basic policy of the occupation, not only to allow the system to stand (with appropriate purges of personnel), at all events for the time being, but as far as possible to use it and work through it in bringing about the desired national reorientation.[2] And so it came about that, while sometimes SCAP

[1] For a general treatment of the earlier stages of the occupation, see E. M. Martin, *The Allied Occupation of Japan* (Stanford University, Calif., 1948).

[2] The situation existing and the policy determined upon were entirely different from those in Germany, where the end of the war found all government in collapse, and where, in any event, the Allies would not have chosen to work with a government whose utter destruction had been a main object of the war.

issued directives through no Japanese intermediary at all, in most instances the great reconstruction measures proclaimed took the form of decrees promulgated by the emperor or of acts and decisions emanating from the cabinet. Every one knew that back of such decrees and decisions lay directives from the occupying Supreme Commander. But the method had the advantage of associating the Japanese government publicly with the policies ordained and committing it to their execution. In the meantime, of course, the Japanese authorities were in a position to go straight on exercising any normal powers of government not significantly involved in the reconstruction program.

Of the amazing series of measures and actions taken, on the basis described, as the occupation moved from stage to stage, it is, of course, impossible to speak here; only the major constitutional and poiitical outcome lies properly within our purview. One merely recalls the demobilization of armed forces, the dissolution of militarist and fascist societies, the repatriation of Japanese civilians, the release of political prisoners, the abrogation of laws restricting civil liberties, the adoption of measures to prevent future re-militarization, the trial of war criminals, the disestablishment of state *Shinto,* the introduction of agrarian reforms, the reorientation of the content of popular education, the partial liquidation of the *Zaibatsu,* and a host of other things.[1] Speaking broadly, the first year was taken up with demobilization, purging the government of militarists, and efforts to eradicate militarism from every phase of the national life; later years, with the more positive aspects of reform, aimed at making the Empire a peaceful and useful member of the family of nations. To be sure, in 1947, General MacArthur, convinced that the military phase of the occupation had been completed and the political phase brought to a point where only watchfulness and advice were longer needed, proposed that relations between a chastened Japan and the Allied Powers be regularized by a formal treaty of peace, to be followed, presumably, by some relaxation of the rigors of military occupation. Proposals by the United States looking to peace talks, however, encountered diplomatic obstacles, particularly on the part of the Soviet

[1] See P. W. Buck and J. W. Masland, *The Government of Foreign Powers* (New York, 1950), Chap. xxviii; R. A. Fearey, *The Occupation of Japan* (New York, 1950); SCAP, *Political Reorientation of Japan, Sept., 1945 to Sept., 1948,* 2 vols. (1950); and articles by P. H. Taylor and R. J. D. Braibanti in *Annals,* Jan., 1950.

Union; and it was not until September, 1951 that representatives of the Allied nations met with Japanese agents in San Francisco to draft a treaty.

Framing and Adoption. The Japanese government through which the Supreme Commander administered the country's affairs during the first year and more was, of course, that which had come down through the war from earlier days, except only that the militarists had been eliminated. Bureaucratic and business interests still dominated; the emperor was in his accustomed place; the cabinet, for a good while headed by the relatively liberal but Mitsubishi-connected Shidehara, still functioned, even though mostly under SCAP direction; the bicameral Diet was in full, even if not very active, operation, with a new one elected in April, 1946; political parties were once more active, bearing new names, though how genuinely changed remained to be seen. From the outset, however, a main purpose of the Allies had been to see that Japan came off from the war with a government of entirely different sort—one based on broad principles of democracy and devoted to the interests of peace; and in varying language that objective was reiterated in official pronouncements both before and after the surrender. It was part of the plan, too, that—in accordance with pledges contained in the Atlantic Charter of 1941 and the Potsdam Declaration of 1945—the Japanese should be given as much opportunity as their conduct merited to determine for themselves the form of government they thenceforth would have—within the prescribed framework, of course, of democracy, responsibility, and peaceful intent; and the new constitution of 1946 was made by procedures which at least nominally associated Japanese with Allied authority. Many Japanese, to be sure, and including some of fairly liberal mind, such as Premier Shidehara and Professor Minobe, considered that no new constitution was needed at all; broad and general provisions of the existing one, they argued, could be freshly interpreted with more liberal connotations, or if necessary, might be modestly amended textually. At SCAP headquarters, however, a different view was taken; and within two months after the start of the occupation, the cabinet was told (on October 11, 1945) not only that a new fundamental law would be necessary, but that under its provisions the emperor (if surviving

