THE HOUSE OF LORDS QUESTION

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THE HOUSE OF LORDS QUESTION

EDITED BY

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"THE QUESTION IS WHETHER THE WORK OF THE HOUSE OF LORDS IS NOT MERELY TO MODIFY, BUT TO ANNIHILATE THE WHOLE WORK OF THE HOUSE OF COMMONS, WORK WHICH HAS BEEN PERFORMED AT AN AMOUNT OF SACRIFICE—OF TIME, OF LABOUR, OF CONVENIENCE, AND PERHAPS OF HEALTH — BUT AT ANY RATE AN AMOUNT OF SACRIFICE TOTALLY UNKNOWN TO THE HOUSE OF LORDS?

". . . THE ISSUE HAS BEEN POSTPONED, LONG POSTPONED, I REJOICE TO SAY. . . . I DO NOT LIKE TO SAY THAT THE SITUATION IS INTOLERABLE . . . BUT I FEEL THAT IN SOME WAY OR OTHER A SOLUTION WILL HAVE TO BE FOUND FOR THIS TREMENDOUS CONTRARIETY AND INCESSANT CONFLICT UPON MATTERS OF HIGH PRINCIPLE AND PROFOUND IMPORTANCE BETWEEN THE REPRESENTATIVES OF THE PEOPLE AND THOSE WHO FILL A NOMINATED OR NON - ELECTED CHAMBER. IT IS NOT WITH THE HOUSE OF COMMONS TO PRONOUNCE A JUDGMENT ON THIS SUBJECT. THE HOUSE OF COMMONS IS ITSELF A PARTY IN THE CASE. . . . THE HOUSE OF COMMONS COULD NOT BE A FINAL JUDGE IN ITS OWN CASE. . . . THERE IS A HIGHER AUTHORITY THAN THE HOUSE OF COMMONS. IT IS THE AUTHORITY OF THE NATION WHICH MUST IN THE LAST RESORT DECIDE. HAPPILY, WE KNOW THAT WE, ALL OF US, ARE SUFFICIENTLY TRAINED IN THE HABITS OF CONSTITUTIONAL FREEDOM TO REGARD THAT ISSUE AS ABSOLUTELY FINAL UPON ONE AND UPON ALL ALIKE OF EVERY ONE OF THESE SUBJECTS. THE TIME WHEN THAT JUDGMENT IS TO BE INVITED, AND THE CIRCUMSTANCES UNDER WHICH IT IS TO BE INVITED, OF COURSE, CONSTITUTE A QUESTION OF THE GRAVEST CHARACTER, AND ONE WHICH THE EXECUTIVE GOVERNMENT OF THE DAY CAN ALONE CONSIDER AND DECIDE."[1]

[*From Gladstone's last speech as Prime Minister in the House of Commons.*]

[1] The Right Hon. W. E. Gladstone, 1 March 1894. 4 Hans. [21 1150-1151.

PREFACE

Mr Clodd, in his new and fascinating book, "Tom Tit Tot," reminds us how there is a widespread fable that the Devil can be cheated by a superstitious name. The people of the British Isles have for centuries been cheated by the superstitious name of The Lords.

The House of Lords is wrong by name and wrong by nature. Even if the Second Chamber were elected by the multitude, the title of "Lords" for one House and "Commons" for the other would be a temptation to many to be chosen for the former because of its sounding title.

If we take away from the House of Lords its legislative functions, its judicial and deliberative functions remain. In 1873 the judicial functions were nearly annihilated. And why should we associate the Lords any longer with the Supreme House of Justice? That connection is in itself a great mischief. As to deliberative functions, though the Lords' House be abolished to-morrow, the debaters and wise men, if elected, can appear in the House of Commons, and there they can still have their vote.

The devetoment of the House of Peers will take away Dame Partington's mop, but it will still leave

over her door—MANGLING DONE HERE. Will the country be willing to vote thousands of pounds every year to keep up Mrs Partington's Mangling Establishment? I doubt it.

DOWN WITH THE LORDS was the war-shout of our fathers. They never dreamt of fine phrases like "the annihilation of the legislative preponderance," "the abolition of the legislative functions," "the suspensory veto,"—it was ABOLITION.

However, we must again listen to the Prince of Trimmers:—

> The innocent word Trimmers (wrote the first Marquis of Halifax) signifieth no more than this, that if men are together in a boat, and one part of the company would weigh it down of one side, and another would make it lean as much to the contrary, it happeneth that there is a third opinion of those who conceive it would do as well if the boat went even without endangering the passengers. Now it is hard to imagine by what figure in language, or by what rule in sense, this cometh to be a fault, and it is much more a wonder that it should be thought a heresy.

Let us hope that third opinion—it seems we want a Third House—will not steer the boat on to the Manacles. It is said that we must wait till the Lords have thrown out a great Bill. Very well; but let the great Bill be the Lords' Veto Bill.

Let the Commons strike the match on their own box. Let the Lords who have abandoned all initiatory functions, throw out that Commons Bill as an unconstitutional interference with their privileges, and depend upon it that match will light the fire which will consume the Lords.

Before we set up a new House of Lords, we will

see what we can make of the House of Commons and the Referendum. The Lords had better perish of natural death, or Col. Pride's Purge, than patent medicines. It will be madness to put our neck under the yoke of a new trouble, when it has cost us so much to get that neck out of the old one.

It is said that representative institutions have been played out. Have they ever been played in? I have given the Second Chamber a good chance in Dr Lawrence. I believe that that eminent authority, Sir Frederick Pollock, was the author of the Dunraven scheme. Dr Russel Wallace has also proposed a plan. But have either of these capable Second Chamber men succeeded? Are not the Referendum and the Commons enough for legislative purposes?

Mr Michael Davitt warns me against committing him to my phrase—One People, one House. He agrees with one House. Let me explain that I mean—One nation, one House; and one Union, one House. But no contributor to this book is answerable for any opinions but his own.

Our case is not against the hereditary principle. The nation is hereditary. But our case is against a patent hereditary sect of legislators, with a special House and vote.

Goethe said—"Don't tell me your doubts. I have enough of these myself. Tell me what you believe." Let those who shovel over us their doubts "cheese it." Faith can remove mountains. The people who have dethroned kings can easily deseat Peers. At the dawn of the twentieth century we

WILL hand down to our children a representative and purified Constitution.

This book is necessarily a part work. If it meets with success, we shall continue the impeachment of the Lords. We thank our contributors. I have to acknowledge especially the zealous and able services of Mr Walter Warren, LL.B., Barrister-at-Law.

ANDREW REID.

CONTENTS

PAGE

PREFACE vii

THE HOUSE OF LORDS QUESTION

I. BY THE HON. PHILIP STANHOPE, M.P. . 1

II. BY LORD MONKSWELL . . . 36

III. BY ROBERT WALLACE, M.P. . . 43

IV. BY J. G. SWIFT MACNEILL, M.P. . . 89

V. BY MICHAEL DAVITT, M.P. . . 102

VI. BY SIR WILFRID LAWSON, BART., M.P. . 110

VII. BY J. H. YOXALL, M.P. . . . 112

VIII. BY J. CARVELL WILLIAMS, M.P. . . 126

IX. BY W. P. BYLES 131

X. BY ERIC D. TILLETT . . . 145

XI. BY J. HIRST HOLLOWELL . . . 151

XII. BY THE REV. DR CLIFFORD . . 154

XIII. BY THE REV. DR LAWRENCE . . 155

XIV. BY THE REV. SAMUEL VINCENT . . 178

XV. BY F. S. STEVENSON, M.P. . . . 179

PAGE

XVI. By Walter R. Warren, Barrister . 184

XVII. By J. Theodore Dodd, Barrister . 280

XVIII. By Andrew Reid 301

Appendix I

Letter from Lord Hobhouse . . . 388

" " Herbert Gladstone, M.P. . 390

" " The Bishop of Nottingham . 390

Appendix II

Extracts from Speeches 392

Appendix III

Chief Divisions of the House of Lords, 1867-1898 401

Record of the Votes of the Lords Spiritual, 1863-1897 404

Attendance of Lords of Parliament . . 407

Appendix IV

Text of the House of Lords (Discontinuance of Writs) Bill 408

Extracts from "Correspondence of King William IV. and Earl Grey" . . 410

THE HOUSE OF LORDS QUESTION

I

By the Hon. Philip Stanhope, M.P.

I

It is the diurnal happiness of Liberals in these times to read in the columns of the Tory Press, conveyed in the most affecting language, the expression of the melancholy anticipations of the writer for the future of the Liberal Party. These reflections are generally coupled with the advice that we should forthwith recognize the error of our ways, turn our backs upon our ancient watchwords, "Peace, Retrenchment and Reform," eschew Home Rule, Temperance, or Land Reform, and such-like pernicious Radical fallacies, and fall down and worship the Whig gods, whom they are so good as to indicate to us, and who alone will be able to conduct us to the shining gates of Paradise and Patronage. Somehow or other, however, these counsels seem to have fallen upon deaf ears. Of course, the quarter from which they proceed is in itself suspicious; but unquestionably, with the exception of a small handful of superior persons principally belonging to the Bar or the wealthy Bourgeoisie, who believe apparently in a Jingo

policy abroad and a Jejune policy at home, the vast majority of Liberals throughout the country still remain loyal to the great principles of their party, and are not prepared to ignominiously renounce them upon the freshly-closed grave of their late illustrious chief. Meanwhile, however, time is slipping away. We have entered on the fourth year of the present Parliament, and while it is perfectly true that the adoption of a lengthy cut-and-dried programme, laboriously constructed for us by the wiseacres of the National Liberal Federation, would be the repetition of an egregious tactical blunder, it would nevertheless be well for Radicals in the country to be considering their position and preparing to formulate their objects, so that whatever may be the result of the next General Election, we may at least look forward to the return of a Liberal Party in the next Parliament which shall be united, clear and resolute in its aims, and be charged with an unmistakable mandate from the constituencies to endeavour to accomplish them.

For to those who sat through the Parliament of 1892 to 1895, surely an experience has been given and a useful lesson acquired.

Nothing more profoundly pathetic than the position of Mr Gladstone during the years 1892 and 1893 can possibly be conceived. Struggling against gigantic odds for a last great and patriotic achievement, but feebly supported by many of his colleagues, and finally overborne by years and increasing infirmities, with the dignity which ever marked his acts, he at last relinquished to other

and inexperienced hands the direction of the Liberal Party at a most momentous crisis in its history.

Had Mr Gladstone been a younger man, or even, old as he was, had he been sincerely urged thereto by his Cabinet, his last speech in the House of Commons is a sufficient testimony that he would have been prepared in 1894 to have appealed directly to the constituencies to decide once for all between the representatives of the people and an hereditary House of Lords, which has ever been an unsurmountable barrier to effective Liberal legislation and to all democratic progress. Let me recall Mr Gladstone's own words:

> "The issue which is raised between a deliberative assembly elected by the votes of more than six millions of people, and a deliberative assembly occupied by many men of virtue, by many men of talent, of course with considerable diversities and varieties, is a controversy which, when once raised, must go forward to an issue. In some way or other a solution will have to be found for this tremendous contrariety and incessant conflict upon matters of high principle and profound importance between the representatives of the people and those who fill a nominated chamber."

What the result of such an appeal might have been, made with all the weight and prestige of a majestic personality, it is difficult perhaps to pronounce upon. But this at least may be said, that the question of the House of Lords would have been brought one great step nearer solution, while the Liberal Party would not have been left in the position of inferiority which it subsequently acquired at the General Election of the succeeding year, when

it sunk from a majority of 40 to a minority of 150 upon a division. Mr Gladstone's retirement from the helm of affairs left his colleagues in the late Liberal Cabinet free to work their own sweet will, and what that will was, and how far it was sweet for all of them, must be to outsiders a mere matter of surmise. We have only on record the plaintive lament of not the least important among them, who inveighed against the purposeless "ploughing of the sands," although, as far as is known, he took no practical steps to divert the plough into more fruitful soil, or to adopt some more promising process of legislative husbandry.

II

BUT I am perhaps permitting myself to deal with the grave question of the action of the late Liberal Government in regard to the House of Lords in too light a spirit of persiflage, for, after all, had they not a resolution upon the subject in reserve? The existence of such a resolution was authoritatively announced. It was darkly hinted that its nature was of so terrible and revolutionary a character that it could not be produced, as in the case of many modern forms of explosives, until all due preparations had been made, and when no unforeseen accidents were likely to occur to the inventors or others concerned. For a while we held our breath in awe-struck and hopeful anticipation. There were many rumblings, and the mountain was in long and painful labour; but not even the smallest mouse made

its appearance, except it were a new batch of Peers upon the resignation of the Government, which had the effect of a cold douche upon all of us who had to explain the matter in our several constituencies at the time of the General Election.

During the present Parliament, the principal members of the late Ministry have made allusion only in the vaguest terms of denunciation to the House of Lords, while one or two of them seem to have abandoned all idea of practical action on the subject in favour of some form of "referendum," which is about the most hopeless expedient from the Liberal point of view which it would be possible for the mind of man to suggest. It is no breach of confidence for me here to record that in the course of a conversation upon the subject which I had the honour of having with Mr Gladstone in the winter of 1895, subsequent to the General Election, he signified to me that he would have adopted a very different course with regard to the House of Lords from that pursued by his former colleagues. What exactly that policy might have been it would have been perhaps unseemly to enquire; but from the vigour of his declaration and the strenuous terms of his denunciation, it can at least be averred that he would not have been satisfied by "a resolution in a strong box," but would have fought the question out frankly and decisively in the face of his countrymen.

The truth is, and it is better that it should be boldly stated, that in this question of the House of Lords, as in some others of paramount import-

ance, such as the taxation of ground values and the payment of members, the aspirations of the Liberal party are held in check by the party managers and wire-pullers in deference to a small if opulent Whig minority who have privileges to protect or aspirations to satisfy in the direction of nobiliary distinction, and that thus the popular enthusiasm which alone could restore Liberalism to its position of ascendancy, is held dormant and inactive and without the necessary stimulus to rouse it into successful activity.

Indeed, we have seen that these deadening influences have been the principal cause of secessions in the ranks of Labour and of the formation of the Independent Labour and Socialistic Parties, who have recruited their adherents amongst those malcontents who have been alienated, not without reason, by the timid and halting course of official Liberalism, and have hoped honestly, if perhaps not wisely, to contribute by their action to the more vigorous development of real democratic progress in the counsels of the Liberal Party. They argue—and their premises are incontestable—that out of every ten Liberal votes recorded, at least nine are those of Radicals ; and yet when a Liberal Ministry is called into being, it is still to all intents and purpose held in bondage by the Whigs and largely composed of gentlemen belonging to that persuasion.

It is, of course, true that a great proportion of the Whigs under the Duke of Devonshire renounced their allegiance to the Liberal Party in the Home Rule schism of 1885, but a small and

active remnant remain, and the Whig of to-day is as the Whig of yesterday, and in the pages of history he hangs upon the skirts of the Radical party. He deprecates precipitation. He is thrilled with anxiety with respect to every progressive measure. It is even possible that with the development of the Röntgen rays we may yet discover a Tory and not a Liberal microbe lurking in the Whig body, but after all he has above all things traditions. Thus he is a Whig, his family had always been remembered when the Party had things to give away, and he is so far accommodating that, whatever his inward spasms may be, with respect to Radical measures, he bows when suitably requited to the inevitable, but it is obvious that so far as he or his friends have any influence upon the conduct of Party affairs, it will hardly be in the direction of Radical progress, and it is without question that by reason of their wealth and social station, the Whigs have an influence in party management out of all proportion to their present numerical importance. It is therefore not surprising that we find in Whig circles, and in the columns of the London newspapers subject to their control, the same blighting tendency at the present moment. We are abjured to await in silent expectation the inevitable swing of the pendulum; to have confidence in our leaders whoever they may be in the opinion of the writers, but above all to refrain from committing ourselves to extreme opinions which might inconveniently hamper our Whig friends in

their *dolce far niente* domestic policy of the future. On the other hand we may wax eloquent in denunciation of the timidity of the Government in foreign affairs and in favour of a Jingo policy and increased armaments, all of which are dear to the average Whig mind, however much they may be distasteful to the disciples of Gladstone and Cobden, and repugnant to the great body of Liberal opinion.

The idea of these Whig gentlemen of course is, that if only things be allowed to drift, by reason of the mistakes of the Government and through the chapter of accidents, we may perhaps be able at the next election to patch up some scratch majority which will enable a Government, necessarily under the circumstances containing a strong Whig element, to be called into being, which may have a brief, if inglorious, existence; and that, while renewed ploughing of the sands takes place, they would at all events find in the temporary dispensation of patronage some pecuniary solace or gratifying accession of dignity.

I have been led into this somewhat lengthy digression, because it seemed to me that the question of "The House of Lords and the Liberal Party" can scarcely be adequately and fairly treated without a preliminary consideration of all those important circumstances which are absolutely germane to its comprehensive examination. But while the influence of the Whigs, the party managers and the wirepullers, must ever be borne in mind, it is not difficult, I think, to set forth in plain and unambiguous terms the position

generally taken up by the Liberal Party, and in such form as will at all events command almost universal assent from the Radicals of the country.

III

FOR convenience sake I would, therefore, venture to submit these propositions :

1. That the Liberal party will continue to support and strenuously press forward Home Rule, Land, Temperance, and Electoral Reform, Disestablishment, and legislation in favour of the legitimate and established claims of Labour, but that the order and precedence of those measures must be determined by the urgency of the circumstances existing at the time of the accession of the Liberal Party to power.

2. That no one of these reforms can be carried to a triumphant conclusion in the teeth of the inevitable opposition of the House of Lords, and that it is, therefore, imperative that the Liberal Party should seek and obtain from the electors at the next General Election a direct mandate to successfully and definitely overcome this standing obstruction to all democratic progress and Liberal reform.

3. That it would be as futile as it would be undignified for the Liberal Party to return to office for the purpose of again vainly ploughing the sands, and that the Party would not give its support to any Ministry who accepted place without power,

and who at the time of their assumption of the responsibilities of government did not seek from the Crown, as a condition of their doing so, such necessary sanction and authority as would ultimately permit them to overcome the resistance of the House of Lords, and thus fulfil the mandate of the people.

Now, though doubtless among my critical friends, who fasten themselves upon a word or turn of phrase which to their minds could be advantageously modified, there may be some difference of opinion, there cannot be, I presume to affirm, any substantial dissent on the part of sincere Liberals and Radicals from the principles which I have thus attempted to summarize and formulate. And if this be so, what is the logical consequence? It surely can only be this, that we must without further delay make up our minds with regard to the House of Lords, endeavour to discover a scheme and plan of conduct which commend themselves to average Radical opinion as a settlement of the question, and without further circumlocution or waiting for party managers and wirepullers to give the word, proceed in concerted fashion to offer them for the consideration and adoption of the electorate. For let there be no doubt upon the matter, that apart from the Whigs, the wirepullers, the placemen, and a select bouquet of Q.C.'s who have kindly retained themselves on behalf of the Liberal Party, and whose professional advancement urgently requires an early resumption of office, the great mass of the electors —Liberals or Radicals though they be—are really

indifferent as to the return of a Liberal Administration, except it be under such conditions as clearly to establish that it shall also be to a position of power, that effective work is about to be done, and a record of Radical legislation left, not as marks upon the sand, but upon the statute book of the country.

IV

Having thus cleared the ground, I proceed to take up what is after all the object and burden of this short paper, the examination of the various methods and proposals which have been already made, or may be advanced, to deal with the House of Lords.

And first of all then as to the case which can be urged against the House of Lords, I do not propose to expend much time upon a subject which is already wellnigh threadbare. All the evidence which may readily be accumulated in order to prove the evil which the House of Lords has done in the distant past, overwhelming though such evidence may be, counts for little to convince those whose experience is more recent, and who have in that experience ample cause for their conviction that the House of Lords is to-day, in the words of Sir Henry James, "an additional wing of the Carlton Club," wholly inaccessible to modern ideas of progress, and profoundly attached to those extreme reactionary principles which even so orthodox a Tory as Lord Salisbury is sometimes called upon to stigmatise and repudiate.

So strong indeed is the case against the present

House of Lords, that even among the Tory Party, few can be found openly to undertake its defence as at present constituted, and many have come forward with suggestions for more or less far-reaching reform. Thus the late Lord Pembroke, an enlightened man, though of strong Tory conviction, said so far back as 1884: "He did not believe that the House of Lords as at present constituted was strong enough in popular estimation to do its work efficiently, without causing an amount of irritation that would endanger its powers, if not its existence. They must remember that the hereditary principle on which that House was chiefly constituted was of all others the most distasteful to the democratic spirit of our time."

Thus Lord Dunraven, another Tory peer, though of more or less progressive instincts, was found to say: "The proposition that some change in the constitution of the House was called for by the circumstances in which they found themselves placed, and also by the voice of the Nation, was incontestable."

So again Lord Cadogan, a member of the present government, who said:

"He did not believe that the House of Lords as at present constituted was strong enough in popular estimation to do its work efficiently, without causing an amount of irritation that would endanger its powers if not its existence. They must remember that the hereditary principle on which the House was chiefly constituted was, of all others, the most distasteful to the democratic spirit that prevailed in our times. He supposed he should be reminded that in the last struggle between the two Houses, the House of Lords had at least held its own.

But they must not forget that the battle was never fought out, and that no one could tell what the result would have been if Mr Gladstone had appealed to the country with a cry for the reform of the House of Lords ;"

and he went on to say :

'I believe that in the opinion of this House it is necessary and desirable to proceed without delay to repair and renovate this House. . . . Between the very divergent opinions on this subject --the opinions of those who are in favour of abolishing the House of Lords as at present constituted, and on the other hand, the opinions of those who think that there are no changes that can be carried with propriety—I think there are certain middle views upon which useful legislation can be founded and useful action taken."

It is also interesting to note that Lord Salisbury, whose various speeches upon the subject it would be almost superfluous to quote, has frequently admitted the possibility, if not the wisdom or propriety, of some reform of the House of Lords : but it is useful to remember one pregnant sentence of his in this connection, to which I shall have occasion subsequently to refer, when he significantly remarked that any reform of the House of Lords " must be at the expense of the House of Commons."

V

So much for the Tory view of this sacred edifice, one of the corner-stones of the Constitution, even though it may be for present purposes merely " an additional wing of the Carlton Club," and as recent events have shewn in the course of the passage of the Vaccination Bill through Parliament,

not the most docile to the teachings and necessities of modern Toryism.

From the Liberal standpoint the position is so anomalous and absurd as to be almost unworthy of serious argument. At the present time some forty peers, more or less—for the exact figures taken from recent division lists are not now before me—can be generally reckoned upon to give their support to the Liberal party. A considerable proportion of them owe their peerages to a recent creation of a Liberal Government; and probably one half of them have held, and expect again to hold in the future, office under the Crown during Liberal administrations, if not in the actual government, yet as having charge of either Royal dogs or horses, or as holding some office in the Queen's Household. The record of the results of later creations of Liberal peerages would in itself furnish an ample and amusing theme, were this the proper occasion to pursue it. It was formerly considered that decency demanded that these gentlemen should continue their allegiance to the party which ennobled them for at all events a short term of years ; but even this ethical principle is no longer respected. Let me take an instance in point. I am old enough to remember as a boy the great controversy which took place at the time of the emancipation of the Jews, which was carried through by the energy and resolution of the Liberal Party. The first member to take his place under the new law, and as a Liberal, was the late Baron Rothschild, who during his long and honourable

lifetime remained faithful to Liberal principles. Not many years after his death, Mr Gladstone, disregarding the prejudice existing against the elevation to a seat in the House of Lords of the head of what is after all not a British, but a Cosmopolitan, though very eminent, financial firm, conferred a peerage upon his son, the present Lord Rothschild. Though undoubtedly it is a recognised trading custom amongst the Jews to manifest sentiments of almost exaggerated patriotism for the countries to which they have migrated, or in which they are temporarily settled, it is difficult to believe that the passionate attachment of Lord Rothschild to the Irish Union, which was enacted at a time when his family were still conducting their business in the City of Frankfort on the Main, can have been the sole or determining cause of his sudden conversion, and yet within a space of time to be almost measured by months since the bestowal of the Peerage upon him, he had become one of the bitterest and most active of Mr Gladstone's political opponents; and —*facilis descensus Averni*—the present Liberal temper of his mind can best be judged by the abortive report of the Old Age Pensions Commission, of which he, strange to say, was selected by the Tory Government to be Chairman, and which has already excited a revolt amongst the younger generation of Tories.