at all) must be shorn of his political power, the reactionary extra-constitutional advisory agencies of the past dispensed with, the Diet strengthened, responsibility of ministers to the Diet established, judicial independence guaranteed, and an adequate bill of rights adopted.[1] Hitherto, not much Japanese interest had been evinced. Confronted, however, with what was in effect a politely phrased but none the less pointed ultimatum, the government set up a Constitutional Problem Investigation Committee, headed by a prominent lawyer; while political parties and other groups turned to formulating plans and proposals. From the viewpoint of SCAP, the outcome of these efforts left much to be desired; even the report of the Constitutional Committee showed little disposition to introduce significant changes. And the natural upshot was a decision of General MacArthur's headquarters to take the job of constitution-making into its own hands, in consultation with the Japanese cabinet, but yet in substantial independence of it. On this basis, the new constitution was made. American political scientists were called to assist the Government Section in the task; the Far Eastern Commission at Washington contributed a lucid statement of principles to be observed; discussions with Japanese ministers were held; and early in 1946 a completed draft was ready to be placed in the hands of the Emperor.

Final adoption was not rushed. On the contrary, every opportunity was afforded for regular Japanese procedures to be observed. On March 6, the Shidehara cabinet, acting in the name of the Emperor, published the document for the information of the people; General MacArthur came out with a strongly worded statement in support of it; the Japanese press commented on generally favorable lines; approved by the cabinet, the document was, in June, submitted to the Diet, which, after making a few changes in wording, adopted it by unanimous vote except for a Communist group abstaining because of objection to retention of an emperor; and in an imperial rescript of November 3, the new instrument was promulgated, with May 3, 1947, fixed as the date for it to take effect.

Characteristics as a Document. Organized in a preamble and 103 articles grouped in 11 chapters, the constitution of 1946 is longer by at least a third than the old one, partly because more topics are covered, partly also because of more rhetorical language,

[1] SCAP, *Summation of Non-Military Activities in Japan*, No. 1, pp. 8-9 (Sept.-Oct., 1945).

e.g., in the preamble, contrasting sharply with the laconic style employed in 1889. The constitution, too, is not primarily of Japanese origin. To be sure, it went before the world bearing the stamp of Japanese authority; and both its promulgation and its final proclamation were accompanied by impressive popular demonstrations of loyalty. That the instrument was actually the work of the Japanese themselves was, however, only a convenient fiction. Not only was the method by which it had been made an open secret, but the document bore on almost every page evidences of its essentially Western origin—evidences of being, as native newspaper writers plaintively remarked when they first saw it, only a Japanese translation of a text prepared in English.[1] And many who witnessed the enthusiasm of the crowds at the ceremonies of promulgation and proclamation suspected, no doubt rightly, that the actual object of adoration was the obviously embarrassed, bespectacled little Emperor rather than the document which he was reading. However that may be—and in consonance with the instrument's actual origin—the new fundamental law fully meets the specifications laid down at General Headquarters at Tokyo and by the Far Eastern Commission in Washington, and in doing so bestows on Japan a genuinely new governmental system. To be sure, in proclaiming the constitution in effect, the Emperor referred to it as if it merely embodied amendments to the constitution of 1889. But this, too, was a fiction; because the constitution of 1946 is no revision, but in both form and substance a new frame of government. Not only is it organically quite separate, but for a constitution drawn on German models and suffused with the old Prussian absolutist and militarist spirit has been substituted one in which American, British, and internationalist principles dominate almost every line. In days to come, the Japanese people may or may not live up to its specifications; but at all events, it has set their feet on a political pathway which they never before have trod.[2]

Some Major Changes Provided For. Of three forceful illustrations which may be cited, the first is the unequivocal assertion of

[1] This characteristic was especially evident in the preamble, strongly reminiscent of the American Declaration of Independence—a preamble which, it has been observed, no Japanese could possibly have conceived or written and which few could even understand.

[2] H. S. Quigley, "Japan's Constitutions: 1890 and 1947," *Amer. Polit. Sci. Rev.*, Oct., 1947; D. N. Rowe, "The New Japanese Constitution," *Far Eastern Survey*, Jan., 1947.

popular sovereignty. Even the most liberal-minded and ingenious interpreters of the old constitution never found anything of that sort in it. But the new one not only proclaims in its preamble that "sovereign power resides with the people," but undertakes to provide machinery calculated to implement the principle, particularly a Diet, with both houses popularly elected and declared "the highest organ of state power," a cabinet now expressly made responsible to the Diet, and an amendment procedure under which, after a proposed constitutional change is approved by a two-thirds vote in both branches of the Diet, final ratification is left to the electorate by means of a referendum.[1] The position in which the emperor is left may tempt die-hards to attribute to him a sort of moral sovereignty, but legally the situation is clear. A second illustration is afforded by a conspicuously full and specific bill of rights, inserted as the constitution's third chapter and in point of fact occupying almost one-fourth of its total space. There was, of course, a bill of rights in the old constitution also, but brief and couched in language permitting guarantees to be whittled down by legislation to mere statements of theories or ideals. Guarantees in the new instrument, however—declared "eternal and inviolate"—leave hardly any possible topic untouched, and in addition are almost completely free from qualifications. Everything is there, even the right to equal education, to work, and to Jeffersonian "life, liberty, and the pursuit of happiness." And a third illustration of the reorientation provided for comes in connection with international relations. Proclaiming in its preamble the desire of the Japanese people "to occupy an honored place in an international society striving for the preservation of peace . . ." and reliance upon "the justice and faith of the peace-loving peoples of the world," the document contains, in the single article forming the second chapter, two of the most extraordinary clauses ever written into a national constitution—one "forever" renouncing war as "a sovereign right of the nation and the threat or use of force as means of settling international disputes," and the other specifying that "land, sea, and air forces, as well as other war potential," shall never be maintained. For a nation long dominated by militarists, recently possessed of a powerful army and navy, and prone to wars of aggression, this was a sharp reversal indeed. Completely disarmed under Allied mandate, there was, of

[1] Art. 96.

course, no option to accepting such constitutional limitations, nor, indeed, to observing them as long as foreign occupation lasted. Whether a later fully independent nation will adhere to the new pattern is, of course, a matter of grave doubt. Unless in the meantime the general world situation should take a decided turn for the better, it hardly could be expected to do so.

GOVERNMENT UNDER THE NEW CONSTITUTION

The Emperor: 1. Arguments for Retention. As observed earlier, the constitution of 1889 started off with articles recognizing the emperor as "sacred and inviolable" and declaring him "head of the Empire, combining in himself the rights of sovereignty." The constitution of 1946 likewise devotes the first chapter to the emperor, but, striking a very different note, recognizes him only as "symbol of the state and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power"; and the two sharply contrasting characterizations afford a lucid measure of the differences between the old and new governmental systems. Long before the war in the Far East came to an end, widely differing opinions developed in the United States and elsewhere on the question of what should be done about the emperorship when the time should come for the Japanese political system to be reconstructed.[1] One view was that the institution should be permitted to continue, shorn of power, but with nothing done to impair its prestige;[2] and arguments for this course included: (1) that, with Japanese beliefs and habits what they were, no new political régime could be expected to function successfully except in the emperor's name; (2) that therefore an emperor on the throne would be the best safeguard against upheaval, revolution, and chaos; (3) that the emperorship might be developed into a nucleus for a constitutional, liberal form of government, as kingship had been in Britain; (4) that if, as was understood, the Japanese people, barring only minor elements such as the Communists, wanted an emperor, the pledges contained in the Atlantic Charter and the Potsdam Declaration entitled them to have one; and (5) that something could be said even for Hirohito, a thrifty, methodical man interested chiefly

[1] K. Colegrove, "What Shall We Do With the Japanese Emperor?," *Amerasia*, Oct., 1942.