It may perhaps be suggested in this instance, as well as in many others, that social motives have exercised a powerful stimulus upon intending

seceders; and it is of course notorious that the houses of great Tory families, which were previously inaccessible to these gentlemen, have since had their portals opened wide for their welcome, on the Scriptural principle, let us hope, that "there is more joy over one sinner that repenteth," whatever may be his extraction or antecedents. At least it may be surely affirmed that the bestowal of Liberal peerages is regarded by a large proportion of the recipients merely as a stepping-stone to the early adoption of the orthodox views of the majority, and that the present already attenuated Liberal minority in the House of Lords will, if the prospect of the advent of a Liberal Government recedes more and more into the future, become, as years go on, beautifully and beautifully less in number.

VI

These reflections upon the present position of parties in the House of Lords, and the tendencies of opinion current there, have a very considerable value when we come to examine, as I would now proceed to do, the proposal which is made in some quarters for a reform of the House of Lords. As I have shewn, suggestions for that object have been received with favour even on the Tory benches; and it is certain that there are to be found among Whigs, still included within the ranks of the Liberal party, some few gentlemen whose views on this subject are not in advance of their Tory colleagues.

It is true that their opinions are more often expressed in the salon or the boudoir than on the platform, but it would be impossible to ignore the existence of this probably very limited class, particularly as their influence in the inner councils of the managers of our party is still, as I have already contended, undoubtedly important and considerable.

It would be, it appears to me, sheer waste of time to examine these proposals in detail, and I will even pass by those made by Lord Rosebery some years ago, not because these were not both ingenious and valuable, but rather on the ground that they are now, from the Liberal point of view, out of date, and that, whatever may be the plan proposed—whether for the removal of the bishops, the elimination of the black sheep, the election of a certain number of English representative peers by the peers themselves, on the same system which already exists in Scotland and Ireland, or the creation of life peers representative of the great corporations, the county councils, the universities, and other learned bodies—all these schemes are vitiated by the fact, so bluntly stated by Lord Salisbury himself, and already quoted, that all such changes "must be at the expense of the House of Commons," and must inevitably tend to exalt the powers of the non-elective House, and, consequently, to curtail those of the elected Chamber.

Some painstaking and speculative persons have been led into making elaborate enquiry and comparison between the House of Lords and the various Upper Houses or Senates which are in

existence in our colonies or in foreign countries. But in this connection it may be observed that the popularity of these institutions is almost universally on the wane—notably in France, and even in the United States of America, where, in spite of the admiration of their Constitution being almost a fetish with the American people, the respect for the Senate is seriously impaired, and, indeed, to outside observers it would appear to be an institution, if not wholly mischievous, nevertheless quite unworthy of being accepted as a model for our imitation. But surely it is unnecessary to labour this question of the reform of the House of Lords at any greater length in order to convince the great majority of Liberals, and even those who are in favour of some sort of Second Chamber, of the futility, and indeed of the danger, of embarking upon an enterprise of this character. Few of this latter class of Liberals would, I presume, be willing to contend that it is their object, as it is that of the Tory party, to increase the power of the hereditary and non-elected Chamber and to debase that of the House of Commons, and I think, therefore, we may well dismiss this branch of our enquiry from further examination, and accept as an axiom and starting-point for the Liberal party, that any reform of the House of Lords is not only excluded from our programme, but would be regarded, when probably put forward as part of the programme of the Tory party, as being, with the existing unabridged powers of that house, dangerous and inimical to the cause of progress.

VII

HAVING thus cleared the ground, we are free to take up the question of the attitude which the Liberal party should adopt towards the House of Lords, what the party aims and objects should be, and how they can best be prosecuted to a successful issue. And at this point I can hear some of our very strait-laced party men exclaiming, "What do our leaders say on the subject?" In truth, I do not know. I have spent some time in attempting to classify the declarations of leading Liberal statesmen, with the hope of discovering some common ground of agreement amongst them. It has been, however, a fruitless and bootless task. Of course we are aware that most of them officially subscribed when in office to the famous "Resolution in a strong box." But that grim pronouncement will apparently remain as great a mystery to the present generation as the Man in the Iron Mask was to an earlier one. There has been, and still is, a singular indisposition on the part of all of them to pursue this question unfalteringly and with persistent determination. As in the case, however, of a certain class of afflicted persons who have only been partially reclaimed, and who occasionally burst out again into previous excesses, so these gentlemen still make fitful and denunciatory references to the House of Lords when the exigences of a popular audience appear to demand them. Not that any exception whatever can be reasonably taken to their occasional utterances. They are excellent,

as far as they go, but they do not go a long way or help us much towards a solution of this difficult problem. From a rhetorical point of view, they are worthy of all admiration, and it would perhaps be proper for me to quote the words of some of them.

In the first place, let us take Sir William Harcourt, whose strictures upon the House of Lords have always been most forcible and effective. At Derby, in January 1894, and therefore previous to the last General Election, he said :

> "There has been a great deal of ignorant nonsense talked and spoken lately as to the constitutional position and functions of the House of Lords. Some people seem to suppose that it is a sort of supreme court of appeal, a kind of superintending providence set up to rejudge the acts of the representatives of the people, and to revise the conduct of the responsible Government. It is nothing of the kind. In the greater, and, indeed, the most important part of the affairs of the nation, it is the House of Commons and not the House of Lords which decides who shall be charged with the government of our mighty Empire."

The argument, which in these words Sir William Harcourt eloquently sustained, is incontrovertible. It is unquestionable that in the department of finance, to take an example, the powers of the House of Commons are absolute, and no one has a right to speak with greater confidence on this point than Sir William Harcourt himself, whose great measure, the Radical Budget of 1894, was the one positive achievement of the late Liberal Ministry. It is also true that the House of Lords has no voice in the grave issues of peace and war, nor in

the conduct of foreign affairs, and that its votes of censure would have no operative effect upon the position of a Liberal Ministry. But while these constitutional limits may be admitted, so also must be the lamentable fact that in the domain of legislative action, apart from the limitations already recited, the existing power of veto of the House of Lords is absolute and unqualified. The problem we are called upon to solve is not how the existing privileges of the House of Commons can be maintained, but rather how they can be extended, and the power of veto of the House of Lords—always disastrously exercised in relation to Liberal measures—rigidly circumscribed or entirely removed.

Upon this material, and indeed all-important and most urgent question, I cannot discover, after most diligent research, that either Sir William Harcourt, or any one of his colleagues, afford us the advantage of counsels of light and leading. Lord Kimberley, also, at the time of the passage of the Parish and District Councils Bill through the House of Lords, made use of for him expressions of unusual and uncompromising vigour when he said :

" We have got the measure, we have got the villagers enfranchised; given them power to manage their own affairs, the protection of the ballot, votes equal to the squire and the parson ; but no thanks to the House of Lords for it. We have got it in spite of the Lords, and it has been wrung from them only through their cowardly fears."

Last of all, my friend, Mr John Morley, has

employed language of denunciation which is unsurpassable in merciless criticism. He has said with respect to the Upper House:

" A vast and overwhelming preponderance, a huge dead-weight of passion, of interest, of bigotry, of blind class and party spirit, impenetrable by arguments, irremovable by discussion, beyond the reach of reason, and only to be driven from its hereditary and antiquated entrenchment, not by argument, or by reason, or by discussion, but by force."

With the exception of this indirect suggestion of possible violence on the part of Mr John Morley, I am unable to find either from him or from Lord Kimberley, any more than from Sir William Harcourt, even the semblance of a proposition, practical or not, for the guidance of the Liberal Party in the course which it should adopt to overcome the obstruction of the House of Lords; and in Mr Morley's case, I regret to say, his more recent utterances on the subject have borne the impress of despair rather than of courage and of resolution.

Under these circumstances, we are therefore left to ourselves in the endeavour to formulate a plan which will be generally acceptable to Liberals and Radicals throughout the country, and, doubtless, if we are so fortunate, as the result of free discussion, to be able to agree upon some practical scheme, it will serve as a rallying-ground for the concentration of our political forces, and in such a case we need be under no apprehension as to the eventual compliance therewith of our men of light and leading, so soon as they discern the direction and the force

of the wind; and even a remnant of famished Whigs will doubtless end by doing violence to their convictions, and while stipulating for kindly remembrance when "our ship comes home," will vouchsafe to us a stereotyped attitude of acquiescence.

VIII

VARIOUS propositions have been made from time to time, and from all quarters and all classes of the Liberal Party, for the solution of our difficulties with the House of Lords. For convenience' sake the authors of them may be classed under two heads—the Anti-Vetoists and the Abolitionists. Under the first of these classifications we must place, naturally in a position of pre-eminence, the great name of Mr John Bright, who almost in the last stage of his political activities, and at the time of the Reform Bill of 1883, renewed his earlier attacks upon the House of Lords in various public speeches, and with his customary eloquence and vehemence. But it is to be remarked that although Mr Bright finally ranged himself with the Anti-Vetoists, his arguments tended quite as much to the conclusions of the Abolitionists, and it was probably only because he hoped for more general agreement with regard to the limitation of the veto that he did not resolutely pursue his plea for abolition. Thus we find in his speech at Leeds in 1883 the following words, which precede his demand for the limitation of the veto of the peers:

"It has been a common opinion that two Houses

are necessary, and that no steady government could exist in any country whose policy and whose legislation were determined by the voice of a single representative chamber. I think the conduct of the peers is fast dispelling that illusion."

It is certain that if Mr Bright were happily alive to-day, he would agree that the illusion of which he spoke in 1883 was being dispelled even more rapidly than he had anticipated.

As I am apprehensive of exceeding the due limits of a paper of this description, I will refrain from citing the names or quoting the words of many public men who have pronounced themselves in favour of some limitation of the veto, but it would not be out of place at this stage to refer to the incidents which marked the period immediately subsequent to Mr Gladstone's retirement, and when the noble appeal contained in his farewell speech had provoked much natural public agitation, and had given rise to gatherings and demonstrations throughout the country. In nearly every town meetings were held and resolutions passed condemnatory of the House of Peers, and concluding in some cases with a demand for the limitation of the veto of the House of Lords, but in a great majority of instances urging the total abolition of that assembly. At an immense gathering in Hyde Park on March 18th, 1883, called by the Council of the Trades' Union of the county, and largely made up of delegates, a resolution was unanimously passed calling upon the Government "to take steps for the entire abolition of the House of Lords, and

thereby to deprive the peers of the power of opposing the National Will."

So widespread and intense was the feeling upon the subject, that finally even the National Liberal Federation was compelled to emerge from the safe protection of the Party Whips' office in which it is now generally stabled and trained, and announced that a great open conference would be held at Leeds, at which all classes of Liberals were invited to attend. I trust I may be pardoned some degree of scepticism with regard to open meetings or conferences thus ostentatiously proclaimed. In the course of an experience of active electioneering now extending over twenty years, I have been the witness of many ingenious, not to say amusing, incidents. I can well remember a meeting called at the time when party spirit was running very high with regard to Home Rule. It was announced with a great flourish of trumpets that the gathering would be an absolutely free one, and the doors open for all to enter at half-past seven. So in point of fact the front doors were open at the hour named, but by half-past six the back doors had also been unlocked to a select body of Irish patriots, who had already filled the hall, and the results were necessarily of a comical and unexpected nature. Far be it from me, however, to suggest that precautions of this kind were taken in connection with the Leeds Conference, and it is certain that, apart from the large body of Liberal agents present, the majority of whom are officially tractable and docile men, there was also a strong ad-

mixture of independent Radicals in the audience, and those of us who attended with the desire to support more advanced and Radical views had the relative satisfaction of materially modifying in that direction the mild official pronouncement originally prepared for our delectation. The resolution finally adopted by the Leeds Conference was, under the circumstances, necessarily somewhat in the nature of a compromise, but, as will be seen, it sets forth with tolerable virility the minimum demands of the Anti-Vetoists. Its exact terms run as follows :—

"That this meeting therefore calls upon the Government to introduce as soon as practicable during the present Parliament a measure for the abolition of the House of Lords' Veto, by providing that whenever a Bill passed by the House of Commons should be altered or rejected in the House of Lords, such Bill may be reaffirmed by the House of Commons at any time in the same session, in the same Parliament, with or without such alteration, and subject only to the Royal Assent shall thereupon become law."

The resolution, thus quasi-officially promoted, was in due course submitted to the Prime Minister, and received from him a somewhat curt and wholly discouraging acknowledgment ; upon which even the great Panjandrum himself, the redoubtable Dr Spence Watson of Newcastle, bowed his diminished head, and meekly consigned the resolution of his once omnipotent Federation to the waste-paper basket, from which it has never since emerged.

It cannot be said, therefore, that the prowess and promise of the Anti-Vetoists of 1893 have been maintained, or that the question has made much progress along the road to success in that direction, and it is useless to deny that the objections which may be urged against the limitation of the veto are great and manifold. In the first place it is avowedly only a compromise, and not a complete solution. It is further impossible to contemplate without grave apprehension the periods of unrest and agitation during which various Radical measures might be hung up by the Lords. For it would obviously be the policy of the Lords and the Tory Party, after the establishment of this reform, to abandon their present tendency to occasional concession and compromise, and rather to take every occasion presented to them for rejecting Radical bills in the first instance, in the hope that the intervening interval might be profitably turned to account in endeavouring to influence upon every specious ground the elements of opposition, and in the event of a bye-election going against the Liberal government, to seize this pretext to raise a storm in favour of an immediate dissolution. Under this system, therefore, it is abundantly clear that while Radical measures would in certain instances eventually prevail, it would only be after prolonged periods of storm and stress, and it would inevitably intensify the irritation and hostility between the two branches of the legislature.

The difficulties under which the "Abolitionists"

suffer may now be very briefly stated. Although it is probable that theirs is a proposal which would command the assent of three-fourths of the rank-and-file of working-class Radicals, who, when a thing has to be done, naturally prefer a straight to a devious course for its accomplishment; and even in spite of the fact that it has had in the past distinguished advocates at present upon the other side of politics, including the versatile and accommodating Mr Chamberlain, and his henchman Mr Jesse Collings, who once publicly exclaimed that "he was no reformer of the House of Lords. He demanded its total abolition," still there remains the one patent and incontrovertible truth stated by Professor Goldwin Smith, "that the only visible remedy would be a revolution." And a revolution, while sometimes necessary and unavoidable, is not to be recommended when other and equally effective means may be adopted to accomplish the purpose in view.

IX

But surely there is yet another alternative, free from most of the objections already urged in connection with the other proposals which I have already passed under examination, and which, though a middle course, would appear to me as offering a common ground upon which both Anti-Vetoists and Abolitionists might reasonably and sincerely unite.

In my humble opinion the true solution is to be

found in the extension of the principles maintained by the Liberal Party at various periods since the early days of our constitutional history, and more especially and specifically enunciated in the several resolutions of the House of Commons in 1661-1671, and again in more recent times in connection with the repeal of the Paper Duties in 1860. The effect of those resolutions has been, after a great and prolonged struggle, effectually and finally to exclude the House of Lords from all participation in the financial affairs of the country, a most salutary reform of which not even a purblind Tory can be found to demand the abrogation. It is surely no exaggerated proposition to contend that what has been found to be possible and advantageous for a part—and the most important part — of our national affairs cannot be regarded as impossible or dangerous with respect to the remainder, and perhaps less important, of those affairs; and I would contend with all the vigour which I possess or can possibly command, that the time has come for the Liberal Party to take a bold and determined stand upon this question, and to put forward a demand uncompromising in its terms, and resolutely and strenuously sustained, for the complete abolition of the legislative powers of the House of Lords.

The effect of such a reform would be to transform the House of Peers into a purely consultative assembly. It would still, however, occupy a position of great dignity and importance, and would thus satisfy that by no means inconsiderable sec-

tion of the community, of which Mr Gladstone was the most illustrious example, who temper their reforming zeal with great respect for tradition and the monuments of antiquity.

The majority of the Peers themselves also, if one may judge by the record of their attendances, care more for the dignities of their order than for their legislative powers, and the former they would be left to enjoy, as well as their honours, their robes, their right of debate, or that of an occasional siesta upon the benches of the House of Lords. Furthermore, those of them who are possessed of an enthusiasm for the reform of the Upper House, like Lords Cadogan, Dunraven and others, might exercise their ingenuity to their heart's content and without any kind of external interference. They might exclude black sheep and include white ones; they might retain the Bishops or send them back to their dioceses; or, most radical reform of all, they might place restrictions upon the increase of their number by restoring the ancient, and of late years discredited, formula that all classes of merit in addition to preeminent ingenuity in brewing or banking should be considered in the selection of new members of their order.

The House of Lords would still continue to be an august consultative and deliberative Assembly, the chief Court of Appeal of the Empire; all Bills passed by the House of Commons would still be laid before it, not, it is true, for adoption, rejection, or amendment, but for comment and criticism; and it is probable that the causes of friction and hostility

between the two Houses being finally removed, the House of Commons would always favourably receive and even in many cases act upon the advice tendered to it by the Peers.

So much from the standpoint of the Peers. And now what can be stated from the standpoint of the Nation?

It can be said that this momentous, this prodigious and far-reaching reform would give at last to the Liberal Party full power to accomplish its mission, and for the first time to the people of Great Britain complete liberty of self-government. Those of us who have laboured, and who are still eager to do so, for Home Rule, for Temperance, for Disestablishment, for Land Reform, or for Labour and Social Legislation, will at length know that once the constituencies and the House of Commons have pronounced their verdict, the long-sought goal will have been reached and the victory won. And here I pause for a moment in order to deal with a question which naturally arises and requires to be examined. We shall be told: "But the Peers will resist the abrogation of their legislative powers. How will you overcome that resistance?" To that I would reply that the question is not a new one, and that many answers have been given. There are some who affirm that the arguments in the celebrated Wensleydale Peerage case, and particularly the comments of a most learned jurist, the then Lord Chancellor, Lord Cranworth, go to shew that a Writ of Summons issued to a Peer when he

takes his seat at the commencement of a Parliament is neither a right nor a privilege, but a power vested in the Crown which it may exercise or not at its pleasure, and that it would therefore be competent for a Government to advise the Sovereign to suspend the issue of the Writs and thus practically determine the existence of the House of Lords. This, however, is a legal problem of great complexity which I, as a layman, cannot pretend to solve, but which can be left to legal experts to decide upon. But we have a precedent for another alternative, which appears to me to be conclusive—viz., that of the Government of Lord Grey and the Reform Bill of 1832, on which occasion the power conceded by the Crown to create peers was at once sufficient, without any exercise of it, to compel the acquiescence of the House of Lords in that measure.

As therefore I have invoked the precedents of 1661-1662 and 1860 in support of the action which I propose should be taken by the House of Commons for the accomplishment of our purpose, so will I adopt the one of 1832 with respect to the course to be taken to obtain the agreement of the peers in our demands. It is this power of creating peers, if necessary, which I contend a Liberal Government must obtain from the Crown as the condition of its acceptance of office, to be used at such juncture as circumstances may indicate as being the most propitious to enter upon a struggle with the House of Lords.

X

THIS, then—the complete abolition of the legislative powers of the House of Lords—is, in my belief, a cause worth fighting for, and one which would concentrate and arouse the full energies of the Liberal Party. And how is it to be attained? Certainly not by a policy of masterly inactivity, nor by an attitude of impotent indifference while Whigs intrigue and placemen sit awaiting the bounty of Providence and the hoped-for swing of the pendulum which may in their short-sighted imaginations allow another "ploughing of the sands" Government to be formed, and another era of fruitless and abortive labour entered upon. The Liberal Party must make up its own mind, while Liberal statesmen are still apparently vainly attempting to make up theirs.

It must assert at once its fixed determination to submit this question to the judgment of the electors at the next General Election. It must seek to obtain from the electors in the light of day, and in such an unmistakable fashion as to admit of no quibble or doubt as to the verdict given, a confirmation of its views; and if, as I make no doubt, their decision should be overwhelmingly in our favour, it must declare its unalterable determination to support no Government which is not in full accord with our programme, or which accepts office without power and the responsibilities of Government without guarantees for their successful fulfilment.

By this, of course, I do not intend to affirm that the first duty of a Liberal Government on assuming office would be to submit resolutions with regard to the House of Lords. On the contrary, I have carefully guarded myself from any supposition of this character in the words of the first proposition which I set forth at the commencement of this article, to the effect that we must be left free to judge of the urgency and precedence for the introduction of any particular measure according to the circumstances of the hour ; and it is practically certain that any Liberal Administration, exercising a wise discretion, would inaugurate its career by dealing first with one or two great objects of Radical concern.

But when the inevitable crisis arrives, and the House of Lords rejects or vitally amends our measure or measures, then will be the opportunity for putting forward those resolutions in favour of the abrogation of the legislative powers of the House of Lords, which I urge should be frankly and immediately submitted to the electorate for its sanction at the next General Election. Should the House of Commons pass these resolutions by a considerable and sufficient majority, and the House of Peers then decline to accept them, the Government, having received the previous assent of the Crown upon assuming office, would be able by the threat of a possible creation of new peers, or if necessary by an actual one, successfully to overcome the resistance of the House of Lords, and the final battle will be won. With such a cause

and plan of action as I have here endeavoured to define, affording as they do hopeful promises of fruitful results, and contrasted as they must be with the sterile and shallow theories of policy at present in vogue amongst Whigs and in official quarters, I maintain that the Liberal army would not only be ready but eager for the fray, and would emerge from it triumphant. Are we then, I would conclude by asking, to remain for ever knocking at the doors of what Lord Rosebery once aptly termed "The Chamber of Death for Liberal measures"? Are we to stand still while a portion of our Liberal press, and some of our Liberal public men as well, are pandering to the worst forms of Jingoism and military extravagance?

Are we, finally, to be mere creatures of circumstance, criticising the policy of our opponents, but having none of our own; looking piteously forward to the advent of a so-called Liberal Government, brought into existence, not upon any assumed merits of its own, but solely in consequence of the mistakes of the Tory Party, and doomed from its very birth to a short and inglorious career of impotence and discredit, necessarily leading to dissolution and consequent disaster?

To these questions, as it appears to me, there is but one answer which sincere Radicals can give.

II

By Lord Monkswell

No statesman can hope to deal satisfactorily with the question of the reform of the House of Lords who is not thoroughly familiar with that question from three points of view—the point of view of the Radicals, the point of view of the Tories, and, above all, the point of view of the man in the street, who, although by force of circumstances he may own a nominal allegiance to the Liberals or the Conservatives, is apt, when hard pressed for his vote, to exclaim, "a plague on both your parties."

From the Radical point of view there is no doubt a very great deal that may reasonably be urged against the House of Lords as at present constituted. Indeed, in an assembly of good Radicals it is hardly possible to paint that assembly in colours too black to suit the taste of the audience. But though unmeasured denunciation of the Lords is popular on Radical platforms, I doubt whether either the vehemence of the attack or the nature of the arguments adduced are calculated to gain converts. Preaching to the converted is one thing. In that exercise, rhetoric rather than logic is in request. You may trounce and buffet the heathen and the unbeliever to your heart's content, and the

harder you hit the more pleasure you will give. But with the missionary it is different, and it is just this vital difference that strong party men commonly ignore. Strong party men seldom make any sustained effort even to understand the arguments of their opponents, still less to enter into their sentiments and to see things from their point of view. That is where politicians break down, and we constantly see eminent Radicals pounding away at the House of Lords in a manner that certainly does not advance their cause with the general public.

In the first place, I would observe of the approved Radical formula, that the House of Lords must be ended or mended, though its recital always elicits loud applause, when it comes to be analysed is to the last degree vague and unsatisfactory.

THESE WORDS COVER THREE DISTINCT POLICIES —(1) ABOLITION. (2) CHANGE IN THE CONSTITUTION OF THE HOUSE. (3) MODIFICATION OF ITS POWERS.

The policy of abolition has the merit of being simple, and may in time be the battle-cry of the united Radical party, but at present it is not within the horizon of practical politics. Every Briton who is not a Radical firmly believes in the necessity of a Second Chamber, and many Radicals share that belief. The sceptics have a big task in front of them: by all means let them try and convert the believer, but they cannot reasonably expect their iconoclastic doctrine to be embodied just yet in the party programme.

The two other alternatives of the mending de-

scription are seen on close acquaintance to indicate policies which, though superficially similar, are fundamentally very divergent.