[2] Hirohito might be deposed, but if so, only in favor of a less tainted successor.

in biology and of late going along with the militarists only because he had no alternative.

2. Counter-Arguments. Over against all this was the view that emperorship should be extinguished root and branch, because (1) the institution had been an integral part of the militarist-imperialist régime of the past 30 or 40 years and was inseparable from it; (2) if perpetuated, it easily might lend itself to a similar rôle in the future; (3) a basic force promoting militarism and imperialism had been state *Shinto,* which, however, inculcated emperor-worship and could never be uprooted as long as there was an emperor to serve as its focal point;[1] (4) the notion of the emperor ever heading up a democratized state, on the analogy of the British king, was fallacious, because Japan totally lacked the background of political ideas and traditions which had made such a thing possible in the Western country; and (5) as for Hirohito, he might not have had much to do with planning Japan's bold drive for dominion, but his status and prestige were such that he could have interposed a check, and even prevented the late war, if he had chosen to do so.

3. The Decision Reached. In the end, the first viewpoint prevailed. Hirohito ingratiated himself with the occupation authorities by coöperating loyally with them; he publicly renounced all claim to divinity and proclaimed the boasted racial superiority of his people a myth; he paid visits to various parts of the country, mingling freely with the populace; he used such significant phrases as *"we* the Japanese people." And at the last—whether because intrigued by Hirohito's popularization and humanization of his station or because convinced that sparing the emperorship was fundamentally sound strategy—the constitution's planners contented themselves with paring the emperor down to the size of a typical Western constitutional monarch, at all events in so far as they could do so by stripping from him all governmental powers except the performance of ceremonial acts like proclaiming laws, convoking and dissolving the Diet, receiving ambassadors, and awarding honors—with even acts such as these to be performed only on advice of the cabinet.[2] What the constitution-makers could not take away were the emperor's moral assets—his symbolical position as titular head of the state, his prestige rooted in

[1] R. O. Ballou, *Shinto; The Unconquered Enemy* (New York, 1945); D. C. Holtom, *Shinto and Japanese Nationalism* (Chicago, 1943).

[2] All imperial household property, too, became property of the state, with all expenses of the household thenceforth to be met from annual Diet appropriations.

centuries of tradition, his hold upon the affections and instinctive loyalties of the people; and if by chance the monarch again becomes a power in the Empire's affairs, it presumably will be because these intangibles left to him outweigh the more practical functions and dignities which he has lost.[1]

The Diet: 1. Structure and Relations of the Two Houses. Having pushed the emperor far into the background politically, the constitution turns to the "highest organ of state power and sole law-making organ," *i.e.*, the Diet, or Parliament;[2] and in this institution, together with a group of responsible ministers, we find the heart of the new governmental system. Into the hands of the Diet have been gathered all major lawmaking powers formerly diffused among Diet, cabinet, privy council, advisory boards, and other agencies; all of the crippling limitations previously imposed upon the body's financial authority have been removed, with no expenditures lawful unless with Diet approval; and Diet control over every aspect of national policy is restricted only by the power of the Supreme Court to "determine the constitutionality of any law, order, regulation, or official act." As before, the Diet consists of two houses—a House of Representatives of 466 members, perpetuating the former body of that name, and a House of Councillors of 250 members, superseding the old House of Peers. Members of both are elected by direct vote of the people, in the one case for terms of four years and in the other for six years, with half of the Councillors elected every three years; and while the electoral details are left to be regulated by ordinary law, universal suffrage, for both men and women, is to all intents and purposes ordained by the constitution when it forbids any electoral discrimination because of "race, creed, sex, social status, family origin, education, property, or income."[3]

[1] It was still possible, of course, for the peace treaty to require the emperorship to be given up. But with the institution written into the fundamental law with full Allied assent, there was little or no likelihood of such a thing happening—especially under the present emperor; and actually such a possibility received slight attention at the San Francisco conference in 1951.