The policy of restricting the power of the House is one that ought to appeal not only to those Radicals who are too moderate or too cautious to commit themselves to the policy of abolition, but to the Abolitionists themselves as the first step in their programme. For to those who look upon a Second Chamber of any description as a nuisance and an encumbrance, a weak Second Chamber is better than a strong one, and if its veto were made merely suspensory, public opinion at the end of the period of suspense would be obliged to declare itself either for or against the action of the Second Chamber, and in that way an authoritative record would be compiled by which the utility of its work could be gauged.

It seems to me that THE WHOLE LIBERAL AND RADICAL PARTY MIGHT WELL RALLY TO THE CRY OF THE SUSPENSORY VETO, LEAVING OVER FOR FURTHER CONSIDERATION, IN THE LIGHT OF SUBSEQUENT EXPERIENCE, THE DESIRABILITY OF HAVING A SECOND CHAMBER AT ALL.

The third and last alternative—that of altering the constitution of the House—requires detailed consideration.

It is a remedy that appeals to both parties, and herein lies much significance. One readily understands the suspicion and dislike which is felt by Radicals towards the present composition of the House. It is avowedly Tory to the backbone, and

the more democratic popular opinion becomes, the more tenaciously does the Second Chamber adhere to such Tory principles as are capable of being enforced. And not only is it a Tory assembly, but an assembly permeated by that particularly archaic description of Toryism which is redolent of the soil —the agricultural branch of the Tory party.

The Toryism of the House of Lords is far more hopeless and stolid than the Toryism of the most Tory House of Commons. There are no doubt some Tory members in the Commons as obstinate and prejudiced, and as deeply imbued with Toryism as any peer, but at election time they are exposed to the rough blast of public opinion and cannot be entirely ignorant of its trend. Moreover, under a popular franchise Toryism in the House of Commons has to be subjected to various leavening processes in order to adapt it to the taste of the vulgar palate. True, a large number of the more capable peers have undergone a training in the Commons, but it is astonishing how soon unwelcome lessons are forgotten in the sleepy and stifling atmosphere of the House of Lords.

The irreverend saying of Sir Wilfrid Lawson, that over the portals of the House there ought to be inscribed the legend, "mangling done here," accurately represents the truculent attitude it assumes towards legislation propounded by Liberal Governments. Where it dares not destroy it does its best to mutilate, and is a power that every Liberal Ministry has to reckon with.

These considerations stare us in the face.

THE OBSTINATE, NARROW-MINDED, AND OFTEN IGNORANT TORYISM OF THE LORDS IS "GROSS AS A MOUNTAIN, OFTEN PALPABLE," and no wonder some Radicals are of opinion that any change in the constitution of the House must be for the better.

And yet there is another side to the question that may give us pause, and make us "rather bear the ills we have, than fly to others that we know not of."

When Tories voluntarily turn reformers we may be quite sure there is mischief in the wind, and the more plausible their contention the more certain we may be that some wily piece of strategy is on foot. They are never so dangerous as when they masquerade as Radicals.

If there ever was an institution which, next to the Church as by law established, used to be dear to the Tory heart, the House of Lords was that institution. If there was one legislative principle more sacred than any other it was the principle of hereditary legislation, that strong pillar of the Constitution, all the more necessary in these latter days, in order to counteract the levelling spirit of the age, and leave the nation something to reverence and admire, and the Throne an ancient and picturesque support.

ALL THIS HAS CHANGED. The Tory Prime Minister is himself among the reformers, and on taking office, in 1886, showed in the most practical manner his contempt for the hereditary principle by NOT INCLUDING IN HIS CABINET ANY PEER HOLDING A SEAT BY RIGHT OF SUCCESSION.

Notwithstanding the steadfast devotion of the House of Lords to the Tory party, that assembly, it is clear, does not satisfy all the conditions of an ideal Tory Second Chamber. The more intelligent Tories are obligingly desirous of joining hands with Mr Labouchere in a crusade against hereditary legislation. Wherefore this ingratitude towards the inoffensive and obedient Tory Peer, who does his best, without much encouragement, to provide place and power and patronage for his political allies?

The fact is that from a Tory point of view the House of Lords, however well intentioned, has one very serious defect, a defect for which the hereditary principle is in the main responsible—IT IS WEAK. THE TORY FORMULA RUNS THUS — THE POWER OF THE HOUSE OF LORDS HAS DECREASED, IS DECREASING, AND OUGHT TO BE INCREASED.

This is the key of the situation. This is the explanation of recent Tory zeal for reform of the constitution of the House of Lords. The invitation to the Radicals to come and help them is conceived in the spirit of the classic line—"'Will you walk into my parlour?' said the spider to the fly." And the guileless Mr Labouchere is an excellent decoy.

It will be time enough to talk of amending the constitution of the Second Chamber when its claws have been clipt. To set up a strong House of Lords capable of exercising in fact the powers that belong to it in theory—capable of holding its own in a pitched battle with the House of Commons—WOULD INDEED BE A DISASTER.

What we Liberals have to consider primarily is the extent to which any Second Chamber should have the right to interfere with the decisions arrived at by the representatives of the people, and whatever we do, let us firmly decline to follow the lead of the Tory party. LET US SET OUR FACES LIKE STEEL AGAINST ANY PROPOSITION TO STRENGTHEN THE SECOND CHAMBER at all events until the supremacy of the Representative Chamber in a sustained struggle is fully recognized and made legally unassailable.

And let us advocate this moderate reform in moderate language. The more vehemently we denounce the political action of the Lords, the more we insist upon it that its powers are anomalous and its very existence an anachronism, the more we give the man in the street reason to suspect the practical soundness of our argument. That the House of Lords is an anomaly and an anachronism is a statement that does not interest him in the very least. He prides himself upon being no theorist but a practical man, and the long-continued existence of the House of Lords through, with one exception, every political vicissitude, is enough to convince him that, after all, in practice there must be something to be said for an institution that has survived so long, and been so little modified by the eager efforts of the reforming spirit of the age.

III

BY ROBERT WALLACE, M.P., EDINBURGH

I

THE DIRECT MISCHIEF

MY only title to speak on this question is that my feeling about it is, as I believe, and indeed am sure, shared by a very large number of intelligent and earnest people, and I think it should interest and benefit the public at large to understand exactly what that feeling is. I know if I were one of the outside public, I should wish to have that feeling stated by another, of course a better, man, but in any case by somebody who actually had the feeling and was willing to express it honestly and apart from mere partisan activity. That is what I shall try to do in a more or less representative capacity.

My feeling then about the matter is one of intense irritation and even disgust, and a burning desire to do something, and, if possible, something effectual and immediate. The spectacle of the House of Lords irritates me because it is an anomaly and an affliction, both in what it is and in what it does. I rejoice to feel myself living in a democratic age, a member of a great, free, self-governing people. I contend that this is the only

right political position that can be occupied by a civilised man. I will not listen to anyone who desires to question my right to be my own master, conditioned only by my duties to my neighbours, who possess the same right. Between society and myself there must of course be give and take, but that being allowed for, the forty millions of us in these islands have a right to collective self-mastery, and to work out our rights and attend to our interests by means of a machinery of management absolutely of our own creation and under our own control.

Now, how stand the facts? While we forty millions that constitute the nation are thus engaged in doing the justice we are entitled to do to our rights and interests, we are suddenly confronted by a diminutive brigade of four to five hundred titled gentlemen (their names and addresses are all supplied by Burke, Debrett, and other authors), plus a handful of clergymen whom it is sufficient to have mentioned, and who may henceforth be dismissed from consideration in this connection with the civility usually accorded to their cloth. These gentlemen, generally through a deputation of half-a-dozen or so—three will do—advance, and say, "Hulloa! where are you going? What are you after?" Out of politeness we answer, "We are going to work out our rights and interests." "No, you shan't." "But we have not authorised you to interfere." "Don't need your authority. Not responsible to you, or to anybody." "But you are not able to stop us." "Oh, yes, we are; we

have got a magical engine called The Constitution here, and with it we can stop you, though you were twice as many."

And this turns out to be too true. So we resume the conversation. "But surely you won't. With much respect, you are a negligeable quantity, less than a farthing in a ten thousand pounds account." "Don't signify; we have the power and can use it."

Now, I ask you, did you ever hear such impudence? And the matter becomes still worse when you consider the ground on which, with the assistance of The Constitution, these gentlemen base their claim to do all this. It is neither more nor less than the elementary fact that they are the sons of their fathers. I am not going to waste paper over the ridiculous and irrational side of this contention, or formally to argue that birth confers no natural capacity or right to legislate. It is a sufficiently well-worn theme. But the fact remains a standing insult to a self-governing people.

There is, however, another aspect of it which may be noticed, because it may be useful shortly, as showing that the House of Lords is an anachronism as well as an annoyance. The claim to rule or legislate by accident of birth is really a claim to the "right Divine," a man's birth circumstances, to use theological language, being a Divine arrangement. And so we are reminded that the Lords, not as individuals, since most of them are comparatively new, though thoroughly inoculated, but as an institution, are a tradition from days when the Divine

right was vigorously in vogue. The claim of the Lords to be where they are and do what they do, when put upon a natural rather than a formal basis, differs more in degree than in substance from the pretension so loudly proclaimed in certain Imperial quarters on the continent. Indeed, we might almost say, making a rough classification, that the House is a Diet of about two hundred and fifty Kaiserlets, two hundred Tzarikins, and fifty Sultanicules. Certainly a strange phenomenon for this country at this time of day. It might provoke a saint. It sickens me.

Now for the serious application of all this. I do not propose to go into the countless instances in which the House of Lords has, with consistent class selfishness, opposed, mutilated, or rejected measures of reform proposed by our House of Commons in the interests of us forty millions, and of our liberty and prosperity in all departments of public life—parliamentary and municipal, political and religious, educational and social. They will be found duly tabulated in any " Handbook for Liberal Speakers," and the summary of them could not be better expressed than in the often-quoted but still quotable language of the late yet present Mr Chamberlain, when he said, " The House of Lords for one hundred years has never contributed one iota to popular liberties or popular freedom, or done anything to advance the common weal, and during that time it has protected every abuse and sheltered every privilege. It has denied justice and delayed reform ; it is irresponsible without independence,

obstinate without courage, arbitrary without judgment, and arrogant without knowledge." There now! I have no doubt Mr Chamberlain thought that was uncommonly fine, and quite Ciceronian, when he got it carefully up, and fired it carelessly off; nevertheless it is literally and perfectly true.

The thing that surprises me is how people could ever have expected anything else from the House of Lords, and especially the House of Lords of to-day. Remember where they come from. They are the constitutional, though rarely the lineal, descendants of the Lords who lived in days when Lords were Lords indeed; when we plebeians had no rights or power of resistance to speak of; when they could knock us about, literally as well as metaphorically, with an energy of treatment and a ferocity of mien that would have made Nebuchadnezzar or Louis XIV. turn green with envy. There were parts of Britain where they could, and often did, hang us. Whether they could draw and quarter us I do not know, but it would not much matter after the other. As for immuring us in dungeons after a performance called by a courageous hyperbole a trial, that was a bagatelle; while the idea of our having anything to say to the land except to till it for their profit was entirely out of the question. A Lord was then a terrible power in the land, and lordly sensations must have been a splendid experience.

Of course it is not in human nature to part with power or a pleasant consciousness without resistance; but, little by little, these had to go, until the

Lords of the modern period were left with but a fragment of the ancient power and lordly feeling, and the land. No wonder they have learned that popular advance is the enemy, and should view with jealousy the growth of our freedom in all directions. Accordingly, it has been repeatedly observed that the attitude of the Lords has immensely changed since the first Reform Act. Before then they had the House of Commons pretty much in their pocket, and often acted as a real Chamber of Revision. Why they should ever have been specially called the Revising Chamber or the Second Chamber I never could understand, because the House of Commons is equally a Revising or Second Chamber for all Bills originating in the House of Lords. But now they have ceased to be a Revising or Second Chamber altogether, and become a Chamber of objection and rejection, of obstruction and destruction for Liberal measures, there being no occasion for revising the Bills of their friends. The motto seems to be the Donnybrook one of "When you see a Liberal Bill, hit it." The explanation is obvious. Within the past fifty years we of the forty millions have had opportunities of being dangerously aggressive, which we did not and could not have before. Hence the necessity of increased vigilance to prevent us becoming too much habituated to the evil and dangerous practice of attacking privilege. There could be no saying what we might do next.

I do not say that the Lords, among whom there are, of course, men as eminent by their virtues as

by their abilities, put all this propositionally before their minds. Instinct and interest do not advertise themselves in that open way. Like digestion or respiration, they operate mainly outside the sphere of consciousness and volition, and are probably all the surer and stronger in their action on that very account. Hence we of the forty millions may lay our account with it that the Lords will continue to fight us as they have done. The beautiful language of Mr Chamberlain will be as applicable to the future as to the past. Perhaps the fighting will be the more severe as the last ditch is approached. I have said that the Lords have now only a "fragment" of their mediæval power. But a nugget is a fragment, and will often lead its possessor to fight to the death. Now the Lords have still two nuggets, the hereditary principle and arbitrary land-control.

Of the land I say nothing, because it is common to the Lords with many less formidable persons. But of the hereditary principle I will say that, from the point of view of average human nature, it is a splendid possession and worth a struggle. Consider what a man will go through and what he will expend merely to get into the House of Commons to exercise legislative power and enjoy such distinction as he supposes to be connected with that occupation, and then fancy what it must be to gain this power and more for nothing and without exertion by the simple fact of having been born. Add to this the brilliant social prestige attached to the position, and do you wonder that the ordinary man should cling to it, or

that, in Mr, now Lord, Curzon's summary of the Tory Creed as devotion to the Crown, the Church, the Empire, and the Peerage, the Peerage should hold a pivotal position? To me as a Democrat, it is of course Anathema, and makes me fierce. I resent, politically, the existence of a man who, without commission from me, exercises power over me, to his own satisfaction and my grief, and who, because he knows this, almost of necessity does all he can to keep me down and bound in case I should dislodge him. Such is, substantially, the direct mischief of the House of Lords, and in combating it we have to combat human nature, which is a tough adversary, involving a stiff battle.

II

THE DERIVATIVE MISCHIEF

A LORD is not only a hereditary legislator, and therefore an object of fear to me, but he is also the holder of a hereditary title, which calls upon me to reverence and honour him. For that is the true significance of a title. It means that the holder of it is a person of such proved merit, and has deserved so well of his country, that every good citizen should render him more or less obeisance. Could anything then be more ludicrously absurd, or a greater outrage upon human reason and common sense, than hereditary honours? The first Duke of Wellington was made a Duke because, say, he won the battle

of Waterloo or some previous one. That was not irrational. But the moment he died his son, who in the meantime had been probably a marquis, or something like that, from his cradle, became entitled to the same honour as his father. I should not have been particular as to Waterloo if he had won or done anything, but that a person who had done nothing at all should call upon me to honour him in the same way as the man who had saved his country is surely too shocking. I wonder they have not tried the plan in the case of the Spiritual Lords. Why should not a Bishop's son be born a D.D., and take his father's place at the opportune moment? He could not do worse than many a Peer's progeny in similar circumstances.

Whether I have been strictly logical in calling hereditary honour a derivative mischief from hereditary power, whether a Lord exercises the power in virtue of the title, or wears the title in virtue of the power, or whether "concomitant" would not have been a better word than "derivative," is not a question of much consequence. The point is whether there is a genuine mischief. I know there are reformers of the House of Lords who think that if hereditary power were gone, hereditary honour would do little harm, and I admit that the first thing is to get quit of the political scandal and iniquity due to hereditary power. But I am not sure that hereditary honour, with neither power nor merit to back it up, might not prove more demoralising socially than the present state of things. And we must pay some heed to the question of

social demoralisation. For just as there is nothing more conducive to public virtue than reverence for genuine merit, so there can scarcely be anything more corrupting, more debasing, more prolific of all the vices of the servile order, than rendering, or being compelled to render, honour where honour is not due. Now what, from this point of view, is a present-day lord? He is a person who, through his title, demands and obtains general honour—for what? For occupying an utterly false position; for ruling, generally misruling, a people who have a right to be absolutely self-ruling, without their authority and against their will, and merely because he is his father's son.

I often wonder how the average Lord can face us plebeians, whom he treats so preposterously and so inequitably. To me his attitude seems actually brazen; a Duke's must be triple brass. I think it flat quackery; professing that the legal is identical with the equitable claim. Out of a false position only the false can arise. Hence Lords, as a rule, must be proud. As a matter of fact, I have found them so. They shut me off into what they are pleased to consider an inferior sphere. I should like to hear of a plebeian who ever got, morally, within five yards of an ordinary Lord, or ten yards of a typical Duke. For my own part, I never attempt it. I prefer to keep out of the way, but if I am forced into a tight place, knowing what is expected of me, and being a man of peace and politeness, I bow in the house of Rimmon. But I do not love that house, and seek to pass it by and

do something useful. Now I say this annoyance is a distinct hardship on me, arising out of a state of things that first works me political injustice, and then asks me to reverence those through whom the injustice is wrought. Of course I know there are Lords, and I suppose Dukes, with whom it is a pleasure to get on, and who are as excellent men in every way as can be supposed to exist, but they are not Lords and Dukes by reason of these things, and we must not allow the merits of the individual to screen the demerits of the institution. That institution I would destroy if I could ; I will not say the same of life honours for the truly honourable.

But if there are a good many of us who resent the reverence demanded and paid to the Peerage, considering what the Peerage really is, there are also a good many who are only too glad to pay that reverence in spite of what the Peerage really is, and this must be considered another of the derivative mischiefs of the House of Lords. So far as this is an admiration or affection for the virtues and abilities of men who would have been good or great men though they had never been peers at all, I should desire to treat it with all respect, and seek to share in it ; but this is not the characteristic of the world of admirers, imitators, flatterers, dependents, and parasites which I have in view, and of which the Peerage is the creative nucleus. Barring exceptions, it is a degraded world, but it has been brought into being by the power and glitter of the House of Lords. It consists essentially of people who worship power as such and

show for itself, without considering whether the power is righteous or not, or whether the show is substantial or otherwise.

There are a great many people who are open to this temptation, and a Lord and his title form the very bait to catch them. Let us analyse a Lord, considered as a depositary of power. What is the difference between a Lord and a Lord Mayor? Both of them have power, but the one has only the loan of it, and must lose it in a twelvemonth; the other has it in him, and cannot lose it though he would. It is a part of his constitution, born in him like his blood or his lungs. He has really a personal attribute not possessed by other people, and when a man feels that he possesses an extra attribute, especially if that attribute be ruling power, it is scarcely surprising if he should be inclined to fancy himself made of different clay from ordinary mortals; and when this temptation is intensified by the daily environment of the traditional reverence exacted and established by the feudal barons, whose title as a legal demand note for that reverence he wears, it is only natural that the poor gentleman, unless all the stronger-headed, should form a fairly exalted opinion of himself, and think that society at large was formed to submit to him.

And if he who might know better does this, what is to become of the foolish world I have mentioned? They do not inquire whether his power and demand for honour are rational and right, and end by concluding with a free and self-governing people that they are ridiculous and wrong. It is enough for

them that they exist, right or wrong; down they go upon their knees, and do homage; then rising, they form themselves into a bodyguard of the Peerage, servile enough towards their idol, but imperious, as far as they dare, towards the community outside their circle, believing that they too were somehow born to rule, and pervaded by the militant and dominant tradition which the terms Duke and Earl and Baron suggest. As a sort of compensation for the homage they have done themselves, they crush the dependent class nearest them into a corresponding servility, and generate a host of what a great satirist labelled as "snobs," weak enough to think that happiness and distinction mainly consist in getting as near to the centre of aristocratic exclusiveness as vigilantly watched opportunity will allow.

It is a melancholy spectacle, with little to relieve it, but it is more and worse, since the social results of the Peerage are undoubtedly fertile in political mischief. It is in this portion of society, and in its purlieus and annexes, that what is called Jingoism finds its most congenial habitat. It is natural that it should be so. Jingoism is a readiness and a desire to go to war, partly for fighting's sake, partly from an imperious tendency to put other people down, partly for military glory, without much regard to the possibilities of success, the cost of the struggle, or the value of the fruits of victory even if won. All this is, of course, extremely foolish, but it is not unnatural that it should spring up within the lordly party as at present

necessarily constituted. The imperiousness is there, the admiration of supposed glory is there, the military traditions and proclivities are there, and where mere power is worshipped, irrespectively of its just or unjust character, there is no folly or even greater evil that may not be expected. Unscrupulous adoration of power will stop at nothing.

I do not say that all adherents of the Peerage or lordly party are Jingoes. On the contrary, the country was, in certain recent events, indebted to individual Peers for resisting the tendency to plunge rashly into war, but those Peers were strongly goaded to such a course by a numerous section of the lordly party. This is a most unfortunate state of things for the country. For though these firebrands may not achieve all they aim at, they do effect a good deal. As a consequence, we see immense sums added to our already immense armaments, with little or no apparent or proved justification, except that they enable us to enjoy the delighted consciousness of being able to beat various conceivable combinations of Powers, who have shown neither inclination nor ability to combine against us, but have, on the contrary, given proof of the most anxious desire for peace.

This same lordly or Jingo spirit insists on the acquisition of vast tracts of new territory abroad, without any very clear evidence that we shall ever be repaid the expense of securing them, or be able to afford the men to keep them by military occupation, without resorting to the conscription, to the

intense oppression of the working classes and the dislocation of commerce. It wants us to keep Egypt, including the late sanguinary reconquests, though it implies a breach of faith, and though the retaining of it must involve no end of men and money. It rejoices in being able to trace a new red line on the map from Cairo to Cape Town. That will be something to flourish in the face of Europe at least, a performance always dear to the Jingo heart. These costly annexations, whose chief visible utility at present seems to be to provide good posts, civil and military, for the scions of aristocratic and plutocratic families, to the discouragement or exclusion of aspirants from lower social grades, are defended by statesmen, whose ambitions are glaringly manifest, on the plea of opening up new markets, and that trade follows the flag. It is not easy to believe in Jingo zeal for trade. Here the argument is too thin to conceal the insincerity. Much trade there is likely to be in those wildernesses of alternating marsh, sand, rock, and jungle, where millions are being spent on railways and other preparations and protections. No doubt there is a sense in which trade follows the flag, but whose trade? Most likely that of the nimble American, and the thoroughly trained German, who utilise us, with our lavish expenditure, to pull the chestnuts out of the fire for them.

In the sense intended, however, trade does not necessarily follow the flag. Trade follows demand, and demand is always for the best goods at the

cheapest rate. Blood may be thicker than water, but it is not thicker than profits. If I were offered my choice between a ton of bad and dear boots manufactured by my nearest relative, and a ton of good and cheap ones, the work of my greatest enemy, I should send my order to the man who hated me but loved my money. You cannot force your trade in any direction at the point of the bayonet. If your goods are wanted, they will find their way under or over hostile tariffs. At this moment we are doing a great and growing trade with the highest-tariffed countries in the world. It is very questionable whether the money lavished in keeping "open doors," mostly for the benefit of rivals, pays in the end. If a few of the millions—and it would require millions—spent in conquering and occupying deserts were devoted to organising a thorough system of technical education for our industrial population, as one is glad to see is being done on a limited scale in Scotland and elsewhere, they would be infinitely better laid out than they are at present. All this Jingoism not only ignores, but contradicts and despises, and while making evil progress in one direction, prevents good progress in another; and if the Peerage is the parent of Jingoism, it has much to answer for.

I may be told that to trace all this to the Peerage is what the lawyers call "too remote." I do not see it. It is a curious coincidence that in America, for a hundred years, there has, of course, been no lordly party, and also no Jingoism, the humanitarian Jingoism, if it can be so called, in

Cuba not coming properly into the reckoning. Were there no Peerage in this country, there could be no lordly or regularly constituted aristocratic party. But there it is. And as it still holds the diplomacy of the country in its hands, in addition to the Army and Navy, and much of the permanent Civil Service, it is brought into intimate relations with the military aristocracies of the Continent—Germany, Russia, Austria, and once upon a time even Turkey, whose peculiar glories it envies, and whose spirit it unavoidably imbibes, and instinctively seeks to apply at home. And of this spirit Jingoism is one of the fruits.

III

WHAT IS TO BE DONE?

SOMETHING, of course, must be tried to stop these mischiefs, but in treating this question I find I must change my attitude. In dealing with the general evils of the House of Lords I felt sure that I was expressing the feeling of a very large class, although they may not agree with parts of my way of putting it. But when we come to the question of the remedy, I feel I must relinquish, or nearly relinquish, all pretensions to the rôle of general indicator. There are various opinions as to the remedy, or rather the extent to which it is to be applied. I have mine, but how far it is shared by others I do not know. I shall, however, state

my views for what they are worth, and whether approved or not, they may help in forming a basis of criticism for those who are thinking the matter out for themselves.

On one point I am sure that I give voice to a universal conviction, and that is, that unless the people are thoroughly aroused and unanimous in their demand, nothing, or next to nothing, in the way of remedying the evils associated with the House of Lords will be effected. Whether even then the Lords would give way, and vote their own annihilation, may be a question. Many of themselves and their champions have repeatedly declared that when the mind of the country has been clearly and emphatically announced, they consider themselves bound to sacrifice their opposition, and it is certain that they have in very numerous cases, probably through fear however, given way to continued pressure. But whether they would extend this rule to self-destruction remains to be seen. A man might be made to empty his pockets one after another under prolonged pressure, but if the pressure wound up by pressing him to cut his throat, he might say, " You had better do that yourselves ; I shan't." At the same time, I know that the Lords might find themselves in a difficult position if surrounded by an angry and determined people demanding their supreme functions.

The point is to get an angry and determined people. It is easy to find angry and determined individuals, but what is wanted is the same attitude in the mass. That can only be obtained by a

powerfully led agitation and a rousing cry, and unfortunately we are confronted by difficulties as regards both those essentials. Where are our leaders? We look to the Front Opposition Bench in the House of Commons, and listen. But we listen in vain. Nothing comes. Some of them, indeed, in their speeches in the country, after having talked out their hour on things in general, wind up with a few remarks on the House of Lords, like a sort of concluding doxology. But it is no part of the sermon, and makes nobody angry at the Lords, though it may make some people angry at the speakers. A good many of them, as well as other members of the Liberal Party, would like to be Lords themselves, and could not be regarded as likely to be very zealous against the object of their ambition. Moreover, last election they declined to follow Lord Rosebery's lead of "Concentrate on the Lords." It is not a matter of any public importance, but I may say that I followed that lead myself, and found it perfectly successful, a fact which, after all, may be of some public importance.

But, indeed, you could hardly expect our Front Bench men to be much set against the Lords, seeing they hold their seats by the same tenure, namely, that of assumption and not of choice. All other parties in the House of Commons choose their Leader, except the Tory and the Liberal parties. In the Tory party this is lordlike and natural. In a Democratic party it is not so. There the Leader should be chosen by those whom he is to act for and over. I have heard one of

these gentlemen say that he was chosen by the party. That was not correct. I have been twelve years and more in the House, and was never summoned to a meeting of the party except once, to be told that Lord Rosebery had been appointed my Leader by somebody or other, and was already doing business as such. What can you expect in a self-chosen and self-imposed director, except lordly sympathies and temper—not a good preparation for a battle against the Peerage. Then there may be a difficulty about the electioneering cry. "Down with the Lords" always tells, but I question if "Half-down with the Lords" would produce much effect. "Abolition of the Lords" thrills, but I am afraid that "Clipping the wings of the Lords" might fail to move.

But suppose these difficulties overcome, and that some one takes the field, and persuades the people to demand resolutely that something effectual shall be done with the House of Lords, a demand in which they, of course, would be deeply interested parties. What next? May I state at once what I should like to see done if I could have my way? I should abolish the House of Lords, root and branch, hereditary power and hereditary honour alike, and in its place I should put another Chamber, absolutely the creation of the popular will, but chosen at a different time and constructed on a different basis from its neighbour, so that the full history and the different attitudes, and not merely a single passing mood, of the public mind might be present in the management of the nation's affairs. I should

not call it a Second or Revising Chamber; either chamber would be first and originating, or second and revising, according as legislation began in it, or was received from the other for consideration.

In any agitation against the House of Lords it seems to me almost fatal to propose that the House of Commons should be left absolutely supreme for seven years, or even for three years if it so choose to limit its duration, of which there could be no certainty especially if it were a Tory House, without some other authority to watch it in the interests of the electorate. I believe there is a sufficient number of people in the Liberal ranks who dread "hasty legislation," or "skilful lobbyists," or "small majorities" to deprive such an agitation of much of its force. "Two heads are better than one" and "Second thoughts are best" are homely maxims, but they are of priceless importance in great and even small affairs. The analogy from the unicameral aspect of Town and County Councils is misleading, because they are in reality second-chambered by parliament itself, watching them at every turn through the checks imposed by the Acts that created them. The examples of warning drawn from the French and American Senates fail, because they assume that no other constitution than theirs is possible; while to quote the House of Lords as an instance of what "second" chambers are likely to become almost amounts to intellectual dishonesty. The vehement opponents of the bicameral idea run the risk of marring the general cause by raising the suspicion that what they are aiming

at is to rush their own favourite notions and take the nation by surprise. Possibly with an absolute House of Commons the dormant Royal Veto might be revived, and the Privy Council or some unseen clique or cabal turned practically into a revising or vetoing chamber, which would not be an improvement. To propose that the question of two chambers should be postponed until after the House of Lords has been rendered powerless is to decide preliminarily in favour of unicameralism.

To return from this digression. I was assuming that the Lords were being put under strong pressure to surrender their unjust and mischievous powers or part of them. If in a partially yielding mood, their first offer would no doubt be to reform themselves. But the Bill that would be certain to be brought forward could not by any possibility satisfy any person of democratic convictions. It would no doubt be drawn somewhat on the lines of Lord Salisbury's Life Peers Bill of 1888, by which a few distinguished men in different walks of life were to be ennobled for life and mixed up with the general mass of the Peerage. This would be no improvement at all. The new Peers would not be chosen by and representative of the people any more than the old ones, and would soon assume the colour of the medium into which they had been thrown. It has been proposed to limit the number of hereditary peers by having a delegation of them only in the House. But that would do no good. It is not the size but the quality of the House that is complained of. Indeed the scandal would be

greater to have the nation contradicted and coerced by a smaller number. There is really no "mending" of the House of Lords.

Among proposals for mitigating the evil state of things, two suggestions by two ex-Cabinet Ministers merit early attention out of respect to their authors. Mr John Morley has suggested that peers should be allowed to sit in the House of Commons, provided they make up their minds to give up the right of peerage, and once for all make themselves eligible as representatives of parliamentary constituencies. I understand he means that they would forfeit, among other things, the power of transmitting their old powers and honours. I do not suppose the Lords would veto Mr Morley's Bill for making a Lord a Commoner. But how it would improve them I do not see. The Lord who would do what Mr Morley suggests would be a very heroic person indeed; because he might not get a seat in the House of Commons after all. To withdraw all the heroes from the House of Lords, and have their places filled with commonplace men, would, in my opinion, make it worse instead of better. Besides, the absurd and oppressive hereditary character of the House would remain untouched. No wonder Mr Morley himself afterwards said that he did not think it would be enough. It really is not anything.

In connection with House of Lords reform Mr Asquith has launched the Referendum, with the countenance of at least one Liberal peer of great sagacity and experience. I do not say that he has

gone so far as to recommend it as a solution of the problem ; he says that he only throws it out as a suggestion worth considering. But when a man of Mr Asquith's calibre and foresight puts forward the Referendum as worth considering, it probably is so, and his suggestion is a sign of the times. I suppose the way in which it would work would be that the House which had a Bill rejected should be entitled to ask the people whether the Bill ought to pass or not, and that their decision should be final. There might be worse solutions than this. Would the Lords accept it ? Their principle of submitting to the wish of the people when unmistakably declared should make them do so. Of course the evil of a non-elected chamber would still remain, but there would be this vast difference, that whereas at present the yielding of the Peers is a matter of favour to the people, under a Referendum law it would be the constitutional right of the people to command, and the constitutional duty of the Lords to obey. Instead of being the masters, they would be the servants of the people.

Be that as it may, if certain of those proposed reforms, which involve an absolute and unchecked House of Commons, became law, and indeed in any case, the principle of the Referendum, if not also of the Initiative, would seem to be essential to the protection of the people. The characteristic feature of the Referendum, as usually practised, is not so much that the people should have a law submitted to them for approval or disapproval, as that they should, by means of suitable machinery, step in and

say, "We will or will not have this law, just passed by our legislature;" the Initiative being a corresponding right to say, "We wish a law, to effect this or that purpose, worked into shape and carried by our legislature." Now suppose the House of Commons standing alone with no constitutional check. Many Liberals, animated by a happy-go-lucky spirit, assume that with the House of Lords out of the way, everything would proceed on the most advanced Liberal lines. We should have triennial Parliaments, and who knows what all, that Liberals want. They forget we should sometimes have Tory Houses of Commons, perhaps stronger than ever, because they would be frantic to recover lost ground.

It must further be remembered that by that date a good deal of practical revolution would have taken place, and that we should be living in revolutionary times. I do not object to revolutionary times as such. They are often useful and even necessary, but they require a different handling and engender a different way of action from non-revolutionary times. In revolutionary times, men will stick at nothing to effect their purpose. Instead of voting triennial parliaments, a strong and angry Tory House of Commons might vote an extension of the present term, as has been done before now (witness the Long Parliament and the Septennial Act), that it might prolong its power and work out the reaction. As somebody has said, there would be nothing to hinder it from voting itself perpetual. Even under the present House of Lords, this would be impossible, who-

ever tried it, because of the jealousy and self-preserving prudence of the House of Lords. Or something else equally outrageous and disastrous to public interests might be done by exasperated reactionaries. In such a case, I should wish the people to have the power to protect themselves by coming on the scene through the Referendum and saying, "No you sha'n't; we will not have this evil law; so there is an end of it." Of course there are other powerful arguments in favour of the Referendum, but they do not belong to this topic. It is much to have had it so influentially mentioned.

There is a class of Reforms connected with the Veto of the House of Lords which fall short of total abolition, and leave the House standing, with its social prestige, and in some cases one or two small legislative functions. Of course with respect to all of these it must be remembered that the consent of the House of Lords must be obtained to the Bill embodying any of them, and it is for Reformers to consider how far this is likely to take place, and by what means it is to be effected. It is a little unfortunate that there should be this diversity of view, and that all the plans agree in making the House of Commons absolutely supreme and unchecked. This is certain to strengthen the hands of the opponents of Reform, unless some unity of plan and purpose is arrived at before any general agitation is entered on. As matters stand, however, there are at least three distinct kinds of proposal before the public mind in this connection: (1)

What is called the Suspensory Veto; (2) The entire abolition of the Veto; both proposals apparently leaving to the House of Lords the power of initiating legislation, and No. (2) that of mildly suggesting probably ineffectual amendments to all House of Commons Bills whatsoever, and (3) The entire abolition of the legislative function of the House of Lords. I would say at once that the last of these seems to me the best, for reasons which I shall give presently. If a Bill proposing it were introduced, I should satisfy my political conscience by moving two amendments, one abolishing the remainder of the House of Lords, and the other demanding a democratic check upon the emancipated House of Commons; but I should be disposed to support it as against any competing Bill of the same order.

How would the "Suspensory Veto" work? The proposal is that the Lords shall be entitled to veto a Commons Bill once, but that if next session the Bill is again passed, it shall become law without reference to them. It has been suggested that the interval might be employed in improving the Bill, so that the House of Commons might become a Second Chamber to itself. But that would not do. It must be the same Bill which was vetoed the previous session, otherwise the courts of law when called upon to apply the Bill, now become or called an Act, might hold it as of no authority, because unconstitutionally passed. The Lords would still hold their honours and the influence so derived intact, and would apparently be able by initiating

objectionable legislation, greatly to assist the Tory Party in the House of Commons. Perhaps it is thought that by means of these reservations, and by leaving the Lords the power of staving off what they consider objectionable legislation, for a year, they may be induced to consent the less unwillingly to the proposal. But the Lords are shrewd enough to see that the next step would be a Bill for their virtual extinction, which after a year would become law. They and their friends will therefore fight the Suspensory Veto as fiercely as they would fight Abolition, and if the Suspensory Vetoists have popular force enough to carry their special point, they have force enough to carry more. Then why not do it?

The same line of remark applies to the proposal for the immediate and total abolition of the Lords' Veto on Commons Bills. It would leave them in show and splendour, with the power of proposing evil legislation, and with the additional and clerkly amusement of annotating Commons Bills which they would like to reject but cannot. I do not think they would care to indulge much in such diversion. Of course every trace of the present system of accepting the second reading of a Bill, and then "mangling" it out of all shape in committee, would disappear under any of these forms of Veto. Under the Suspensory Veto, a Liberal Commons would say to the Lords, "We reject all your mutilations. Will you pass the Bill or not?" If they passed it, well and good, if not, it would become law next year. Under

the proposal before us they would say, "We reject your mutilations, and you must pass the Bill. You have no choice." I need not say that if the Lords will fight the Suspensory Veto tooth and nail, they will fight this other proposal teeth and nails, the one giving them a year's grace, the other giving them none.

The third proposal is to abolish the legislative function of the House of Lords altogether, and leave it simply an honours list in the books of reference. As I have already said, I prefer this proposal to the two that have just been described, subject to the drawbacks affecting them all. In the first place, it deals in the right way with the principle of hereditary power, that is to say, it wipes it away altogether, as an offence against a self-governing people that should receive no quarter. The other proposals leave this evil principle standing, as if it had some claim to consideration, certainly an encouragement to some extent, at least, to its champions, and a weakness to its assailants. It has the substantial advantage of preventing the Lords from assisting the Tory Commons by initiating Tory legislation. It refrains from perpetrating the childish mockery of inviting the Lords to improve Bills which they cannot otherwise handle freely. It has just as good a chance of being carried as either of the other proposals. The Lords and their friends will put forth all their strength against the others, and they can do no more against this. It is a more straightforward proposal than either of the others. It sets out a fair and square issue.

There is to my mind a certain "dodginess" about the others that is scarcely worthy of Liberalism, or of the great issue that is at stake. Large questions should be faced in a large spirit. It is more easily adaptable to that idea of a companion democratic Chamber which a great number of people who are worth conciliating desire to see recognised. And it is better fitted for placing before the people, who get puzzled and chilled among ingenious quirks and devices, but who understand and like a simple and broad issue, and respond to it with enthusiasm.

IV

IF THE LORDS RESIST?

I HAVE already said that the practice of the House of Lords to give way sooner or later to popular pressure stands in a very different relation to the question of their virtual or absolute destruction as a part of the Constitution from what it does to other questions. They might be expected at least to resist longer on this ground than on any other. Various reasons could easily be invented. It might be said that to give way on an ordinary measure was one thing, but to give away the Constitution was another. They might as well give away the Crown. It might be said that the general election had not turned on the House of Lords, but on a number of other issues, and so forth. In short, they might have made up their minds to resist to

the death. In view of such a contingency, various methods have been proposed of coercing the Lords into consenting to their own virtual or absolute extinction. The most familiar is that of creating a sufficient number of peers to swamp the existing House, and carry a Limitation or Abolition Bill. To do so would be to execute what commercial men call "a large order." According to the generally reliable "Whitaker," there are at present 658 members of the House of Lords. It is commonly said by those who ought to know that only forty of these are Liberals, so that to secure a majority of a score or thereby, 600 new Peers would have to be created, giving a total peerage of about 1260 members.

Now, if the Lords believed that this would really be done, I think it probable that they would give way to some extent. They would argue that as they would probably lose their power in the event of the threat being carried out, they might as well save the selectness of their order. But it would be difficult to persuade them that any Minister of the Crown would consider himself justified, in the first instance at least, in straining the prerogative to such an extent. Besides, how could he be sure of the loyalty of all his men? Every effort would be made to corrupt them, and the new sensation of nobility might render a sufficient number of them an easy prey, and then we should be left with all this fresh aristocracy on our hands, with a further addition at the next attempt to pass the Bill.

I am not staggered by the magnitude of the figures. Gigantic evils require gigantic remedies;

and if the 600 new Peers had been called up to abolish the House altogether, themselves disappearing in the general exodus, I should not have complained ; but if they are merely to be employed for the purpose of passing one of the Limitation Bills already discussed, and then remain permanently in the ranks of the Peerage, I regard such a result as full of social disadvantage. It would be as good as doubling the quantity of peer-worship now existing, and surely there is enough and more already. It is to be hoped therefore this mode of coercing the Lords will not be adopted except in a desperate emergency and under enormous popular pressure, and after other methods have been exhausted.

Another suggested method of effecting the same object is precisely the opposite in its form of working. Instead of overcrowding the gilded Chamber, it proposes to deplete it of objectionable members. It seeks to manipulate the Crown prerogative with reference to the issue of Writs of Summons to Peers to attend Parliament. At the beginning of a new Parliament, every Peer receives a Writ of Summons from the Sovereign through the Lord Chancellor to attend, and without this summons he cannot sit. The proposal is to withhold Writs of Summons from Tory Peers, so that if a House of Lords' Limitation or Abolition Bill came from the Commons, it would be certain to be passed. Some people have even gone so far as to suggest that the House might be extinguished altogether during a Liberal *régime* by simply omitting to issue any Writs. The Law Courts, however, would refuse

to recognise legislation that had not been participated in by a House of Lords.

There seems no doubt that this method is a perfectly constitutional one, and that the Sovereign is at liberty to keep back the summons at pleasure. In the famous case of the Earl of Bristol in Charles I.'s time, from whom a summons had been withheld, the Lords themselves regarded the matter as entirely within the discretion of the Crown, and petitioned the King, as a matter of favour, to issue a Writ to Lord Bristol. In the Wensleydale Peerage case, the Lord Chancellor laid it down as law that the issuing of the Writ is neither a right nor a privilege, but a power vested in the Crown, which it may exercise or not at pleasure. The terms of the Writ itself seem to imply this: "Whereas, &c., we have ordered a Parliament to be holden, &c., we strictly enjoin and command you, &c., that, &c., you be at the said day and place personally present with us, &c., to give your counsel on the affairs aforesaid, &c., &c." The Sovereign is not bound to ask anyone's advice. Nobody can have a right to be "strictly enjoined and commanded to give his counsel." It may be his duty to do it when adequately enjoined, but that is a different matter.

Mr Freeman is cited in this connection by Mr Swift MacNeill, Q.C., M.P., an ex-Professor of Constitutional Law, who has made a speciality of this subject, and has set out some very drastic, not to say savage, proposals for crippling the Lords by the non-issue of the Writs. Mr Freeman says: "It is hard to see how, except where they have been taken

away by Act of Parliament, any powers which were exercised by Edward I. can be refused to Queen Victoria;" and then, "one may certainly doubt whether Edward I., when he summoned a baron to Parliament, meant positively to pledge himself to summon that baron's heirs for ever and ever, or even necessarily to summon the baron himself to every future Parliament." No doubt it became the custom; but, strictly speaking, it was a custom in the interest of the Sovereign, not of the baron, the idea of a right to be "enjoined and commanded" being, as I have said already, really a preposterous one. Besides, if the Sovereign withholds the Writ, what can the Peer do? The Court of Queen's Bench cannot *mandamus* the Sovereign. As for impeaching the Lord Chancellor, who has charge of the Writs, or any other Minister who advised their non-issue, that would, of course, have to be done by the House of Commons, which, by the supposition, would be supporters of the Ministry advising the proceedings, and therefore would not undertake the task.

I think, then, we may safely assume that there is nothing in the constitution to prevent the withholding of Writs of Summons from Peers, whether their Peerages have come to them through Letters Patent or the other channel, and so preparing a House of Lords that would welcome, or at all events pass, a Limitation or Abolition Bill. But there is no disguising the fact that it would be a strong and even violent proceeding. The custom of centuries would be against it. Besides, there

would be an element of invidiousness in the distinction drawn between Liberal and Tory Peers in the arrangement, for Liberal Peers are as little representative of the people and as much infected with the hereditary taint as their opponents. A Minister, accordingly, who proposed to adopt this method would require to be supported by a very strong and general acquiescence of popular opinion and feeling. Not that any apology is wanted for adopting any available and effectual means for destroying or mitigating so objectionable and indefensible an institution as the House of Lords. There is no call to be very scrupulous on that point. But there are dangers associated with such a way of proceeding that should be noted.

I do not suppose anyone would deny that it would be revolutionary, although that is not to pronounce its condemnation. But revolutionary proceedings tend to produce revolutionary counter-proceedings. And what I should fear would be that the lordly or aristocratic party, which is also of course the Court party, if led, as it might be, by some able and resolute Peer, might seek and manage to play off the Royal Veto against the party of Democratic Reform. Remember, we are speaking not of these jog-trot days, but of presumably revolutionary times, when anything is possible. It is not to the point to say that if the Royal Veto were proposed to be worked against Ministers, they would resign. Of course they would. But the Sovereign is not bound to Ministers with seats in Parliament. It is a mere

matter of custom and convenience. The Crown could work through Ministers who had no parliamentary seats, and a determined and skilful aristocrat might intrigue to carry on the battle in that way. Now, it seems to me that the only force by which this counter-revolution could be met would be a consensus of popular opinion, so powerful and universal and threatening, that the aristocratic party would be cowed and paralysed in their attempt to work mischief. So supported, a reforming Minister would be justified in doing anything with a constitutional colour that would effect the purpose. Otherwise, it would be of doubtful prudence; for it must never be forgotten that a Tory House of Commons, having learnt the lesson of revolutionary methods from their predecessors, might undo all that they had done, and set the old state of things up again, in fact, reproducing the Restoration.

V

QUIETER PLANS

MANY House of Lords reformers are averse to the strong measures for coercing the Lords into self-destruction or self-mutilation which I have just been describing, and think that success may be reached in gentler ways. Of these the chief is the method of proceeding by way of Resolution of the House of Commons. When, in 1894, at Leeds,

Lord Rosebery, then Prime Minister, made his remarkable pronouncement for Constitutional Revision and House of Lords Reform, he stated that the method of setting about it would be by Resolution of the House of Commons, and, as I understood him, indicated that such a Resolution would be submitted sooner or later to the House. I have never heard any more of it. Perhaps if the Liberal Government had not considered it their duty to throw up their immense power for good, which might have saved us from many evils by which we are now afflicted, because they lost a snap vote on Cordite gunpowder, we might have seen the promised Resolution. Perhaps the Cabinet could not agree among themselves as to the policy of starting an Anti-House of Lords crusade. At all events, it has never been seen to my knowledge.

A learned and thoughtful article, however, appeared in one of the magazines, from the pen of Mr Haldane, Q.C., M.P., discussing the method of proceeding by Resolution, and I think I am justified in believing that the possible Resolution on which he comments contains the substance of what should have been proposed to the House, but was not. Mr Haldane says: "It is not too much to hope that the acceptance of a resolution declaring that the Commons are entitled to be the sole judges of the will of the constituencies would settle the question at issue." There can be no doubt that if the House of Commons passed such a resolution, they would be making a declaration so full of truth as to amount almost to a truism. Of course, as com-

pared with the House of Lords, and on the footing of the Constitution, they alone are entitled to be judges of the will of the constituencies, because they alone have any constitutional acquaintance with that will. That will is indeed representatively embodied in them, as it cannot be in any other quarter except in the constituencies themselves. It is their constitutional business to know, and expound and judge of that will, because they have been chosen for that purpose. But nobody else has been constitutionally chosen for this purpose, and the Commons, in this matter, necessarily remain masters of the field.

Lord Salisbury, in speaking of certain reforms, as he calls them, which he is prepared to make on the House of Lords, describes them as reforms "better to ensure full effect to the deliberate will of the nation." That is very good of Lord Salisbury, but who asked him to take all this trouble? Not the people themselves, about whom he professes to be so anxious. In a democratic nation, Lord Salisbury and his colleagues are simply an aggregation of usurpers, and their leading desire necessarily is to prop and prolong their usurpation with all its unjust privileges. When he says that he wants House of Lords Reforms "to ensure full effect to the deliberate will of the nation," I not only say that that is no particular business of his, and that the deliberate will of the nation would have a much better chance if he and his colleagues were out of the way, but I further say that I do not believe that what he says he wants is really

what he does want. I do not, of course, say that Lord Salisbury is lying, but I say that he incorrectly states the position, because his judgment is warped, his perceptions blinded and his consciousness falsified by the interests of himself and his order. They want to stave off Liberal Reforms as long as possible, not to ascertain the "deliberate will of the people," but to arrest, if they can, that spirit of free and fearless criticism and democratic aggression, which they fear may, as it certainly will, end by demolishing that lordly usurpation of which Lord Salisbury is the exponent and the champion.