In December, 1948, Emperor Hirohito was tartly called to account by various party spokesmen on the floor of the Diet for "private dealings with foreign powers without reference to the elected representatives of his country," and for acting as if he were the "head of the nation" and not merely the "national symbol." His offense consisted simply in authorizing an American official to tell President Truman that Japan hopes for "the closest and most cordial relations with the United States."

[2] Art. 41.

[3] Art. 44. Electoral procedure is regulated by a supplementary House of Representatives Election Law.

Much alike in general structure (except for the difference of terms), the two houses, however, do not stand on a common footing. In the first place, the House of Representatives enjoys a substantial primacy in legislation. A bill passed in the same form by both bodies automatically becomes law. But a bill passed by the lower house and rejected by the upper one also becomes law if the first body passes it again by a two-thirds majority of the members present, with failure of the upper house to act at all within 60 days considered tantamount to a rejection.[1] When such differences arise, the House of Representatives, however, may ask for a joint conference committee in the hope of getting them ironed out so that the measure may be duly passed by simple majority in both. In the second place, the annual budget must be presented first to the House of Representatives; and in case of differences between the two chambers as to the form in which it shall become law (with efforts at reconciliation failing, even through conference committee), the same rule applies, except that the upper house is allowed to hold up final action for a period of only 30 days.[2] Finally, while the constitution makes the cabinet responsible to the Diet (both houses), in practice responsibility is, as was expected and really intended, to the lower house only. That body can upset a cabinet by a vote of no-confidence; and if, rather than resign, a cabinet under fire decides upon a dissolution (it must make its choice within 10 days), followed by a general election within 90 days, it is the House of Representatives only that is dissolved, the House of Councillors being merely "closed"—though while there is not a lower house to function the upper one may be convoked by the cabinet in special session and may pass provisional measures, which, however, lapse unless the new House of Representatives gives its assent within 10 days after being convoked.

2. Organization and Procedure. Other provisions are to be found in the constitution—such as that the Diet shall be convoked in regular session once a year, that special sessions may be called by the cabinet, and must be called by it if as many as one-fourth of the members of either house so request, that a quorum in either house

[1] For a substantially similar plan in the French Parliament under the Fourth Republic, see p. 533 above.

[2] When, too, the two bodies cannot agree on a nomination (virtually selection) of the prime minister to the emperor for appointment, the rule applies, with in this instance the maximum period of delay reduced to 10 days.

shall consist of one-third of the members, that sittings shall be public unless two-thirds or more of the members of a chamber vote to close the doors, that proceedings shall be published except in the case of closed sittings, that the votes on any measure shall be made a matter of record whenever one-fifth of the members present so demand, and, finally, that all ministers shall be entitled to appear and speak in both houses.

Matters of parliamentary organization and procedure were in the old days regulated largely by an imperial ordinance known as the Law of the Houses of the Diet,[1] and today are dealt with, in much detail, in a Diet Law originated by the House of Representatives and enacted (along with other measures preparatory for the new régime) in the spring of 1947.[2] In this organic statute, numerous antiquated and obnoxious practices and procedures formerly imposed upon the body are swept away and legislative processes generally assimilated to those familiar in Western parliaments. Only a few of its contributions can, however, be mentioned. (1) The length of regular sessions is increased from three months to five, with further extensions subject to control exclusively by the houses themselves. (2) All officers are to be chosen by the houses instead of designated, as formerly, by the emperor and cabinet; in the House of Representatives, the speaker is selected from the party having the most seats and the vice-speaker from the one ranking second, although this is a matter of practice only. (3) Members of both houses for the first time receive the franking privilege, together with right to a private office and one clerical assistant at state expense; and not only a Diet library, but a bill-drafting and reference service is provided for. (4) Committee of the whole, authorized in the old rules but never used, is replaced by a system of "free discussion" in plenary session under which each house must devote at least one sitting every two weeks to general discussion of larger issues of state policy. (5) For the first time, a system of standing committees is introduced in both branches. In the old Diet, there were merely special, *ad hoc* committees, notoriously inefficient and impotent. Now, however, 21 standing committees are

[1] Text in H. S. Quigley, *Japanese Government and Politics*, 364-377.