The Lords, accordingly, cannot be accepted as constitutional "judges of the will of the constituencies." They may form an onlooker's opinion of it, very much as newspaper editors and descriptive reporters might do, but that does not put them on the same constitutional plane with the Commons in the matter. The Resolution would no doubt be passed by a Liberal House of Commons, and the practical corollary to it would be that the Lords, if acquiescing in the Commons' claim, as they have done before, would reject no Bills sent to them by the Commons, at all events on the ground that the "deliberate will" of the people had not been ascertained. It would be something like the simple abolition of the Veto under one of the other schemes of reform already referred to, and it was apparently expected that a Bill embodying the Resolution as acquiesced in would have no difficulty in passing. There can be no doubt that the House of Commons, in the course

of its history, has greatly extended its powers at the expense of the House of Lords by simple and successive acts of self-assertion, while both Houses by the same process have reduced the legislative function of the Crown to zero.

The control of the finances of the country by the House of Commons alone is the most prominent instance of the success of the Commons in extending their powers by simply claiming the extension, and receiving the acquiescence of the Lords. From a legal point of view there is nothing to prevent the Lords from amending a Money-Bill. But the inconvenience of an inevitable collision with the Commons over such a matter is too great. The last occasion on which the Lords made any such attempt was in 1860, when they threw out the Bill for the Abolition of the Paper Duties. They were strictly within their theoretical right. But the Commons adopted an ingenious device to checkmate them. Having got into the habit of sending their financial proposals to the Lords separately, they now combined them, Paper Duties and all in one Bill, so that if the Lords threw out that Bill they would have stopped the supplies and deranged the whole service of the country. This would have been too much for even an irresponsible Chamber to try, and since then they have lost every vestige of influence over the national finances.

Up to that date the Commons had made great progress in excluding the Lords from finance by the simple process of protesting against their in-

terference and the Lords yielding to the protest. But there is no law on the matter. There is merely a powerful custom. Down to 1628 Supply ran in the name both of Lords and Commons. Then under Coke and Selden it began to run in the name of the Commons, and so has continued; with a steady completion by the Commons of its financial monopoly. The same has been the case with the annual protest of the Commons that the Lords shall not interfere with elections. That is not a law. It is a mere claim, which, however, is invariably honoured. The Lords on their part have also made claims by Resolution in which the Commons acquiesced. Thus they resolved that foreign matter should not be mixed up in Supply Bills with the view of smuggling through objectionable measures under the mantle of Supply, and the Commons have consistently honoured the Resolution.

Would the Lords in a similar manner acquiesce in the suggested Resolution, and fall into a custom of passing all Commons Bills as a matter of course on the ground that their authors were the sole judges of the will of the constituencies, reserving power to themselves to act on their prerogative in emergencies? There does not seem much chance of it at present. Lord Salisbury was extremely defiant and contemptuous, intimated that he did not care though "the Government spent the whole session in passing such Resolutions." The Lords would pass another Resolution, and there might be a dissolution to take the opinion of the

constituencies between the two, but "the electors would vote on the particular matters nearest their hearts without thinking anything about the Resolution," so that a vote in favour of the Government would not be accepted by the Lords as conclusive on the point raised in the Resolution. If the Commons attempted to make a law on the matter by itself, as some one seems to have suggested, it "would not be recognised by the Courts of Law." That is certain. A Cromwellian House of Commons law ignoring the House of Lords is impossible without a Cromwell.

Then there is one point which the Lords may sometimes make against the Commons. They may say, "It may be true that you are the constitutional judges of the will of the constituencies. But if you palpably contradict the will of the constituencies, what then?" I have always been of opinion that the Home Rule Bill of 1893, for instance, which passed the Commons but was thrown out by the Lords, was not what was demanded and expected by the will of the constituencies. What they ordered was simply that Irishmen should manage their own affairs, independently of British influence, at Dublin. What they ultimately got was a proposed order that while Irish affairs should be free from British influence at Dublin, British affairs should be controlled by Irish influence at Westminster. It is impossible to conceive that the constituencies meant this when they "willed" Home Rule; and they showed it pretty conclusively at the next general election. But it ought not to have been a non-

elective body, with no authority from the people, that should have made the correction, but a companion Democratic Chamber, representing a phase of the national feeling not present in the other. The great weakness of the Resolution method is the historical one, that it was never produced by the Liberal Government, and offered for discussion. Rightly or wrongly, that fact has been widely accepted as a sort of negative announcement by the Liberal Government that the Resolution either will not work, or ought not to work, a cold-water operation which has not increased the fire of House of Lords reformers.

Some sanguine reformers, I believe, have tried to persuade themselves that they could gain their end by means of Royal Warrants and Proclamations. It is true that when the Bill for the abolition of Purchase in the Army was thrown out by the Lords in 1872, the Liberal Government resorted to the Crown Prerogative, and abolished it by Royal Warrant. But you could not abolish the House of Lords by Royal Warrant. The only use of the precedent would be to stiffen a Government if ever they thought of making so extraordinary a use of the Prerogative as would be wanted for creating six hundred new Peers or withholding the Writs of Summons. As to Royal Proclamations, you could not abolish the House of Lords in that way either. A Royal Proclamation cannot make new law. It can only apply existing law in modes lawfully competent to the executive. It is true that the servile parliament of

Henry VIII. enacted that the king's proclamations should have the force of Acts of Parliament; but Henry was what a well-known writer's cabman called the magistrate, a "harbitrary gent," and he had scarcely gone to his account when the despotic Act was repealed. Henry's methods are, of course, impossible to-day.

I feel, however, that all this discussion of method is, in a sense, premature. None of the plans which I have tried to describe and criticise is at present of the slightest use or consequence, nor will be until we have command of an immense, earnest, and determined popular feeling and demand, to push some of the plans, or something better. We must first catch our hare. At present that essential quadruped is at large. We must have him, dead or alive. In other words we must set on foot a popular agitation worthy of the name and of the cause. "Agitation" is in many respects a word of sinister association, being often employed to denote dishonest efforts to effect unworthy objects. But an honest agitation to promote a good object would be a laudable employment. And in this case it would mean informing and persuading the people of the seriousness and depth of the evils connected with lordly and aristocratic ascendency, and that is to be employed in a good work. Indeed it is only a continuation of the characteristic work of the Liberal Party for the past hundred years, that is to say, the destruction of privilege in its various forms. There is nothing to hinder the performance of this Liberal duty hand in hand with all needful social legislation.

This agitation will not have been successful unless it has created a national feeling so strong as to force the hand of the Front Bench Opposition gentlemen who, after upsetting the coach, have obligingly resumed the drivership, though with no more democratic appointment to the post by the parliamentary party they assume to lead than the House of Lords itself has to its usurped position. The popular demand must be such as to compel these gentlemen to make a general election turn upon the question of the House of Lords. Their conduct with respect to Lord Rosebery's call to concentrate on the Lords shows that they will not do so except under a National compulsion. Lord Salisbury and his colleagues want to have the power to say that any successful election quoted against them did not turn on the Lords question, but on other things, and that therefore they need not regard it. This must be made impossible.

I know the agitation will be difficult. It will have to encounter many opposing forces ; the conservatism of indolence, as well as the conservatism of prejudice ; that sentiment of the sacredness of rank, which makes even a democrat grovel, and tremble to let his tongue play upon a Lord ; that low view of political activity which teaches the working classes that its sole use is to get them more "sausage and mashed." Men must be taught that this matter involves a high duty to their principles, to themselves, to the security of democratic liberty, and the emancipation of the nation from many corrupting and otherwise

mischievous influences. The agitation will require to be steady and incessant, in season and out of season, so that the popular mind may acquire a thorough grasp of the principles and facts involved, which in their turn will not fail to create a powerful and permanent enthusiasm.

The unwilling say, "Wait for a suitable occasion"; and I have heard clever politicians suggest as a good "dodge," to bring in a Home Rule Bill which would conciliate the Irish, have it, of course, rejected by the Lords, and then sweep them away before a billow of popular indignation. I do not think this would succeed. Not only is it to my mind unworthy of honest Liberalism, but a mere sudden, frothy and feather-headed excitement would never carry the position against the many hard-headed men to be found in the lordly and aristocratic party. With a thoroughly taught and trained people it might be different. The agitation must have money. Above all, it must have men; men of genuine democratic enthusiasm, thorough knowledge of the principles and facts of the subject, eloquence of some kind sufficient to sway the masses, and a willingness to make a life-work of the agitation. The ranting ignoramuses I have heard on rural and even urban platforms will never do. Cobdens and Brights do not grow on every bush, but surely one or two Liberals could be found to devote themselves to a task which, wisely and perseveringly prosecuted, could not fail to be ultimately successful. Who will take the field, and win the honour and gratitude of his country?

IV

By J. G. Swift MacNeill, Q.C., M.P.

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William Pitt, so far back as 1783, was asked by a dignitary of the Roman Catholic Church in what part the British Constitution might be first expected to decay. Pitt mused for a moment, and then answered: "The part of our Constitution which will first perish is the prerogative of the King and the authority of the House of Lords."[1]

The prerogative of the King, of which Pitt spoke, has not, indeed, perished, but it has been virtually transferred from the Sovereign to a Cabinet responsible to the House of Commons, and through the House of Commons to the people at large. "The character of the regal office has," in the words of Mr Gladstone, "been altered;" and "the day when George IV., in 1829, after a struggle, renewed the charter of the Administration of the day and thereby submitted to the Catholic Relief Act, may be held

[1] Stanhope's "Life of Pitt," i. p. 133.

to denote the death of British kingship in its older sense, which had, in a measure, survived the Revolution of 1688, and had even gained in strength during the reign of George III."[1]

It is no exaggeration to say that the exercise of prerogatives which brought Charles I. to the block were strictly within the rights of an English king. These prerogatives were, however, exercised by Charles I. on his own responsibility and against the wishes of the people in the effort to assign to himself as Sovereign a separate and transcendental sphere of action. The Revolution of 1688, by substituting for a king affecting to govern by divine right a statutory monarch deriving his authority from the will of the people, established the principle, which has only received its full development in our own days, that the political action of the Sovereign shall in all cases be mediate and conditional upon the concurrence of confidential advisers responsible to the people. The old prerogatives of the Crown have not then perished. They have, on the contrary, survived, and have been transferred in practice from the Sovereign to the Cabinet, by whose advice the Sovereign exercises them in accordance with the wants and wishes of the people. "The prerogatives of the Crown," in the words of Mr Dicey, "have become the privileges of the people."[2] Mr Bagehot on one occasion recommended a perusal of the powers of the English Sovereign in the pages of "Comyn's Digest," or any other such book under

[1] "Gleanings of Past Years," i. p. 38.
[2] "Law of the Constitution," p. 394.

the title "Prerogative": and Mr Freeman has observed that it is hard to see how, except when they have been taken away by Act of Parliament, any powers which were exercised by Edward I. can be refused to Queen Victoria. "Recent discussions," wrote Mr Bagehot in 1872, "have brought into curious prominence another part of the Constitution. It would much surprise people if they were only told how many things the Queen could do without consulting Parliament; when the Queen abolished purchase in the army by an act of prerogative, after the Lords had rejected the Bill, for so doing there was a great and general astonishment. But this is nothing to what the Queen can by law do without consulting Parliament. Not to mention other things, she could disband the army; she could dismiss all the officers from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a Peer; she could make every parish in the United Kingdom a 'university'; she could dismiss most of the civil servants; she could pardon all offenders."[1] This sensational account of the Queen's powers must be qualified by the remark that the constitutional monarch is, in the words of Mr Gladstone, "only a depositary of power, as an armoury is a depositary

[1] Bagehot's "English Constitution" Intro., p. xxxviii.

of arms, and that those who wield the arms and those alone constitute the true governing authority."[1] Mr Dicey has well said that "if government by Parliament is ever transformed into government by the House of Commons the transformation will, it may be conjectured, be effected by the use of the prerogatives of the Crown."[2] The government of the country which, so far as legislation is concerned, has been impeded and obstructed by the House of Lords, can, as I have attempted to show elsewhere,[3] be transformed into government by the House of Commons by a short and easy method. A Cabinet, strongly backed by the people, have only, in accordance with the mandate of the people, to use a prerogative actually claimed and exercised in his own interests by Charles I., and to issue to some Peers, at their discretion, and withhold from others, the Writ of Summons to attend Parliament, without which a Peer cannot take his seat, which must be issued to him to enable him to take his seat in every fresh Parliament, and which is issued by the Lord Chancellor as a Minister of the Crown and in that capacity alone.

The submission of the people of Great Britain, to be in the words of Mr Chamberlain in 1885, a "peer-ridden people" with the remedy for getting rid of this intolerable incubus absolutely in their own hands, has always seemed to me to be one of the most inexplicable mysteries in the

[1] "Gleanings of Past Years," i. pp. 229-230.

[2] "Law of the Constitution," p. 395.

[3] *Fortnightly Review*, January 1895.

political history of the century. The people of Ireland must be acquitted from all complicity in the support of an institution which has exercised a blighting influence on humanity.

Mr T. W. Russell, M.P., a member of the present Government, speaking at Preston on the 26th October 1885, gives in my judgment a correct appreciation of the House of Lords in the view of Irishmen. "It is quite impossible," he said, "for any man out of a lunatic asylum to defend the House of Lords. But it is there, and it has been there a long time, and I know that the English people are dreadfully conservative. In Ireland we might make quick work of it."

On the 17th May 1889, Earl Compton who has now become Marquis of Northampton and was then Radical Member for the Barnsley division of Yorks, referred to himself in the House of Commons as an eldest son who, against his will, would be removed from that Assembly in order to take part in the deliberations of another Assembly to which he did not wish to go, and proceeded thus in words the significance of which, having regard to the position of the speaker, it would be difficult to exaggerate.

"As far as I can judge, the members of the House of Lords are utterly out of sympathy with the people of this country, and I believe it is the object of a large number of Conservative members to remove that objection by bringing the House of Lords more into sympathy with the masses of the people. The people are being taught not to

be content with the constitution of the House of Lords. Almost every biography one reads of statesmen who have been in the House of Lords speaks in terms of blame of that House. A nobleman who would not be considered a Party man who wielded and still wields a great influence over his fellow-men (Lord Shaftesbury) spoke of the House of Lords on one occasion as having strong feelings of personal and political interest, but little generosity and no sentiment. On another occasion he said of it, 'There is a coldness and insensibility which are positively benumbing.' In 1882, after the debate on the Registration Bill he wrote, 'I consider the extinction of the House of Lords in fact, if not in terms, a foregone conclusion now.' It was living, he said, on suffrance, and it was the suffrance 'of the boa-constrictor in the Zoological Gardens who has a rabbit in the cage and is not quite ready for it.'"

Before the period of the first Reform Act no abuse was perhaps more flagrant than the direct control of Peers over the constitution of the House of Commons. The Duke of Norfolk was, for instance, represented by eleven members, Lord Lonsdale by nine, Lord Darlington by seven, the Duke of Rutland, the Marquis of Buckingham, and Lord Carrington each by six. Sydney Smith, writing in 1821 says: "The country belongs to the Duke of Rutland, Lord Lonsdale, the Duke of Newcastle and almost twenty other holders of boroughs. They are our masters." [1] Can it be contended that the Peers

[1] "Memoirs," ii. p. 215.

have ceased to be our masters when although the rotten boroughs which they controlled in the House of Commons have been swept away, the representatives of the Peer borough-mongers of a past generation can to-day obstruct, retard, and even destroy measures passed by the freely elected representatives of the people? The House of Lords thwarts the wishes of the people to the furthest extent to which such a course is compatible with the preservation of that institution and it is worthy of note that the monarch of these realms has twice intervened by beneficent suasion to save the House of Lords from a well-merited destruction. In 1832, William IV., by the exercise of his personal influence, induced the Lords to desist from further opposition to the Reform Bill, and in 1869, Archbishop Tait, at the request of Her Majesty Queen Victoria as is recorded in his biography by his son-in-law, the present Bishop of Winchester, became the medium of persuading the House of Lords to allow the Irish Church Bill to pass its second reading. General Grey, writing to the Archbishop by the Queen's command on June 4, 1869, while stating that "Mr Gladstone is not ignorant how deeply the Queen deplores the necessity under which he has conceived himself to be of raising the question (of the Irish Church disestablishment) as he has done," and that "Her Majesty's apprehensions still exist in full force," proceeds: "But considering the circumstances under which the measure has come to the House of Lords, the Queen cannot regard

without the greatest alarm the probable effect of its absolute rejection in that House."[1]

Would it not be preferable for the representatives of the people to exercise their unquestionable power to direct their servants, the Ministers of the Crown, to bring the House of Lords into accordance with the wishes of the people by the exercise of a discretion by the Lord Chancellor as a Minister of the Crown in the prerogative of issuing to Peers or withholding from Peers of Writs of Summons to attend Parliament?

I have, in the article to which I have referred, endeavoured to show that such a course is absolutely consistent with historical and constitutional precedent. So far as I am aware, the facts I stated and the arguments on which I based my contention are irrefragable. Indeed a legal dignitary of the very highest eminence told me that in his opinion it was wholly within the power of the Lord Chancellor as a Minister of the Crown, in consultation with his colleagues, either to issue or to withhold the Peers' Writs of Summons to attend Parliament. A few months after the writing of my article there was a remarkable, but wholly undesigned confirmation of my contention. The Earl of Selborne, who had been Lord Chancellor of England from 1872 till 1874, and again from 1880 till 1885, died on the 4th May 1895. His eldest son, Viscount Wolmer, who had been elected to the House of Commons at the General Election of 1892 for West Edinburgh, appeared

[1] "Life of Archbishop Tait," ii. pp. 23-24.

on the 13th May in his place in the House of Commons, although he had notoriously succeeded to his father's peerage. Lord Selborne's contention, put shortly, was this, that although he was a Peer of the Realm, he was not a Lord of Parliament, and did not become a Lord of Parliament till he had taken his seat in the House of Lords, and that it was wholly within his own option to apply or to refrain from applying to the Lord Chancellor for a Writ of Summons to the House of Lords. Mr Curzon stated at Lord Selborne's request that in this action he was fulfilling the wishes of his father, the late Lord Chancellor. The House of Commons, without expressing any opinion on the question as to the effect of the issue of the Writ of Summons from the Lord Chancellor to attend the House of Lords, and acting on the report of a Select Committee, that "the Hon. William Waldegrave Palmer, commonly called Viscount Wolmer, has, since his election to this House, succeeded to the Earldom of Selborne in the Peerage of the United Kingdom," issued a writ for the election of a member to succeed Lord Selborne in West Edinburgh. Lord Selborne in due course applied for his Writ of Summons to the House of Lords, and was introduced with the usual formalities to that body.

Lord Selborne's contention that he could delay or refuse to apply for a Writ of Summons to the House of Lords, and that during this interval he was, although a Peer of the Realm, not a Lord of Parliament, has, independently of any claim to sit

in the House of Commons, the sanction of high constitutional authority. The distinction between a Peer of the Realm and a Lord of Parliament is clearly stated in the third report of the Committee of the House of Lords on the dignity of the Peerage: "The union of England and Scotland first, and the union of Great Britain and Ireland afterwards, have had the effect of creating a clear distinction between the character of a Peer of the Realm and that of temporal Lord of Parliament, but a distinction previously existed in some degree in the case of minors or of women claiming to be Peeresses in their own right, and with respect to such persons also as being Peers of the Realm by right might not have thought fit to qualify themselves to sit and vote as Lords of Parliament."[1]

In a very admirable memorandum presented to the Select Committee of the House of Commons (Vacating of Seats) by Mr George Curzon (now Lord Curzon, Governor-General of India), and circulated by the desire of the Chairman of that Committee, Mr Asquith, the following statement is made as to the practice in the application to the Lord Chancellor of Writs of Summons to the House of Lords:—

"A preliminary declaration is usually made to the Lord Chancellor by some relative or representative on behalf of the claimant to the title as to the circumstances of the family (*e.g.* the death of elder brothers, if any, and certificate of such death) and as to the grounds of claim by the

[1] P. 33.

claimant. The Lord Chancellor then asks for evidence, and the heir must produce to his satisfaction—(1) a certificate of the marriage of the late Peer, if he be his son, or of his own father; (2) a certificate of the burial of the late Peer; (3) a certificate of his baptism; (4) an extract from the journals of the House of Lords showing that the late Peer or one of his direct predecessors in title and of the same patent took his seat; (5) the patent of Peerage.

"When the Clerk has satisfied himself from these documents, he then orders the issue of a Writ of Summons by the Clerk of the Crown."

Mr Curzon's memorandum proceeds:—

"Not only is this true, but so long as such evidence is withheld, even though it be intentionally withheld, the Lord Chancellor does not require it, and has never compelled it. *Vide* the cases of the late Lord Tenterden and the present Earl of Iddesleigh, who refrained for some years after their succession to the titles and dignities of a Peerage from applying for a Writ of Summons to the House of Lords in order that they might continue to hold office in the Permanent Civil Service (Permanent Under Secretary for Foreign Affairs and Chairman of the Board of Inland Revenue), believed to be incompatible with a seat in Parliament.

This exposition of the practice is, I believe, absolutely accurate. It is given in the passage I have cited more succinctly than in Mr Curzon's speeches in the House of Commons with reference to the Selborne Peerage. The effect of this position is

virtually to demonstrate that the Crown can at its own option postpone the issue of the Writ of Summons to the House of Lords. This was clearly seen by Sir Richard Webster, the present Attorney-General, who in a speech in the House of Commons on May 21, 1895, in endeavouring to refute Mr Curzon's contention, said, "that the proposition that a Peer of the Realm need not be summoned to the House of Lords unless he wished, and that if he chose to abstain for any length of time from asking for a Writ of Summons, such writ could not be issued to him, was equivalent to the statement that the Crown could of its own option postpone the issue of the Writ. A more dangerous doctrine than that the Crown can abstain from issuing a Writ could not be conceived. In the reign of Charles II. (the Attorney-General evidently refers to the case of Lord Bristol in the reign of Charles I.) the Crown attempted to summon a certain number only of Peers to Parliament, but the attempt was resisted, and it had been recognised for two centuries as the constitutional right of every Peer of the Realm to be summoned to Parliament. If his hon. friend declined to depend, as he believed he must, on the doctrine that the Crown could postpone the issue of the Writ, he could only fall back on the other alternative, that a Peer could apply for a Writ or not as he chose."

Mr Curzon's exposition of the practice in the issue of Writs of Summons to the House of Lords, which, as I have said, is in my judgment correct, fully brings out the contention of Sir Richard

Webster in his attempt to impugn it, that its acceptance renders necessary the acceptance of the doctrine that the Crown can at its own option postpone the issue of the Writs of Summons to the House of Lords. It only remains for a Cabinet secure in the confidence of a majority of the House of Commons who are faithful mouthpieces of the wants and wishes of the people to make, by this course of action, in the words of Mr T. W. Russell, "quick work of the House of Lords."

V

By Michael Davitt, M.P.

I

The House of Lords has been so persistently identified with the denial of justice to Ireland that it becomes a difficult task for a democratic Nationalist to write his views of that branch of the British Legislature without prejudice or anger. This admission tells, of course, against the weight and value of a judgment confessedly biased. I am, however, as free to admit, as I am bound to recognise, that an institution so essentially English is not likely to suffer much damage in the esteem of Lord Salisbury's fellow-countrymen as a result of any recorded antipathy of mine. To expect otherwise would be to ignore the fact that the very worst sins of commission and omission which history can lay at the law-making door of the Peers relate to this rule of Ireland by England; a fact which must tell more for than against the hereditary Chamber with the great majority of Englishmen. But if an Irishman of my way of feeling thinks angrily about the House of Lords he thinks earnestly also, and by way of apology for holding

and expressing strong views, he can quote the American writer who held that every real thought on every real subject knocks the wind out of somebody or other, and as soon as the breath comes back he very probably begins to expend it in hard words. What other words can one truthfully use when dealing with the treatment of the Irish people by the House of Lords?

As far as my reading of Parliamentary history goes I am led to believe that there is not a single instance on record in which this Chamber initiated a measure of useful reform, or one of an ameliorative nature of any kind, for the good of Ireland. If I knew of one such redeeming action I would acknowledge it, if only to emphasise by its solitary instance what I am safe in asserting to be the general testimony to its changeless hatred and hostility. Nor is this the case merely with respect to some particular phase of the Anglo-Irish question. It covers the field of legislative effort in every attempt that has been made within the century of the Union to obtain due recognition of the claims of the people of Ireland to popular rights, religious freedom, educational liberty, land reform or local self-government. O'Connell, speaking in the House of Commons in 1835, declared that "the House of Lords in dealing with Ireland treated everything of conciliation or justice with contumely or contempt."

It is not only that the Peers were legislatively anti-Irish on their own account; they thwarted, whenever possible, any attempt made by the

Commons to redeem the promises made by Pitt when carrying the Act of Union or to remedy some outrageous grievance that could no longer be inflicted upon the Irish people with safety to the interests of English government. It is not alone in its own blind enmity that it has sinned against us but, in a far greater degree and extent, by the malignity with which it has ever striven either to destroy the reforming endeavours, such as they were, of the other House, or, failing to do this, to render them as weak and as unsatisfactory as obstructive opposition could possibly do. Sixty years ago Mr Roebuck indicted the titled wreckers in his place in Parliament for this evil work in memorable words:—"You have tried on your knees," he said, in addressing the House of Commons, "to obtain justice for Ireland, and what has been your reward? Contempt and scorn. Your enemies have trampled upon your measures; they have contemptuously delayed, changed, or rejected them, as the humour of their insolence suggested. What ought you to have done? What you did not dare to do. You should have boldly told the people of both countries that justice could not be gained by either while an irresponsible body of hereditary legislators could at will dispose of the fortunes and happiness of the people. We have laboured in order to relieve the miseries of Ireland, and if possible to heal the wounds inflicted by many centuries of misrule. Every year sees our labour rendered abortive by the headstrong proceedings of the House of Lords."

II

WHENEVER this policy of insolent antagonism has been changed into one of a reluctant assent to a Bill of some value it has been owing either to the pressure of disturbance in Ireland or to some bribe offered as a *quid pro quo* to the Irish landlords. Force and bribery are the only arguments to which this assembly of landlords, plutocrats, and bishops will listen when the question of Ireland comes before it. Though deaf to the pleas of reason and justice it is amenable to that of popular menace or of corrupt considerations. This is the only way in which such reforms in the condition of Ireland as have been won since the days of O'Connell, were assented to by the House of Lords. The stories of the Anti-Tithe war, of the subsequent agrarian movements, of the "intensity of Fenianism," of the Land League organisation are but the records, in an extra-Parliamentary sense, of the measures which the stubborn Lords had to consent to pass after having refused again and again to agree to milder proposals when advocated as guarantees for the peace and tranquillity of the country. Every deed of violence provoked by a delay of justice during the century can thus be brought home to the moral responsibility of the House of Lords to, at any rate, the extent to which the whole Imperial Parliament does not share in this accusation through its corporate resistance to the reasonable demands of the Irish people.

The most flagrant instances of the corrupt side of

the House of Lords in recent years are those connected with the English Agricultural Rating Act and the financial part of the Irish Local Government scheme. As landlords, owning one branch of the Legislature, they were enabled to levy a toll of ten millions for their class and farming supporters in Great Britain, while they managed to procure £350,000 a year for ever, for their Irish brethren, plus a great enhancement of the value of their property in return for permitting an instalment of justice to become law. About this latest piece of legislative "boodling" there was virtually no disguise. It was carried out in the open on the admitted plea that it would be perfectly useless for any ministry to expect the House of Lords to pass such a measure for Ireland without the provisions which secured to the land-owning class of that country the consideration provided in their exemption from the payment of poor rate as proprietors. To find a parallel for this successful raid upon the taxpayers' pockets one would have to go back to the times when the robber-barons of the middle ages compelled merchants, travellers, and others to pay them blackmail for the privilege of carrying on a business near their castles or of using the roads of the country, or for some other exercise of individual liberty. Probably the morals of the period lent some semblance of right to this exercise of predatory power. These titled bandits gave some protection, against rival robbers, to those from whom this blackmail was exacted. And, there was an element of personal risk in the calling

of a noble footpad that redeemed to some extent the infamy of his prerogative and practice. As a rhymster in an American journal once put it :—

> The robbers of old were brave and bold
> And seldom put on any frills,
> But the Lords of to-day have a different way
> And the taxpayers foot up their bills !

III

THE Lords have improved upon, at least, the methods of the earlier professors of the aristocratic cult of grab. They can "hold up" the taxpayer with impunity, with no risk to life or limb, and can more successfully play the game of helping themselves to what belongs to the community than those who exercised the calling in the clumsy ways of the darker and more dangerous ages. Their vantage ground lies in their possession of the Second Chamber of the law-making assembly, and the power of moulding laws is more advantageous to them than the power to break them. Here they are entrenched, and it looks as if here they are to remain despite Radical opposition, be the same more or less sincere.

Where is the use of discussing whether it is better to "mend or end" such an anomaly as a landlord-ridden Chamber in face of the indifference with which the English people complacently allow the same class to hold the land of the country as its property ? There is no real movement in England against the House of Lords because

there is no earnest popular opposition to land monopoly. If the English farmer cannot cultivate his grain or carrots without his landlord; if the workers of Great Britain are about equally divided in opinion as to whether landlords or the State should own the soil; what hope is there in face of these facts, and in view of the pro-aristocratic leanings of almost the whole middle class, of obtaining any overwhelming popular mandate against the power of the Peers? None. If those who suffer most from the evils of landlordism in country and town continue to glory in the proud privilege of the Briton to be ruled by his "superiors," and are content to provide them with the wealth with which to prolong that rule, it is hopeless to expect the uprise of any real democratic movement which would make the rule of the people by the people a reality instead of the sham it is to-day.

The Liberal Party fears to tackle the House of Lords because of the snobbish spirit which lies somewhere latent in almost every Englishman. What I have seen and observed during the past few years in England convinces me that a movement against the House of Lords as a portion of Parliament will take no hold of popular imagination. The people worship wealth and rank. Radical papers publish the movements and the doings of dukes, lords, and baronets on their best pages, just as the Tory organs do, and presumably this is done because the newspaper-reading masses want to know all about the doubly-dear classes in their parties during the season, their shootings in the

autumn, and how they fare when the annual rounds of pleasure and gaiety take them to the various "cures" where Continental waters are made to repair the injuries done by native indigestion. No. The House of Lords has built up its usurped power on the successful grabbing of the land of the country. That power will not be endangered by the Parliamentary assaults of Radicalism. It can only be fought and beaten by Rent. The ancient Witenagemot was the people's council chamber. The land-grabbers have made it the stronghold of the rent stealers. When the people make up their minds to stop the stealing the House of Lords will give very little further trouble to the movement of English social democracy. When will that be?

VI

By Sir Wilfrid Lawson, Bart., M.P.

My opinion is that the House of Lords is ONE OF THE MOST ABSURD AND MOST MISCHIEVOUS INSTITUTIONS IN EXISTENCE.

I presume that the work of legislation is admitted to be about the most important work in which a nation can engage.

I know of no other important work which is committed to persons to carry out simply on account of their birth.

Everyone would laugh at the idea of an hereditary shoemaker or candlestick maker, but the intense absurdity of an hereditary lawmaker never seems to occur to numbers of otherwise perfectly sane persons.

As to arguing the point, I never know what there is to argue about. That a man being the son of his father warrants his being good and wise—the two qualities required in a legislator—is a statement which almost paralyzes me ; it seems to be so utterly and absolutely contrary to everything which we have heard or read of in the history of the human race.

However, the defence of the House of Lords is generally muddled up with vague talk about the

virtue of having two chambers. But what has that to do with the question? If the nation desire it, let it have two and twenty chambers. All which I object to is that the elected representatives of the nation should be thwarted, "let and hindered," by a handful of individuals who have done nothing except take the trouble of being born.

Certainly the English nation is a most peculiar one. Its citizens talk about freedom, independence, etc., etc. They speak with lofty contempt of Pashas, Mandarins, and "Ju Ju" men, and all the while they submit to be governed by a hereditary aristocracy.

VII

BY J. H. YOXALL, M.P.

I

ONE need not spend words here in condemning the House of hereditary legislators. It is, of course, archaic, absurd, and malign. But that is not the question ; sentence has long been passed ; the question is, How to execute the verdict ?

I should be a root-and-branch man, I should be a one-Chamber man, if, at the outset, it were worth the while. But even the most cursory review of English constitutional history is enough to show the futility of proposals for sudden, drastic, and wholesale change. Besides, the time is not auspicious for constitutional revolution. At present John Bull is fat, sleek, and sleepy. It is your lean and hungry nation that cuts a knot, and it will not be easy to persuade the English people even to make the effort to untie it.

There is only one *legal* short way to the single Chamber ideal, and that is impracticable. The direct way would be to cause the House to commit suicide. But the creation of new Peers enough to vote the House of Peers out of existence is hardly feasible. The Crown might decline to issue the

patents, and the Crown has the prerogative so to decline. Most likely the new Peers, were these patents issued—perhaps *because* the patents were issued and irrevocable—would make difficulties when asked to commit the happy despatch. In any case, the Abolition Bill carried through the two Houses by a bare majority, as at the best it would be, would seem to the Crown and to a great party in the nation the result of an odious, arbitrary, and almost unconstitutional device. All through the process of this "short way with the Peers" we should be treading the verge of revolution. Englishmen are more likely to use force to conserve than to destroy, and a revolution, if it came, might be *for* the House and not against it.

No, under even the most favourable conditions in the House of Commons, we could not do away with the House of Lords at one blow. There will have to be several moves in the game before the word "mate!" can be uttered. Reformers themselves are by no means agreed that no Second Chamber ought to exist. Many of them would rather transform the House of Lords than erase it. So to the out-and-out root-and-branch man I say that transformation is the first step, and at first the only practicable step, towards his ideal.

There will have to be several moves in the game, and I do not agree that the first move should be an attempt to abolish the Peers' Veto. Remember that we have, in any proposal, to appeal to the political common sense of the indifferent Englishman, of that third citizen in every triplet of voters

who is neither Liberal nor Tory, Radical nor Liberal Unionist. Now the common sense of Englishmen would ridicule the suggestion of a Second Chamber devoid of power. Moreover, the legislative process of abolishing the Peers' Veto would be almost as difficult and dangerful as the direct attempt to abolish the House altogether.

I assume, therefore, that (1) one must needs contemplate the existence, for years after reformative action has begun, of a Second Chamber possessing the power of veto. No doubt that Chamber will continue to be called the House of Lords. Titles are tawdry things in themselves, of course, but every country has its titles ; titles are of the essence of human nature. "Senator Jackson from Mississippi," as a designation, does not differ in kind from "Lord Howard of Effingham." Titles have been abolished in France several times these hundred years past, yet the country swarms with the *Baron*, *Comte*, and *Marquis ;* moreover, "M. le Sénateur" is as much a title as is "My Lord." The prefix *Lord* is the customary British designation for a member of the Second Chamber, and we shall not evoke enthusiasm at the polls in favour of exchanging it for the prefix *Senator*. Besides, this customary British designation has been the incentive and the reward of hundreds of distinguished leaders and servants of the nation. Their assumption of the title has rendered it respectable. The deeds of Nelson, Lawrence, Lytton, Mansfield, Brougham, Napier, Stratford de Redcliffe, and Brassey, for example, were wreathed about the titles they

won, and illustrated the order they entered. The illogical, practical, conserving Englishman will not break with all this all at once. So long as there is any Second Chamber in this country, one door into it will continue to be the title conferred on distinguished servants of the nation, and the Second Chamber will continue to be called the House of Lords.

II

I ASSUME, then (2), the continuance of a Second Chamber called the House of Lords. But I do not postulate the continuance of a House of *Hereditary* Lords. I suggest, as the first move in the game, THE ABOLITION OF HEREDITARY SUCCESSION TO A SEAT IN THE SECOND CHAMBER. The titles baron, viscount, marquis, and duke might descend as they do now, and die out eventually, as often they have done in the past; but we ought to enact that hereafter no successor to a title should *ipso facto* possess a seat in the Second Chamber. I suggest this as the first instalment of reform because it is politic, because it is justifiable to the business interests of the average Englishman, because it is evolutionary and not revolutionary, because it is in keeping with that stepwise piecemeal progression which has been the law of the development of the British Constitution, and, above all, because it can be done.

Consider how many difficulties inherent in any more complex first proposal this plan would smooth

away. There would still remain a Second Chamber; the Crown would not cease to be the fountain of honour; the incentive and reward of the Peerage would still shine before the eyes of distinguished men; the successor of a Peer of Parliament would still be a lord, though not a member of the House of Lords. Four sources of opposition to any more thoroughgoing abolitionary proposal would be appeased—the cautious elector, the Crown, the ambitious commoner, and the eldest son. As the eldest son would inherit the territorial and social value of the title, in most cases he would esteem the withdrawal of the legislative function a gain.

No doubt the impatient root-and-branch man who does not read me to the end will read so far with angry disappointment. He will denounce my proposals as faint-hearted and hardly worth the whistle. I answer that what I suggest is to be regarded as only the first instalment of reform, that it is the only instalment at present procurable, and, also, that the change would secure for us a Second Chamber of members more capable, more wise, less ignorant of the currents of national thought, more versed in the affairs of the Kingdom and the Empire, more amenable to public opinion, less jealous of the House of Commons, less subject to the dictatorship of a Salisbury, and more equally divided into parties, than the hereditary Peers can ever henceforth be. The elimination of the hereditary legislator, at each death of a present Peer, would eventually cause the Second Chamber to become a House of created Peers.

A House of created Peers would be less independent of the House of Commons and the Government of the Crown, and therefore more adaptable to future reforms, than such a House as the one we now suffer from. Obscurely conscious of all this, the Lords have always voted or schemed against the creation of life-Peerages. The insistence on hereditary succession and the operation of the unwritten law whereby a Peerage is never given to a man with a son to succeed him but no considerable estate to bequeath, have checked the infusion into the House of able commoners, have buttressed its privileges, and strengthened its political power. A House of created Peers would be infinitely more useful and vastly more reasonable than we can ever hope for an hereditary House to be; more useful for the present, more malleable in the future. What I am suggesting is a half-way House of Peers, erected at a stage upon the road to complete reform. The next stage would be, either to make the House elective in its constitution like a senate, or to do without a Second Chamber altogether. I do not wish to waste time and thought and effort on things that lie wholly in the future, though I would pave the way for them. What one is here concerned about is the most feasible and imminent method and instalment of reform. At present the development of the Constitution on democratic principles is arrested, and so long as we demand and aim at what is not immediately practicable, the check in that development will continue. A block in Cheapside is not

scattered by dynamite; vehicle by vehicle it shifts away. Hereditary succession to the function of law-making is, I think, the vehicle at the head of the block.

III

I ASSUME, therefore (3), that the abolition of the hereditary principle is the immediate objective of the first move in the game, and I propose the introduction of a Bill to the effect that thenceforward no person shall be called to a seat in the Second Chamber by reason of the inheritance of an English Peerage, and that no inheritor of a Peerage may be elected to represent the Peers of Scotland or Ireland.

I suggest a Bill in the Lords,[1] and not a Resolution in the Commons. Resolutions in the House of Commons have had weight with the Peers in days past, no doubt, but these were days when the Upper House was more evenly Whig and Tory, days when titles and wealth were not so uniformly on the side of one party. A mere Resolution in the Commons would have little influence with a House of Lords that is ten-elevenths Tory. The Peers might utterly ignore such a Resolution: a Government Bill introduced in the usual course they could not ignore.

[1] "All Bills that may, in their consequences, any way affect the rights of the Peerage are, by the custom of Parliament, to have their first rise and beginning in the House of Peers" (Stephen's "Commentaries on Blackstone").

I shall be answered that the House of Lords would throw out the Bill ; that they would defend the hereditary principle as stoutly as even the existence of the House ; and that the struggle might as well be undertaken on the larger issue while we are about it. Now the Peers certainly would defend themselves, and might defend themselves successfully on the larger issue ; but against a Bill narrowed to an attack on the hereditary succession to legislative functions only, the Peers could not defend themselves with success, and many of them would not think the defence worth while. For a Second Chamber would continue ; a Peer's son who distinguished himself as leader or servant of the nation would have at least as good a chance as any commoner of being *created* a Peer of Parliament ; the heir would succeed to the title though not to the Parliamentary privilege ; and there would be no deprivation of social rank. A good many Peers who never attend the House themselves, and the heirs of such Peers, would regard the Bill with equanimity, no doubt.

But let us suppose that the Peers defended the hereditary political privilege and threw out the Bill a first time. Would they receive the support of the country? I do not think so. If the Bill proposed the abolition of the Second Chamber all the Unionists and a proportion of the Liberals in the country would applaud the rejection of the measure. But nobody can defend the theory of an *hereditary* House of Legislature. Even by Unionist politicians the House is regarded at the

best as occasionally useful and generally harmless. A proposal to abolish birthright whilst retaining selection, to gradually eliminate the mere heir and gradually multiply the Peer of distinguished service, would commend itself to the political common-sense of that "third man is the triplet" to whom I have already referred. Any assertion by hereditary Peers of the hereditary principle, in the face of a moderate Bill, would be likely to evoke in the typical Englishman that spirit of detestation for privileges not broad-based upon the people's will, and that tendency towards cumulative constitutional reform, which are always latent in our fellow-countrymen. Slow to raise a theoretical question at any time, the typical Englishman, whenever a theoretical political question is raised in the practical shape of a Bill, knows well on which side to throw the weight of his vote and opinion. The hereditary Peers might cast forth the Bill a first time, but by the time the next session came round their opposition would probably have been overawed. Brought into the House of Lords a second time, by a determined Government, the Bill would be likely to pass.

IV

YET let us contemplate the other contingency. If the House of Lords repeatedly threw out the Bill, what would need to be done? If the Peers persistently refused the smallest instalment of reform

that can be asked or accepted, how then must we deal with the Peers?

I acknowledge that at this point we should begin to "tread the verge of revolution," and I may be told that we may as well face that emergency at once as later. I prefer to face it later; to face it in connection with a Bill likely to commend itself to Englishmen of all parties; to face it with the support of the Crown and country, and with the sanction of all our constitutional past. A Bill for abolition of the House or abolition of the Veto would not enable us to face the emergency so well fortified and fore-armed.

Suppose, then, that the Lords should twice refuse to pass the Second Reading of a Bill to prevent hereditary succession to seats in the Upper House, what could a determined Government do? The clumsy and uncertain expedient of a dissolution of Parliament, and an appeal to the polls at a general election, is a resource, but not the resource the most commendable. The political faculty inherent in the Englishman, his native aptitude for constitutional liberty, would be better shown in another way. In what way? Let us learn a little in the lesson-book of the past.

In the struggle with Charles the First, Pym, that great but too-little-remembered statesman, who was the brain as Cromwell was the arm in those stormy times, found himself "in presence of a conflict of co-ordinate powers, a conflict for which no provision had been made by the law." How did he confront the emergency? In the words of the

historian Green, "Pym was the first statesman who discovered, and applied to the political circumstances around him, what may be called the doctrine of constitutional proportion. He saw that as an element of constitutional life Parliament was of higher value than the Crown; he saw, too, that in Parliament itself the one essential part was the House of Commons. On these two facts he based his whole policy in the contest which followed. When Charles refused to act with the Parliament, Pym treated the refusal as a temporary abdication on the part of the Sovereign, which vested the executive power in the two Houses until new arrangements were made. When the Lords obstructed public business, he warned them that obstruction would only force the Commons 'to save the Kingdom alone.' Revolutionary as these principles seemed at the time, they have both been recognised as bases of our constitution since the days of Pym."

It seems to me that in PYM'S "DOCTRINE OF CONSTITUTIONAL PROPORTION," and in the application made of it to the emergencies of his time, we may find the key to the difficulty caused by the House of Lords rejecting a Bill to abolish hereditary succession to the Second Chamber. In Pym's time the quarrel lay, at first, between the Crown on the one hand and the two Houses of Parliament on the other. In our time the quarrel would be between the Lords on the one hand, and the Government of the Crown (the Cabinet) and the House of Commons on the other. When Charles

the First refused assent to the doings of Parliament the refusal was regarded as a "temporary abdication on the part of the Sovereign, which vested the executive power in the two Houses *until new arrangements were made*." Similarly the refusal of the Lords to act with the Government of the Crown could be treated as temporary abdication of the Peers until new arrangements were made. The Bill rejected by the House of Lords being passed by the House of Commons and assented to by the Crown would have the force of law, until completely legalised by its adoption in the reformed House of Peers. It would in its first form be "enacted by the Queen's (or King's) Most Excellent Majesty by and with the consent of the Commons in this present Parliament assembled." There would be a change in the formula of the preamble of the Act, but, passed by the House of Commons, the "essential part of Parliament," and assented to by the Crown on the advice of H. M. Government for the time being, the Bill would *de facto* become law, the Peers notwithstanding. The House of Lords might continue to sit as usual, but thereafter no successor to a title would receive the Royal Warrant to attend the House. Something like revolution—legal revolution—would thus occur, but it would be "revolution by evolution," the natural outcome of constitutional precedent, the fruit of seeds of authority latent in the Crown and the House of Commons these two hundred and fifty years past. And against that authority, of the Crown beloved by the people

and the House elected by the people, what cabal of the Peers or their friends would dare to stand?

It is possible, of course, that the Crown might refuse assent to a measure passed by the Commons alone, but it is not probable. Effectively the Royal Veto is as dead as Queen Anne who last exercised it. If, however, the Royal Veto were resuscitated and used by the Crown to maintain the preposterous privilege of eldest sons of Peers to succeed to seats in the House of Lords, THEN WE SHOULD HAVE REVOLUTION INDEED, with a result that one need not indicate nor, happily, for a moment contemplate. The Crown will never again rank itself on the side of the Peers against the Commons.

If I am still told that the moves in the game thus far indicated and the time they would occupy might be just as well aimed at the objective of the existence of the House of Lords or the destruction of its veto, I reply that purely abolitionary proposals would not be half so likely to enjoy the support of the majority of the nation nor to obtain the assent of the Crown as would the milder yet more effective proposals which I here make. Without the support of the majority of the nation, and —in the more serious and penultimate emergency, without the assent of the Crown—we can obtain no reform of the House of Lords at all.

If it be argued that my *champ de bataille* is ill-chosen—that the badger of the House of Lords can best be drawn by a Bill raising some politico-social question such as the Landholding System, I reply that no such Bill would be so free from

party opposition in the House of Commons and outside Parliament as would the Bill I propose.

Finally, I claim that so far as practicability and probability can be estimated, the plan I outline is the true "short way with the Peers." It lies along the line of least resistance; it keeps within the zone of legality and constitutional safety. It is in keeping with the plans of English reformers and liberators in the past; it aims to remove not so much an institution as the defects of an institution; and it aims first at the most cardinal and obvious defect. Its object achieved, the door would still be open, and open wider than before, to the march of continuous and culminating reform. WE HAVE TO UNRAVEL A TANGLED SKEIN; AND THE HEREDITARY SUCCESSION OF PEERS IS THE BEGINNING OF THE MASTER-THREAD.

VIII

By J. Carvell Williams, M.P.

I am one of those who do not see the necessity for, or the advantage of, a second legislative Chamber, and, even admitting the necessity or the advantage, an *hereditary* legislative Chamber of any kind seems to me an irrational institution, and quite out of harmony with the other institutions of a democratically-governed country. That, however, is a view not likely to prevail for some time to come, and therefore is not within the sphere of practical politics. Nor are the proposals for mending, instead of ending, the House of Lords at present of a much more hopeful character. What *does* appear to be practicable, and that at a comparatively early period, is the proposal, or the proposals, to limit the present power of the Lords, so that their obstructiveness shall be temporary only. That would meet the objection that there is a danger that the popularly-elected assembly may act impulsively and hastily, and while it would, when needful, put a drag upon the legislative machine, it would not prevent ultimate progress, and moreover it would not stand in the way of larger changes for which public opinion may hereafter become ripe.

Assuming, however, that a scheme, or schemes, for the complete reconstruction of the House of Lords may come to be seriously considered, I am asked for my opinion on the proposal that its members should include representatives of the Nonconformist bodies. Lord Salisbury has expressed regret that they are not now represented there, and the suggestion has even been made in at least one influential Liberal quarter. It is somewhat odd that, while Nonconformists are at present denied by the Legislature some things which they greatly desire, there should be proffered to them something which they have never dreamed of asking for. The proposal is, no doubt, well meant, and therefore I will not apply to it the epithet which occurs to me, and will say only this, that it would never have been made by those who are well acquainted with the principles and the wishes of Nonconformists.