[2] Of the 132 articles in this law, 48 are taken verbatim from the old imperial Law of the Houses, two from the old constitution, and four from old House Regulations; 41 are taken from the same sources, but radically altered; and 37 are entirely original.

set up in each house, one for each major field of jurisdiction;[1] and every member must be appointed to at least one but not more than three, with right to serve throughout his full term in the chamber. On the basis of quotas proportioned to party strength, committees are elected and their chairmen designated by the house as a whole; and, equipped with qualified specialists and secretarial assistants, all are empowered to initiate bills, examine and report on bills, conduct investigations, and—as certainly a novelty in Japanese legislative procedure—hold public hearings.[2] Finally (6) on top of this new committee structure is placed a joint Legislative Committee of the two Houses, composed of 10 Representatives and 8 Councillors, and charged with general watchfulness over the legislative process, particularly with making recommendations to the houses and to the cabinet concerning new or amending legislation that ought to be introduced and helping overcome friction when developing between the two houses or between them and the cabinet. All other committees are perpetually in the thick of party maneuvering (it is party that counts, not the individual member); but this one is at least supposed to rise above the turmoil and keep the chambers, and indeed the government as a whole, on an even keel. Nearly all of this machinery is, of course, quite new, and time will be required to demonstrate how well it works.

The Cabinet. As pointed out earlier, under the old constitution there was a cabinet, but no cabinet system; the present constitution provides for a parliamentary, or cabinet, system on the most approved Western lines. All executive power is vested in the cabinet; and this time there is no ambiguity concerning responsibility for the exercise of it: the ministers, all of whom must be civilians, are expressly made responsible to the Diet.[3] In making up a new ministry, or cabinet, three steps are involved: (1) designation of a prime minister by resolution of the Diet; (2) formal appointment of the premier-designate by the emperor; and (3) appointment of all remaining ministers, and assignment of them to their departmental

[1] The list is as follows: foreign affairs, finance, budget, audit, judiciary, labor, public safety, public welfare, agriculture-forestry, commerce, fisheries, mining-industry, electricity, transportation, communications, land-planning, education, culture, library, discipline, and finally a steering committee which, as the principal agency through which the parties manipulate business, is the most important of all, meeting every weekday and sometimes on Sundays through a session and becoming in fact "the hub of the house." Diet Law, Art. 42.

[2] Special committees, too, may still be employed.

[3] Art. 66.

posts, by the incoming premier. A majority must be taken from among members of the Diet, and in point of fact the first cabinet made up, in May, 1947, and headed by the Socialist Tetsu Katayama, was drawn entirely from that source (16 Representatives and one Councillor). Selection of a prime minister by the Diet naturally throws the doors wide open for hectic party activity; and all such occasions thus far have been marked by heated rivalries and even bitterness.[1] After charging the cabinet with "general administrative functions," the constitution specifically enumerates a number, including execution of the laws, conduct of foreign relations, concluding treaties (which, however, must in all cases have Diet approval, given either before or after negotiation), administering the civil service, preparing the budget and submitting it to the Diet, deciding on amnesties and reprieves, and issuing orders.[2] The ordinance power, which as wielded in the emperor's name used to cut so deeply into the legislative functions of the chambers, is now carefully guarded by a stipulation that it shall be employed only for the purpose of carrying out provisions of the constitution or of the Diet-enacted laws. Still other cabinet functions include convoking the Diet in special session (by cabinet decision or, as pointed out above, on demand of one-fourth of the members of either house), and planning and introducing bills for the Diet's consideration—although full right of legislative initiative is reserved also to the two houses and their members. All laws and orders require signature by a minister and counter-signature by the premier.

The Judiciary. For an American at all events, one of the most interesting features of the new Japanese governmental system is the judiciary. In the very first article of the constitution devoted to the subject, he discovers a provision to all intents and purposes copied from the first section of Article III of his own constitution, *i.e.*, that "all judicial power is vested in a Supreme Court and such inferior courts as are established by law." He also finds such familiar provisions as that judges shall be removable only by impeachment[3]

[1] For an account of the selection of the first two prime ministers, see J. Williams, "Party Politics in the New Japanese Diet," *Amer. Polit. Sci. Rev.*, Dec., 1948, pp. 1163-1180.