What is its *raison d'être*? Lord Salisbury apparently thinks that Nonconformists, as well as the Church, should be represented in the Upper House; forgetting that they strongly object to a representation of the Church, or indeed of any religious body as such, in the national Legislature. Have the Lords spiritual rendered as legislators such valuable service to the cause of justice, of peace, of humanity, or of social progress, that it is desirable to increase the ecclesiastical element in what is called in the Commons "another place"? On the contrary, history records but little good effected by the bishops as legislators and a great

deal of their opposition to measures which have proved to be for the popular benefit.

The names I have sometimes seen mentioned as fitting representatives of Nonconformity in the Lords have been those of ministers; or it has been proposed that the presidents of the several Nonconformist bodies—nearly always ministers—should occupy the scarlet benches at Westminster. Nothing could be more incongruous, and the only effect would be, in some cases at any rate, to spoil good preachers and pastors by converting them into mediocre, if not bad, politicians. I need say nothing as to the jealousies and discontent which might arise among Nonconformists themselves as to the choice, or the action, of their representatives in a legislative assembly; as it is certain that no such representation will exist.

The idea which underlies this strange suggestion, of course, is that the new Second Chamber should represent every class of the community; but the idea is one to which full effect could not possibly be given; and why should any attempt be made in that direction? We need less, and not more, of class representation than we now have in Parliament; less narrowness and more of broad-minded regard for the interests of the country as a whole. We need sagacious, inflexibly just, and earnest legislators rather than the avowed champions of class interests. What would be thought of an attempt to parcel out seats in the House of Commons, by allotting so many to manufacturers, so many to traders, stockbrokers, doctors, farmers, brewers, and

all the rest of the varied industrial and professional classes which make up that highly complex body, the British people? It would be declared to be grotesque; but all the fancy schemes for securing in a Second Chamber such a representation of diverse interests as is *not* sought for in that representative body *par excellence*, the House of Commons, savour of the theoretical rather than the practical politician. Such schemes would be very difficult to construct, and when constructed they would assuredly fail to realise the ideal of their authors.

I will leave it to other pens fully to describe the characteristics of the House of Lords as at present constituted, but, having had occasion for many years past to watch their proceedings closely, as well as those of the House of Commons, I may briefly state some of the impressions which those proceedings have made upon my mind.

I have been chiefly struck by the incorrigible indolence of the great majority of the Peers; by the small amount of time which they devote to public business; by their indifference in regard to matters of great national importance—indifference shown, not merely by a miserable, small attendance, except on rare occasions, but by their apathy and lassitude when they are present. And no public body seems to have less sense of responsibility in rejecting, or mutilating, measures of great importance to the public weal. They will sometimes destroy in an hour or a night the work on which the representatives of the people in the House of Commons have spent many weeks. The value of

their labour in revising the work of the Commons, correcting mistakes and effecting needed improvements in Bills, has mostly seemed to me absolutely fictitious. For they usually accept, as a matter of course, the measures brought in by a Tory Government ; and towards the close of a session they pass them through all their stages, with a celerity and a perfunctoriness which make legislation, so far as they are concerned, a mere form, not to say farce. To those who believe all that has been said by eulogists of the Peers, as constituting an august and a supremely important branch of the Legislature, I would only say, go and see them at work in their gilded chamber, and you will probably be disillusioned. You may continue to think that a second Chamber is necessary, but you will also think that such a Second Chamber as we now possess is an anachronism, which testifies to the patience, rather than to the practical wisdom, of the British people.

IX

By W. P. Byles
Late M.P., Shipley, W. R. Yorkshire

I

Considered in relation to national well-being, the Peerage is an influence even more degrading than the Established Church. I speak of the Peerage, not the Peers; of the Establishment, not the Church. The establishment of one section of the Christian Church among a people where there are many sections is a denial of justice and equality, on which foundations all true religion is built; it tends to deprive its members of the supreme Christian grace of meekness; and above all it strains the intellectual conscience of its adherents. Bad enough moral results, certainly. But the Peerage postulates two orders of men, stamps the mass with inferiority, and thus openly and cynically avows inequality as its *raison d'être.* It is the inevitable parent of tyranny and serfdom. It creates a social caste,—the bane of the body politic,—resembling the caste differences of India, or the racial distinctions of slave countries. It engenders arrogance on the one hand and sycophancy on the other. If a Peer

came to live in my town—which is happily Peerless—every snob would lick his boots, and as every latent snob would be developed, we should soon have a big brood. It is not good to lick anyone's boots, it is equally bad for anyone to have his boots licked. If peerages actually, as they do in theory, represented public virtues or national services, we could tolerate them better. But when so many of them stand only for "such services as courtiers render kings," and so many more have a squalid cash nexus for their origin, is it any wonder that they are constantly supplying the world with disgraceful examples such as are revealed in the divorce court, the bankruptcy court, and the Hooley inquiry. We need not blame these noble wrong-doers overmuch. They are as inevitably the product of an unnatural and morally unhealthy environment as is the sot, or the wife-kicker in the slums. If only they were commoners, fewer of them would be wrong-doers, and the mischievous example of those whose immorality survived would be less potent, for they would then just go under like any ordinary rascal. A blackguard more or less would not then matter much. A bucket of slush thrown into the river where it is broad and swift is filthy enough, but it poisons far fewer healthy organisms than if it fouled the stream at its source. It is the claim to "nobility" which magnifies the evil of these aristocratic scandals. They vitiate society at the apex and the vice sinks downwards to the base.

It is not however the Peerage as such, but the

Peerage as constituting a hereditary legislative Chamber, with which especially I am expected in this article to deal. It has been well said that if peers are born to rule, commoners are born to obey, and thus if you have hereditary legislators you have hereditary bondsmen too. What Democrat—what man who has even faintly realised the idea of equality (which, however defaced, is stamped on the Constitution of the United States and of France) can tolerate the continuance of our House of Lords? "Are the Lords to dictate to us, the people of England (asked Mr Chamberlain in 1884)? Will you submit to an oligarchy which is a mere accident of birth? Your ancestors resisted kings and abated the horde of monarchs, and it is inconceivable that you should be so careless of your great heritage as to submit your liberties to this miserable minority of individuals who rest their claims upon privilege and upon accident." That is the sort of language to use. When will our present leaders hit out so straight? If we want a Second Chamber at all, why not make it out of men, regardless whether Peers or Commoners, who are chosen for their experience, sagacity, intellectual stature and moral worth? The existence of the House of Lords is an insult to the representatives of the people, and to their constituents too. You feel it when some young sprig of the aristocracy, perfumed, perhaps, and faultlessly dressed, lounges into the House by the right of his blue blood at some convenient hour between his afternoon rubber and his dinner, and

objects—aw, dontcherknow—to what these fellows have been doing in the Commons. The rubbish of this noble blood theory came to me strongly once. I remember a young fellow who sat near me when I was in the House; he was just as commonplace as most of us, and as banal and noisy in the Home Rule debates as many another young Tory, and he suddenly became a Peer by the death of his father. He wanted to go on sitting in the House of Commons—and indeed did actually sit until he was turned out. A committee of members was sent upstairs to consider his claim, and found that his blood had been "ennobled," and that therefore he could no longer sit among Commoners. He had become a "superior intelligence." When his blood was common blood, like my own, I considered his often stupid amendments, listened to his rather wearisome speeches, and even bore with some toleration his obstructive tactics because he represented a constituency; but when his blood to his own chagrin became noble, I found myself angrily resenting the first vote he gave against a bill which the Commons had sent up. If that was a just feeling, and I think it was, then the whole nation of Commoners ought to feel a like resentment at all the legislative doings of the Upper House. Members sit there by right of birth, and your true Democrat must resent any one ruling him by right of birth. Let us see then how this righteous resentment is to be translated into a practical political form.

II

JUST before the General Election of 1895, Lord Rosebery, then Liberal leader, advised his party to "concentrate," and to fight the elections on the standing grievance of the House of Lords. His advice was not taken, and it is not likely that the next election will be fought on this issue either. The reason is not far to seek. The party is not united on the question. It may be said with some truth that there is hardly any question on which it is united, but upon the House of Lords it is especially at sea. There is no agreement as to what we ought to do or how to do it. There is substantial unanimity up to a certain point. All progressive men are ready to say that the ultimate supremacy should be in the House of Commons—that the final word in any difference between the two Houses should be spoken by the representatives of the people. We have plenty of "enders *or* menders," but comparatively few "enders" or "menders." That is to say, Mr Morley's famous phrase hits off the state of uncertain opinion in the party, and supplies a sort of bi-metallic formula of vagueness which exactly expresses the prevailing indefiniteness of policy. What is wanted is that men should make up their minds whether they want to end the House of Lords or only to mend it. Then we can get on.

What are the proportions of enders and menders in the ranks of Progressives? Move amongst working men, as I have done, in places where they ex-

press their opinions freely, and you will soon be satisfied that among the mass of voters in this country there is none of the deep-seated conservatism which would make them fear to disturb, or even destroy, any part of the constitution which has become inoperative or mischievous. Such conservatism undoubtedly exists, but it is among persons who have property, and who, possessing property, are afraid to disturb anything, lest that should be disturbed too. If we could count by heads, we should find enders an immense majority; but we don't really reckon by heads, though we do so in theory. Here, as everywhere, money has power, and the rich few really count for much more than the poor many. They run the machine, pay for it, and take care to fill all the posts of honour and influence. They are the Conservative end of the party—for riches and conservatism are naturally allied. It is hard for a rich man to enter the political Kingdom of Heaven. And therefore you find few "enders" among the men who work the caucus and choose the candidates. To do away with the House of Lords—still more with the order of the Peerage—is too Radical a measure, savours too much of the French Revolution, for these Moderates. For the true forces of Democracy you must look to the poor, and if you could get at their real opinions, you would find them ready enough to make short work of the Lords—not only of their legislative power, but of their privileges and titles and all. But though they are numerically vastly stronger, you cannot in normal

times get the full strength of their opinions. If you did, it would be called a revolution. They are manipulated, coaxed, jockeyed by the party bosses everywhere. I know a constituency, *e.g.*, where the working-class electors took the bit in their mouths, captured the caucus, insisted on choosing their own candidate—a man who would certainly stick at no half measures. The result was that every rich man in the party, without exception, threw down, would not play any more, and gradually set to work by subterranean methods to regain supremacy and recapture the machine; and owing to the inertia of the victors, these disloyal men are now in a fair way to restore the once emancipated constituency to its former condition of respectable humdrum conventional Liberalism. *Ex uno disce omnes.* Until, therefore, we grow some real earnest leaders with faith and courage to inspire the masses to far-reaching reforms—men like Richard Cobden or Mr Chamberlain in the days of the unauthorised programme—we shall not do big things, and one of the things that is too big for us is to disestablish the House of Lords.

'Tis true, 'tis pity, pity 'tis, 'tis true. It would be a healthy state of things if it were otherwise, if it were possible to go to the country on a cry "Down with the Lords," if men would picture to themselves the House of Commons the one only and supreme Legislative Chamber—would vote as they did two centuries ago, that "the House of Peers in Parliament is useless and dangerous, and ought to be abolished." Abolition is the word, if

it were not a counsel of perfection and unattainable. "The House of Lords has always been the obsequious handmaid of the Tory party." They pass Tory bills even when they disapprove of them, and witness their recent surrender on the Conscience Clause of the Vaccination Bill. "When a Conservative Government," said Mr Chamberlain, truly, "is driven by party exigences to promote a Radical programme, the Peers at once develop Radical instincts and an unexpected alacrity in promoting Radical doctrines." But let a Liberal Government send up reforms demanded by justice and directed against privilege, they only obstruct, curtail and delay. Away with them then. Nobody respects them. Lord Rosebery acknowledges they "have few friends." A Metropolitan magistrate disrespectfully said in Court the other day, "Lords are cheap nowadays." Whenever they do anything, they are held up to ridicule and scorn. They don't even respect themselves. The vast majority of them never come near the place except on rare occasions, and then generally to defend their privileges. One of these habitual absentees, dragged up from the country by the Whips, on entering the House was challenged by the attendant, who was unacquainted with his face and figure, and was suspicious of his rustic appearance. "Beg pardon, sir, are you a peer?" "A peer! Of course I am. Do you think I should come to this d——d place if I wasn't a peer?" Depend upon it, the majority of the Liberal Party shares this nobleman's opinion of the

House which he is privileged to adorn. "Useless and dangerous," the case needs no proof. The Peers are the "unswerving foes of freedom." The House of Lords is obsolete, worn out, has lost its power for good, if indeed it ever had any. It is practically non-existent when the Tories are in, and a mere obstruction when they are out. Why, then, should any Liberal want to keep it alive?

III

SOMEONE may ask what I would put in the place of the House of Lords. I answer, Nothing. Only the inveterate conservatism of Englishmen, their abject fear of breaking the continuity of things, would suggest to them, in getting rid of one obstruction, to manufacture another perhaps not quite so bad. A Second Chamber of any sort must, in the nature of things, be a conservative force. It must equally be a surrender of popular power, a lowering of the democratic ideal. If the nation wants something done, it elects a Parliament to do it. It chooses the best and wisest men it can find. Why then create another and a superior body—not elected, or at best only indirectly elected—to upset, or delay, or even pass judgment on the decisions of the elected Parliament? If there are persons more highly endowed with wisdom and caution than those you have chosen, and therefore fitted to sit in the Upper Chamber, you should have sent them to your First Chamber, so that it would be filled with

the highest wisdom that is within your reach. The only persons who are qualified to sit in judgment on what your representatives do are the people whom they represent. Thus the nation—the combined wisdom of the electorate—is the true, the only true second Chamber. If the House of Commons were the only House of the legislature, it would grow enormously in *prestige*, and every member of it, in every vote he gave, would act with an added sense of responsibility. Equally his constituents would act with more caution. They would have the sense of carrying a heavier burden. They would not press their candidate to pledge himself to this or that extreme opinion, or, if they did, would be more open to listen to his reserves. They would look at a question *all round*, would have regard to the classes who might be prejudiced by a given reform, as well as to those who would benefit. Surely a desirable change in the temper of the electors. *Now*, they ask far more than they expect to get, fully conscious that when they are through the Commons their troubles are only half over. So they shoot at a pigeon when they only desire to hit a crow. *Then*, they would know that what they did they did once for all. A wise streak of conservatism would restrain their ardour. They would ask only for what they meant to have in full. In short, they would be less exacting, but more exact.

Such are my views about a Second Chamber, and especially about a hereditary Second Chamber, and the attraction of this page to me is that I am allowed

to express them without restraint. But I again acknowledge that they are unattainable. I recognise the power of property even in the Progressive party. The extremest reformers have to reckon with the forces of opposition. It is of no use getting on to a tub and preaching demolition. We must consider, not any ideal solution, but such changes for the better as are within reach.

IV

If, then, it is hopeless to agitate for a single Chamber, what remains that is practical and possible on which the forces of progress may effectively unite? What proposals can be made that responsible Ministers can be found to take up, and that the moderate members of the reforming party will support? The thing to be aimed at is, of course, to give to the House of Commons supreme power, ultimate if not immediate. Two methods only of accomplishing this purpose need be considered, because they are the only suggestions which have met with any general approval from persons of large political influence. The first method proposes to give the Commons the power, either in the same or the succeeding session, solemnly to re-affirm any decision which has been reversed by the Lords, and to enact that such re-affirmation shall have the same weight and effect as it now has if it is re-affirmed by the Lords. That is to say, that if the Lords refuse a Bill sent up from the Lower House, or a clause in a Bill, or any part of a clause, the Commons shall have power

to pass it again, and if they do so pass it, the Lords shall have no further option of disagreement, but it shall be entitled to receive the Royal assent exactly as if it had been voluntarily agreed to by the Upper House. One objection to this method is that it could only be accomplished by Bill. This Bill must pass both Houses, and thus the not very easy task must be undertaken of persuading the House of Lords to commit *harikari*—to fall on their own sword. It may be suggested that the Monarch, on the advice of her Ministers, could effect the change by Royal warrant. For aught I know, such power might be exercised ; but for the Queen, by an arbitrary act, to alter the Constitution would be to tamper with the liberties of Parliament, and to create an undesirable, and indeed a dangerous precedent.

The only other method, so far as I know, which has been seriously proposed and comprehensively explained, is the creation of new Peers. The last Liberal Attorney-General (Sir Robert Reid) has lent his high reputation to this plan, and has several times expounded and commended it from public platforms. Here is this perfectly simple plan : A Liberal statesman, when called on by the Queen to form an Administration, is to refuse, except on condition that the Crown consents to make the necessary number of new Peers to enable him to carry his measures.. Every member of the party is to refuse to support the Minister unless he insists on this condition. Every Progressive elector in the constituencies is to refuse to vote for any candidate

who will not pledge himself to refuse that support. Thus the whole matter is within the immediate power of the constituents themselves. You say to your candidate, "Will you vote against any Minister who has not obtained from his Sovereign the right to make Peers?" You act in accordance with his reply, and the thing is done. As Sir Robert Reid points out, that was the method by which the great Reform Bill was passed through the Lords. Lord Grey refused to take office until he had the assurance of the Crown that sufficient peers should be created to carry the Bill. It never became necessary to make peers, because the House of Lords gave way. The threat was enough then, and it would be again. That disposes of the objection that several hundred new peers would be needed to pass (say) a Home Rule Bill, and the further objection that you could not find several hundred men who could be trusted to remain faithful to Home Rule in the demoralising atmosphere of the gilded Chamber. They do degenerate quickly, no doubt; in piety, I am afraid, as well as in politics, for according to Mr George Russell's delightful "Recollections," Arthur Young mentions that a daughter of the first Lord Carrington said to a visitor, "My papa used to have prayers in his family, but none since he has been a peer." But history would repeat itself. The Lords would quickly surrender. The first batch of twenty, at any rate, would break their spirit, especially if they were twenty stalwart Radicals, perhaps Nonconformists or other objectionable characters. This, then, is the simplest and easiest method. It does

not violate or alter the Constitution in letter or in spirit; it deprives no one of existing privileges; it requires no bill; it is within immediate reach, is entirely effective, and would be immensely popular; and, finally, it would meet a point raised by Mr Morley, and would only come into force at a moment when some serious conflict between the two Houses had arisen.

One thing is needed, and one only—a leader with courage and initiative.

> "O, for the touch of a vanished hand
> And the sound of a voice that is still."

One looks in vain for a successor to our lost leader; such men have no successors; they stand apart, like a mountain, alone. Meanwhile, we must possess our souls in patience and mature our faith. A pear on the tree can only ripen, but if it is a well-grown pear, and of rare flavour, someone generally comes along to pluck it. And so if sufficient earnestness is generated in the party, if the temperature of political zeal rises high enough, a leader will surely arise, opinion will be focussed, and the differences which now rend us will disappear as quickly as the mountain mist.

X

By Eric D. Tillett, of Norwich.

THE existence of the House of Lords as a legislative body has been a long-standing abuse, and it is hard to understand why it has remained so long unaltered in the face of arguments against it so unanswerable as to convince even the most moderate of men that at least in its present form it has no right to exist.

The British Constitution has existed in its present form for a very long time. Time never deserts what she has maintained, but becomes ever a more powerful pillar of an edifice she supports, and will hold it up though its very foundations are decayed. The fact that the House of Lords has existed for centuries is the strongest argument that can to-day be advanced against destroying it or altering it. No thoughtful person can say that that should be destroyed which has been approved by so many successive generations, which has been a vital part in the government of a nation immeasurably benefited during its existence, unless it can be clearly shown that there has been no reason or necessity for its existence hitherto, or if there has been any such reason or necessity, such reason or necessity has now ceased. Let us glance back at

those ancient times, when the masses had no voice in the government of their country, when the powerful nobles and landed gentry fought for the upper hand amongst themselves, and those who prevailed swayed the government of their country, and then from those times when the nobles were absolute, let us gradually turn over the pages of history and watch the growth of the power of the people. At first this growth was slow, but afterwards faster, until the scales of power became more nearly equal. Then the people obtain the upper hand. Now it is time for them to hold the power of absolute self-government. In early English history the nobles had to govern. The people were an uncivilised, uneducated mass, swayed hither and thither at the will of their superiors, and totally incapable of having any voice even in the matter of their own government. The House of Lords owes its origin to this original incapacity of the masses, its continued existence to the desirability for control over a power apt hitherto to have been used in a revolutionary manner, and the cause of its downfall will be the undoubted capacity for self-government now possessed by the people of this country, who, now that they enjoy liberty and freedom to the fullest degree possible in the government of a state, would never be swayed in the least by revolutionary ideas.

Assuming for the sake of argument that a control over the otherwise absolute power of the House of Commons be deemed expedient, can it be said that the body of men most fitted to exercise that control

would be a body constituted in the way in which the House of Lords is constituted? If the Upper House were abolished, how many of its members would be found sufficiently interested in the welfare of the community to face the test of a popular election? How many would consider it worth their while to take even the slightest trouble to gain the position of responsibility which they now hold? Very few indeed. The effect of the abolition of the Upper House would be that those members of it (and they constitute the large majority) who are not genuinely interested in the welfare of the State would sink into the obscurity they deserve. On the other hand, those of them who have the welfare of their country at heart would seek election to the House of Commons, for which election they would now be eligible. Thus the House of Commons, in addition to having its power greatly increased, should be inestimably benefited by the presence of some of the most powerful intellects our country has produced. If the House of Lords had never existed, and a second House were now about to be formed, would any one for a moment entertain the suggestion that that second body should consist of those people who were privileged to use some high-sounding title, derived possibly from an ancestor who, many generations back, might have been the favourite of some usurping monarch, who might have won the king's favour by committing some foul deed, or by some exploit deemed now only fit for condemnation? Is a man to have a hand in the government of a great and

free people because he is the son of his father?—Without any other qualification? A title worthily created may be inherited by a man most unworthy of it. Who would for a moment entertain the idea of a second and controlling chamber formed like this? But formed centuries before our time, even though in this manner, and having endured so long, we like not hurriedly to destroy it.

The House of Lords consists of 560 individuals. Here are 560 individuals who can block the will of millions of their fellow-countrymen as voiced by representatives in the Commons. What claim have these men to do this—men who do not come into touch with their fellow-countrymen, who do not, who cannot, feel the needs of the people, who move in select circles, enjoying the luxuries and pleasures only wealth can give, who have not one iota in common with the vast bulk of their fellow-countrymen? These, these are the men who guard the interests of the people, and see that only laws beneficial to their country are passed! A power to govern tempered with no communion with those governed, totally uncontrolled by those governed, is wrong.

Constituted as it is, the House of Lords cannot be anything but a block to wise legislation. With it we cannot progress fast enough. It is said that the sole reason why the Liberal Party attacks the Lords is that that body is so conservative—an argument of no weight, for were they not so conservative, the Conservative Party itself would assuredly have assailed them before now. Cicero said that he cared as much for the condition of

the Roman state after his death as before. So do we Liberals care for our country. We do not want to abolish the Lords with any wild idea of at once bringing about an ideal state, merely for the want of something to do, for the want of a new state of things—but looking from the past to the present, and then with the past transactions of the Peers clearly before us, looking ahead along what we conceive to be the path this country must follow, we feel assured that the best, wisest, and safest course is to leave the Government now absolutely in the hands of the people. The House of Lords has been, as it were, a parent to the representatives of the masses, but now when they have arrived at a state thoroughly capable of legislating for themselves, it still seeks to correct them. Abolish it. Let them stand alone with their power, even if at first to wield it somewhat unwisely, soon afterwards—more conscious of their own absolute responsibility—to wield it wisely, prudently, and beneficially.

When the House of Lords is abolished there will be a revolution in political opinions. Men will become more careful, more conservative in their ideas. Both electors and elected will be more slow to act. While the House of Lords is in existence the electors of this country do not feel the responsibility they will feel when it is gone.

There is no doubt British statesmen have up to the present time been afraid, though prodded on by the very acts of the Lords themselves, to

grapple with this great question. But the time has come. The Liberal Party now has its opportunity. It is a united party on this question—perhaps on this question alone. The whole force of the Liberal Party should be concentrated against this one abuse. A manifesto issued and signed by Sir William Harcourt and Lord Rosebery, urging their followers to this end, would be the death-knell of the Upper House. It would mean a Liberal Party united, irresistible, triumphant.