[2] Art. 73.

[3] Unless "judicially declared mentally or physically incompetent to perform official duties." The guarantee applies only, however, to removals that might otherwise be made by the executive and does not exclude the popular recall of Supreme Court judges mentioned below.

and that their salaries shall not be diminished during their terms of office. The Supreme Court, too, is vested with power to make rules of procedure for all tribunals, although in the United States this function comes by statute rather than constitutional provision; and under the Japanese system it may be delegated by the Supreme Court to inferior courts so far as their own rules are concerned. The observer also finds the Supreme Court expressly endowed—on lines entirely novel for Japan so far as statutes go (there had previously been the same power as applying to ordinances)—with final power to determine the constitutionality of any law, order, regulation, or official act; [1] although here again such judicial review is not provided for (expressly at all events) in the constitution of the United States, but rests upon interpretation and usage. Finally, he discovers that, in contrast with arrangements before 1947, but in harmony with those in the United States, the system of courts is not placed under any executive department (though there continues to be a Ministry of Justice), but on the contrary is a separate establishment with only the Supreme Court at its head. And this is significant, because although under the former régime the Ministry of Justice could not reverse court decisions, it could and did exert much control over the judicial process by making rules of procedure, appointing and promoting judges, and instituting all prosecutions in criminal cases.

One discovers also, however, certain contrasts with the American system, especially as to judicial appointment and tenure. In the first place, the Chief Judge of the Supreme Court is appointed by the emperor, after having been designated by the cabinet; all other Supreme Court judges are appointed by the cabinet directly; and all judges of inferior courts are named also by the cabinet, though in this case only from lists of persons nominated by the Supreme Court. In the matter of tenure, judges of inferior courts have terms of 10 years, with indefinite eligibility to reappointment up to a retirement age fixed by law. Basically, members of the Supreme Court serve during good behavior—but with the interesting qualification that after a new judge has been appointed, his retention in office shall be reviewed by the voters at the next succeeding general election, with dismissal required if the verdict is unfavorable. Not only so, but the procedure is to be repeated every 10 years; so that every Supreme Court judge lives under recurring threat of what amounts to popular

[1] Art. 81.

recall. Since, however, the device is designed only to hold judges to their duty to be bound only by the constitution and laws, it is not construed to interfere in any undesirable way with the judicial independence elsewhere expressly guaranteed. The judiciary was probably the most satisfactory part of the old Japanese governmental system. Under the new arrangements, it has been strengthened and given autonomy, though how well some of these arrangements, *e.g.*, judicial review, will work remains to be seen.[1]

Political Parties: 1. Number and Characteristics. Lastly, a word may be said on a subject which really calls for a chapter, *i.e.*, the situation of political parties under the new constitutional order.[2] Even before the formal surrender in 1945, a cabinet decree dissolved the Political Association sprung from the Imperial Rule Assistance Association; and although this organization was not strictly a party, its disappearance at all events left the country with nothing approaching that description. But the void did not last long. In a fashion, the old *Seiyukai* and *Minseito,* although supposedly extinguished in 1940, had kept up their organizations; and the Communist party of today claims to have existed continuously since 1922. With the possible exception of the Communists, however, the parties with which the country soon found itself again liberally supplied were new, hasty postwar creations. And if every sort of group setting up as a "party" were to be counted, the number was indeed great; an Election Management Commission in 1946 put it at 1,250. All except some half-dozen which gained a certain stability, were, however, mere evanescent associations, forming and re-forming, dissolving and combining, in response to the Oriental's proclivity for forming a group, with a high-sounding title, at the drop of a hat; and even those most worthy of notice were, and on the whole remain, mere personal followings without broad membership, impressive machinery, or any provision whereby the ordinary voter could exercise the slightest influence on the choice of officers, the determination of policies, or the selection

[1] The subject of local government must be omitted here, but the fact may be mentioned that in 1947 the government of the provinces was made more autonomous and democratic by substitution of popular election for appointment by the home ministry at Tokyo in the case of governors and other officials. The charge was made at the instance of the occupation authorities.

[2] It fortunately is possible to cite a series of articles in which the subject is treated with much thoroughness by skilled writers who speak from first-hand observation, *i.e.*, "Post-War Politics in Japan," in the *Amer. Polit. Sci. Rev.*, Oct. and Dec., 1948, articles by J. Williams, K. E. Colton, J. Saffell, and H. E. Wildes.

of candidates. All are directed from Tokyo, where even members of the Diet must follow a party line laid down for them by a handful of leaders, on penalty of expulsion. These leaders, however, are extremely active, and government is carried on amid a veritable swirl of party bickerings and maneuverings. Japan is presumably seeking political democracy; but thus far parties have not proved a very effective tool to that end.

2. Parties of the Right and Center. Although naturally susceptible of change, the major-party spectrum at the date of writing (1952) ran substantially as follows. On the right was the Liberal Party, with a membership originally drawn largely from the old *Seiyukai*, and sustaining close connections with the new landholders created by the land reform effectuated under the occupation and large and small business men. In the Diet opening in April, 1947, it had 132 members; in the election held in October, 1952, it won 240 seats, a majority in the House of Representatives, though a drop from the 285 of early 1952. Standing next to it, but showing a milder conservatism which perhaps entitled it to a right-center position, was the Democratic (formerly Progressive) party, with largely *Minseito* antecedents, also with *Zaibatsu* connections, and inclined to the view that the old constitution was good enough for the new age. In the House of Representatives elected in April, 1947, it held 122 seats, but this dropped to 85 in 1952. Both of these parties suffered recurring, and almost fatal, shocks from the various purges in 1946-47 aimed at banishing from public life men too closely associated with the old order; but, though various efforts to merge the fragments of the two into a single conservative party failed, both contrived to get on their feet again.

3. Parties of the Left. Dating from efforts in 1945 to draw together both older and newer labor, farmer, and other proletarian groups, the Social Democratic party (*Shaikaito*) is hampered by sharp differences among a medley of leaders and wings, but nevertheless has become, at least potentially, among the most important parties: in the general election of 1946, it polled 18 per cent of the popular vote and captured 92 seats in the House of Representatives (nearly one-fifth of the total); in that of 1947; it polled 6,600,000 votes and won 143 seats, the largest single group; and, in combination with other parties, it in this same year gave the country the first Socialist-led cabinet (May, 1947—February, 1948) in its

history, with Tetsu Katayama as premier. In the October, 1952, election the Right-Wing Socialists won 57 seats and the Left-Wing Socialists 54 seats. On even such fundamentals as the nationalization of key industries, the Socialists are not a unit;[1] and no closely knit or politically efficient organization has as yet been achieved. Moreover, successes have been won, not so much because Japan's masses believe in socialism as because of dissatisfaction with the performance of the more conservative political elements. Nevertheless, the Socialists hold out some possibility of developing into the chief channel for expression of the labor point of view in Japanese politics.[2] Farthest to the left are the Communists. A small Communist party has existed since 1922 (underground during the war), and in prewar times the progress of proletarian party movements was always impeded by differences over communistic ideology and tactics. The party today remains relatively small. In the election of 1949 it polled nearly three million votes, or 9.6 per cent of the total, and elected 35 members of the lower house. However, it was shortly thereafter more or less forced underground and in 1952 failed to win a single seat, though it attracted 837,000 votes. All efforts to build up a working agreement with the Social Democrats, or indeed an even wider popular front of laborers and peasants, have been unsuccessful. Japan has never furnished as fertile soil for Communism as has China.[3]

[1] After bitter controversy, the coal industry was, however, nationalized while the party was in power.

[2] J. Saffell, "Japan's Postwar Socialist Party," *Amer. Polit. Sci. Rev.*, Oct., 1948.

[3] Unofficial returns in an election involving members of the House of Representatives held in April, 1953, after this text went to press, showed the following results: Liberal party seats 199, Progressives 76, Left-Wing Socialists 72, Right-Wing Socialists 66, Dissident Liberals 35, Communists 1, and others 17.

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