XI

By J. Hirst Hollowell

Almost all Liberals are agreed that the House of Lords is mischievous and even absurd. Its continued existence reduces representative government and modern democracy to a laughing-stock.

The people of England are supposed to elect those who make the laws by which they are governed, but as long as the House of Lords exists, possessed of its present powers, the people can do nothing of the kind. They are, in fact, governed to a very large extent by legislators in whose election they had no voice. The most ridiculous anomaly of all is that no Bill can be passed into law without the consent of the Church of England expressed through its bishops in the House of Lords.

The House of Lords not only rejects good measures that are submitted to it, but it prevents the introduction into the House of Commons of a large number of measures of the first importance—measures which are never brought forward because it is known that their passage through the Upper House would be impossible.

Either the House of Lords should cease to exist, or it should exist as an advisory and consultative

Chamber without any veto upon the decisions of the popular House.

We are told that there is an insuperable difficulty in the way of reform in the fact that the consent of the House of Lords must first be obtained to any change of policy. But surely the difficulty is not insuperable. Let the House of Lords be asked to consent to the changes which the people demand, and if it consent, well and good. But if the House of Lords is foolish enough to refuse to consent to that abatement or abolition of its powers on which the people are agreed, and which they demand by Bill or Resolution, then other means must be used to bring about the changes desired. Nor are precedents wanting. The House of Commons has on more than one occasion asserted, claimed, and secured its right to be the supreme legislative authority. The repeal of the Paper Duties and the Abolition of Purchase in the Army were not brought about with the consent of the House of Lords. That consent was refused, and the House of Commons simply resolved to do without it. Either by Resolution, or by obtaining the express concurrence and warrant of the Queen, the House of Commons in those famous instances ignored the Veto of the House of Lords and took into its own hands the final authority to legislate. All that is needed is that the House of Commons, while seeking the concurrence of the House of Lords, should declare that it will not, after seeking such advice and concurrence, abandon any measures on which it continues to be agreed.

That seems to be the one course that is open. If it pleases the country to retain the House of Lords in existence, let the people's representatives by a solemn act and resolution declare that that House shall for the future be allowed to help, but shall no longer be allowed to hinder or prevent, the execution of the people's will.

XII

By Rev. Dr Clifford

THE one thing needful for the country is the disestablishment of the House of Lords. The best thing would be to end it. That, I fear, is not possible. But certainly the hereditary and ecclesiastical principles should be instantly ejected from the qualifications for membership of the Upper House. They belong to the "Dark Ages" of our political life. In a democratic country the right to sit in that House should be determined by the vote of the people.

XIII

A SCHEME OF A SECOND CHAMBER

By The Rev. T. J. Lawrence, M.A., LL.D., Cambridge

Late Deputy Professor of International Law in the University of Cambridge; sometime Professor of International Law in the University of Chicago, U.S.A.; Lecturer in Law at Downing College, Cambridge; Rector of Girton; author of "The Principles of International Law," &c.

In the last speech made by Mr Gladstone in Parliament, he declared that the constitutional relations between the House of Lords and the House of Commons were unsatisfactory to the last degree, and warned the Peers that their persistent hostility to the legislative work of the representatives of the people had raised a question which could no longer slumber, but must go forward to its issue. The legacy left us by our great leader has been forgotten or ignored by those who have attempted to occupy his place. And the whole tribe of wire-pullers and waiters-on-Providence assure us that we need not trouble ourselves about it or the kindred problem of Home Rule for Ireland. All we have to do is to sit still and say nothing. The blunders of our opponents are rapidly disgusting the country. We shall soon return to power unhampered by inconvenient

pledges. Blessed, thrice blessed, is the party which has no convictions!

So reason the Tapers and Tadpoles of modern politics. Possibly they are right, as far as the immediate future is concerned. We know on the highest authority that the children of this world are wiser in their generation than the children of light. It is not altogether improbable that after the next General Election we may see a Liberal Ministry attempting to govern the country by means of a reproduction of the policy associated with the memory of Lord Palmerston — vigour abroad and inactivity at home. But how long would such an experiment last? Just as long as the great masses of the people felt no particular grievance and were fired by no overmastering desire. It is perhaps unwise to admit the possibility of such a condition of affairs; but there can be no doubt of the supreme unwisdom of reckoning upon its continuance. It could not endure in these days of wide and increasing dissatisfaction with the social and economic arrangements which give so large a share of the good things of this world to idle possessors of accumulated wealth, while millions of toilers go from cradle to grave without the requisites of a decent human existence. If the Liberal party of the future is unable through lack of will or lack of reasoned belief to undertake wide reforms of a constructive character, a worse fate than the temporary loss of office is in store for it. Impotence and decay must be the lot of a combination which has survived its usefulness.

Like the effete Liberalism of Belgium, it will disappear altogether as a political force, and a Labour party, more or less socialistic in character, will take its place. In that case a bitter conflict will arise between the two Houses as soon as the new leaven has worked such a change in the character of the legislation sent up by the popular Chamber as would in the opinion of the Lords seriously tamper with the rights of property. If, on the other hand, the Liberal leaders, true to the best traditions of their party, endeavour to give just expression and wise guidance to the desires and aspirations of the multitude, they must send to the Upper House measures which an assembly of plutocrats will decline to pass. They will then be forced, whether they like it or not, into a great constitutional struggle with the Peers. Conflict is inevitable sooner or later, though it will not arise till the bulk of the electorate feel a grievance against the House of Lords, and feel it keenly. In practical but illogical England, the political philosopher will prove in vain that our Second Chamber is a ridiculous anachronism, and the historian will unfold to deaf ears the tale of its misdoings in the past. We do not care for symmetry in our institutions ; and the sins or sorrows of our grandfathers do not excite us in the slightest degree. But when we feel the pinch of the shoe, we insist upon obtaining room for free action, even at the cost of venerable leather. The House of Lords has given way on many matters, and will give way on many more ; but it cannot adapt itself without a struggle to a

process of social reconstruction which must diminish the privileges of wealth, and render increasingly difficult the accumulation of large estates and vast fortunes. Faced by such an emergency, it will fight rather than yield. No one can tell how soon the conflict may arise. It behoves us, therefore, while yet we have time for quiet thought and careful discussion, to prepare a plan of battle. Our forces must not be squandered in contradictory efforts or directed towards impossible ends. Hitherto, in England, constitutional changes have been continuous and progressive, because they have satisfied the two great conditions of stability in a country like our own. They have proceeded by the modification and development of existing institutions, and they have rested upon the assent of the great bulk of the people. We have been spared the dangers of oscillation. We have not undone to-day what we did yesterday. Once, and once only, in our modern history did a minority armed with irresistible force impose upon the nation institutions for which it was not prepared; and the Restoration, with its moral iniquities and political reaction, is an instructive commentary upon the premature reforms of the Commonwealth. Cromwell simplified the franchise and redistributed the seats. The old system was restored at his death, and remained substantially unchanged till 1832. Cromwell gave us a united realm. The Restoration resolved it into its component elements. Cromwell created a non-hereditary House of Lords. We are still debating what to do with

our hereditary legislators. On the other hand, we find that when an ancient institution has once been touched by the hand of the reformer, the operation can be repeated again and again, provided that on each occasion it is not too ruthlessly performed. Take, for instance, the House of Commons and the attempts to place its constitution on a rational basis. What we call the Great Reform Bill was passed in 1832, when the tardy surrender of the House of Lords saved the country from imminent revolution. It established a £10 rental franchise in boroughs, and added certain classes of copy-holders, leaseholders, and occupiers to the 40s. freeholders in the counties. To-day we have what is practically household suffrage in both boroughs and counties. If an attempt to carry anything of the kind had been made in 1832, the forces which opposed the Reform Bill would have been enormously strengthened, and either it would not have been passed at all, or it would have been passed at the cost of civil war. Yet what would have provoked a revolution sixty-six years ago was quietly accomplished in 1867 and 1885, with no more disturbance than the pulling down of the railings of Hyde Park and the organization of a number of imposing demon-strations. He who runs may read the moral of this story from modern English history. The difficult and all-important thing is to begin making changes in an institution so venerable as to be sacrosanct in the eyes of vast multitudes of our fellow-citizens. This can only be accom-

plished by putting forth proposals that will conciliate the support of moderate people, and secure when carried the acquiescence of reasonable opponents. They can then be used as stepping-stones to further changes. Where reform has once penetrated, the daylight of reason may enter in, and the nation will be content to remedy what stands revealed as useless or mischievous. If we apply these considerations to the question of the House of Lords, we find—

First, that it is doomed to come into conflict with the House of Commons in the near future. What Erskine May and writers of his school regarded as the source of its strength will prove to be the cause of its downfall. It represents in an increasing degree the wealth and property of the country, and because it does this it is doomed to bear the brunt of the conflict between plutocracy and democracy.

Secondly, that changes, if they are to be successful and lasting, must be made in accordance with the peculiarities of the English people as revealed in history.

Thirdly, that what cannot be accomplished at the first onset may be carried out quietly and peaceably in future times.

These considerations help to supply an answer to the first question to be considered in connection with the House of Lords. The cry, "Mend it, or end it," was useful once, when men's minds had to be directed towards its ridiculous anomalies.

But it belongs essentially to that preliminary stage. If we mean business, we must begin by deciding between the two alternatives. In the progressive section of the Liberal party the current of opinion seems to be running in favour of a vigorous attempt not only to abolish the existing House of Lords, but to reduce our legislative assembly to a single Chamber. The other view will be advocated in the present paper, not because the writer feels the slightest tenderness towards the existing Upper House, but because he is convinced that a properly constituted Second Chamber is essential to the efficient working of representative institutions on an imperial scale. A vestry, a municipality, even the London County Council, can get on well enough as a single and undivided assembly. Representatives are constantly in contact with their constituents, and can easily learn their wishes on questions which arise between the periodical elections. The business transacted, though important, is not of a kind to affect the destinies of the human race, nor does it as a rule require more knowledge or a wider outlook than the average tradesman or manufacturer possesses. The government of a great country is a far more difficult and complicated matter, and the consequences of a mistake are much more serious. A badly laid sewer can be mended at the cost of a small addition to the rates; but a badly made law may mar the lives of millions before it is altered or repealed, and an unwise demonstration may cause a war in which more than one nation is well-nigh ruined.

Affairs should be transacted with care and deliberation proportionate to their importance. In matters of State all sources of information should be laid open, all views considered before a decision is made. Democracy means that the final settlement should be in accord with the mature judgment of the great bulk of the nation. It does not mean that the loudest shouters should prevail, or that the first shallow cry that tickles the ears of the ignorant should carry all before it. A Second Chamber, which is a focus of resistance to the deliberate decisions of the people, stands condemned without further argument in a community like our own, where it is admitted on all hands that government must be carried on in accordance with the wishes of the governed. But a Second Chamber which has power to give expert advice, secure due deliberation, and insist on second thoughts, performs a most useful function. It will be said in reply that the composition and procedure of the popular Chamber may be such as to provide within it those prudential elements of which we speak. Neither reason nor history supports this view. As John Stuart Mill pointed out in his book on "Representative Government," "The deficiencies of a democratic assembly which represents the general public are the deficiencies of the public itself, want of special training, and knowledge." He was disposed to find in the popular Chamber, by means of the proportionate representation of minorities, a place for the elements which would supply these deficiencies. No such scheme has

succeeded in gaining the support of any large body of political opinion. The plans proposed are too fantastical and complicated for the common-sense of the English people. Moreover, it is by no means clear that they would achieve the results expected from them. Minority-representation easily degenerates into fad-representation. Fad-representation is fatal to party government, and without party government our modern constitutional system could not exist. Tentative efforts at proportionate representation have failed to meet with popular support. The three-cornered constituencies created by the Reform Act of 1867 were swept away in 1885, and the cumulative vote at School Board elections is doomed to disappear at the first opportunity. We may feel satisfied that proportional representation is out of the question in this country. As an alternative Mill fell back upon a Second Chamber; but it is hardly necessary to add that he had no idea of retaining the House of Lords in its present form. The conclusion arrived at by general reasoning is borne out by study of our recent history. The House of Commons has legislated in panic and anger; and there is no security that it will not do so again, especially on questions as to which its knowledge is limited and its prejudices great. Take, for instance, the thorny subject of ecclesiastical affairs. In 1850 the Pope divided England into dioceses, and appointed over them bishops with territorial titles. The country was instantly in a turmoil; and in 1851 the Government introduced a Bill to prohibit

the assumption by Roman Catholic prelates of titles taken from any place in the United Kingdom. In vain did Mr Gladstone oppose the measure as an attack upon religious liberty. The Protestant feeling of the people was aroused, and the House of Commons shared the excitement of those who elected its members. The Bill passed; the Roman Catholics ignored it; the Government was afraid or ashamed to enforce the penalties provided in it; for twenty years it remained a dead letter, and was then repealed by general consent. Other instances of legislating in haste and repenting at leisure might be given if space permitted; but it will be sufficient to point out in passing that the inconsistent and unintelligible provisions of Acts of Parliament dealing with technical points of law are a common subject of complaint in judicial circles. The conscience clause of the recent Vaccination Act is a case in point.

It may be said that we cannot expect any constitution to be perfect. No truer statement was ever made. The wit of fallible man is unequal to the task of devising machinery which will get rid of fallibility. But this is no argument for sitting still under remediable defects, and making no attempt to reduce error and prejudice to a minimum. In countries with a wide suffrage representative government is a device for giving effect in the political sphere to the will of the people, whether that will be good or evil, instructed or uninstructed. It presupposes that the people have sufficient knowledge and self-control to be

trusted with the shaping of their own destinies, and take sufficient interest in their affairs to be desirous of regulating them. And this being the case, it deliberately proceeds upon the principle that to avoid violence and secure that legality and physical force shall always be on the same side, the majority must prevail. Clearly under such a form of government there are three great dangers.

1. The majority may be ignorant and prejudiced on some important question or questions.
2. The majority may be variable.
3. The majority of the representatives may have ceased to voice the will of the majority of the people.

We have seen reason to believe that the device of proportional representation would effect no real improvement. Many advocates of a single Chamber are now disposed to propose the *referendum* as a remedy, either in the form recently adopted in Canada with regard to the liquor traffic, where the broad general question of Prohibition or no Prohibition was put to the people and voted upon, or in the form familiar in Switzerland, where on the demand of a certain number of electors a measure worked out in all its details and passed by the legislative body is referred to the whole body of voters for their decision, Yea or Nay, or in some combination of the two forms. It cannot be denied that this plan of constant reference to the direct suffrage of the people removes the last of the three dangers enumerated above. But it

does not touch the other two, and it may be doubted whether dangers greater than those it prevents are not fostered by it. Swiss experience seems to shew that the electors who sent up representatives to Berne charged to give effect to certain legislative projects were easily frightened by some of the provisions of the laws passed to carry out their wishes, and voted against them on a *referendum.* From 1894 to 1897 they treated in this way no less than seven projects of law. In any case the appeal on the details of a Bill from the representatives to the represented, is an appeal from comparative knowledge to comparative ignorance; for, whatever may be the standard of intelligence in the community, it is pretty safe to assume that the average member of the Legislative Assembly knows more than the average elector. But if the advantages of the *referendum* are problematical, its disadvantages are flagrant. Popular representative government is the great political heritage of the Anglo-Saxon race. Wise men are beginning to doubt whether other races can work it successfully. But it suits our idiosyncracies; it is the natural outcome of our history and circumstances; under it we have wedded liberty and stability in a marvellous union, and attained to an unexampled degree of national greatness and commercial prosperity; while the last twenty years have shewn that a democracy working by means of it can rise to the full height of imperial responsibilities. Anything that introduces an element of weakness into it should be

shunned with unaffected repugnance. The *referendum* must of necessity tend to weaken a sense of responsibility on the part of the representatives of the people. It will either dishearten them for their difficult and complicated work, or it will cause them to scamp a task for which they cannot be called to account because the final decision rests with others. Moreover the multiplication of elections and votings would almost certainly increase the power of the wire-puller and the boss, which is already too great for healthy political action. If we are wise we shall not adopt the *referendum* as a remedy for the dangers and weaknesses of a single representative Chamber.

But if the *referendum* will not do, and proportionate representation will not do, we are reduced to two alternatives. Either we must allow a single Chamber with all its defects to rule us with undisputed sway, or we must endeavour to qualify it by means of a Second Chamber. To those who in their impatience with that ridiculous travesty of a legislative body, the present House of Lords, are advocates of one Chamber and one Chamber only, I would point out that an organised party majority will always be tempted to use its power tyrannically, and never more so than when it half suspects that on some question in dispute between itself and the minority the country is not with it. The desire to get the matter settled and pass on to other and safer affairs is almost irresistible. The best parties, the wisest governments, need to be checked occasionally ; and though, no

doubt, the great check is fear of offending popular feeling and losing the next election, yet there is often need of some restraining power which can act at once, especially in the early days of a Parliament. The dangers of prejudice and ignorance have already been enlarged upon. It remains to say a few words about the danger of variability. Those who doubt its existence should read the article by A. L. Lowell on "Oscillations in Politics" in the July number of the *Annals of the American Academy of Political and Social Science.* A more valuable piece of political philosophy, it would be difficult to find. Carefully guarded conclusions are drawn from great collections of historical facts and vast masses of statistics. The author shews that both in Great Britain and in the United States there is a tendency to periodic and rapid changes of public sentiment which might cause alarming instability, did not the written constitution in America and certain traditions and customs in England act as checks upon the violence of political oscillations. The alternate victories and defeats of the Republican and Democratic parties at Presidential and Congressional elections since 1876 has subjected American trade to incessant changes of tariffs and incessant currency legislation, with the result that, vast as it is, it might have been far vaster, had any definite policy been pursued over a long period of time. In our own country the verdict of the people on the Home Rule question has changed at each general election since 1886; and in consequence

poor Ireland, the usual scape-goat for England's political sins, has been condemned to the heart-sickness which comes from hope deferred and the slackening of enterprise which comes from uncertainty as to the future.

Our own institutions contain singularly few safeguards against the dangers of political mutability. In most democratic countries the fundamental rules of government are brought together in a written instrument called the constitution, and this constitution cannot be altered by the processes of ordinary legislation. A special and very difficult procedure is required for the passage of a constitutional amendment. In Switzerland, a majority of the citizens voting, and of the cantons, is required. In America constitutional amendments cannot be submitted by Congress for ratification till two-thirds of both Houses have voted in favour of them, and even then the assent of three-fourths of the States in the Union is required to give them validity. Our own self-governing colonies receive their constitutions nominally as a gift from the mother-country, though, of course, no British Parliament would dream of imposing new fundamental institutions or altering old ones without the full consent of the people of the colony. Still the fact that the constitution of Canada, for instance, is an Imperial Statute secures that any proposals for alteration receive much more consideration and pass under the review of many more authorities than projects of ordinary legislation. In the United Kingdom alone all statutes are on the same level. We could

alter the succession, establish a republic or a military despotism, enlarge or destroy the liberty of the subject, by exactly the same process as we use for regulating railway charges or providing for the care of the insane. That we do not change the fundamental fabric of our government lightly and wantonly is a testimony to our conservatism and a credit to our judgment. But there is nothing in the law of the land to keep us from such wild experiments. If we were afflicted with a bad attack of political *hysteria*, we might change the ministry every week and alter the form of government once a month. So far as the use of legal machinery is concerned, there would be no more difficulty in it than in producing the ordinary sessional output of humdrum legislation. A country placed in such a position should think not once or twice, but many times, before it consents to weaken any of the existing bulwarks against sudden and violent change.

If we concentrate all the vast power of the British Parliament in a single Chamber, we shall deliberately give up our last chance of securing revision of hasty judgments. When troublous times come, and men are easily roused by appeals to passion and prejudice, the first gust of popular excitement will carry all before it, and we shall find too late that on erroneous information and unenlightened judgment we have parted with some precious possessions or produced some irreparable mischief. Shall we then put up with the House of Lords lest a worse thing befall us? Certainly

not. Strongly as I hold to the doctrine of the need of a Second Chamber, I would rather see one elective House monopolising all the authority, legislative and executive, now possessed by Parliament, than consent to the continuance of the political privileges of the hereditary Peerage. I would trust to the sound sense of the people to avoid panic legislation and policy born of passion and ignorance, rather than put my faith in the wise exercise of the checking power by the existing House of Lords. It is a Second Chamber *pour rire*. It fulfils none of the ends for which Second Chambers are supposed to exist. Nay more, it produces some of the evils against which Second Chambers are supposed to guard. They are meant to secure calm deliberation and eliminate as far as possible the element of passion and unreason from the business of government. They are to take care that progress does not become revolution, that change is quiet and continuous rather than sudden and violent. Our House of Lords will yield to clamour what it refuses to reason. If only we demonstrate in sufficient numbers, if only we work ourselves up to the verge of revolution, it will give us almost anything we ask. But if it is fairly certain that a refusal will produce no violent cataclysm, we may beg in vain for the most reasonable demands. If a Liberal Ministry is in power, all its proposals are resisted and thwarted with little regard to their merits. If a Conservative Ministry is in power, the duty of careful revision is forgotten, and the Second Chamber becomes a mere registry of the

decisions of the first. It is at once too strong and too weak. It renders the task of government, when committed to one set of men, well nigh impossible. But when another set of men are called upon to assume it, all restraint is removed. And the composition of the House of Peers is as faulty as its action. With the exception of a few new creations, a few bishops, and a few judges, all its members are there because they are the sons of their fathers. Most of them take no part in its business. When they are whipped up in files and platoons to throw out some great Liberal measure, the door-keepers do not know their faces. What a farce it is to entrust to such men as these the duty of legislating for a great country! How can a people which has lost its reverence for hereditary rank respect the judgments of an assembly so constituted? We English are sadly lacking in the sense of humour. In France such an institution would have been laughed out of existence long ago. To attempt the creation of anything like it in a new country would be justly regarded as an act of political lunacy.

But is it not possible, without too violent a break with the past, to create in England a Second Chamber, which will be free from the glaring faults of the present House of Lords, and perform with reasonable efficiency the functions we look for in such a Chamber? Before attempting to show that this problem is not hopeless, let me set forth again very briefly what the ideal Second Chamber should be, and what it should not be. It should be—

1. An informing power, and to this end it should contain persons possessed of special knowledge.
2. A steadying power, and to this end it should contain persons possessed of great experience and sound judgment.
3. A delaying power, and to this end it should be armed with authority to require from the popular Chamber a second consideration of important measures.

It should not be—

1. An overriding power, and to this end it should not be armed with authority to overthrow ministries or destroy measures.
2. A power possessed of sinister interests, and to this end it should not be a citadel of the classes as against the masses.
3. A power monopolising political ability, and to this end its functions should be such that able and ambitious statesmen would prefer to be members of the House of Commons.

In short, its constitution should be that of a body of experts, and its function should be to see that the enlightened will, rather than the passing whim, of the people prevailed in the long run.

In any attempt to realise this ideal in England, we must bear in mind both the great principle of continuity in our institutions and also the great axiom of practical wisdom that reforms must be such that they will be accepted, when once they are passed, by the people who originally voted against them. For instance, Radicals might prefer

to call a new Second Chamber the Senate; but let them secure the thing, and they can afford to leave the old name for the comfort of their Conservative friends. After all we have had a House of Lords for more than five hundred and fifty years, and this in itself is a good reason for going on having one, if we can remodel it according to our wishes. Again, Radicals might prefer to sweep away the hereditary principle at one blow. But if by putting up with it in a modified form a little longer they can diminish the opposition of timorous people to their main proposals, they will be wise to delay the epoch of its final destruction. The people of this country have a deep respect for expert knowledge, sound judgment, and skill in the management of great affairs. Let us build up our Second Chamber upon these qualities, while we retain for a time some little remains of hereditary rank to smooth the transition stage and reconcile to the new order the people who would at first denounce it as revolutionary. How could this be done? I venture to suggest for discussion the following plan:—

1. The new Second Chamber to be called the House of Lords, and the present Peers to be allowed to elect a proportion, say one-tenth, of their number, who shall have seats in the reformed House of Lords for life; but on the death of any of these elected Peers the vacancy thus created not to be filled up.
2. The Chamber, when by the death of all the elected hereditary Peers it had reached its

normal condition, to consist of not more than a limited number of members, say 200.

3. These members to hold their seats from General Election to General Election, and to be chosen at a reasonable time after each General Election in the manner indicated below.

   (*a*) Fifty to be nominated by the Government of the day.

   (*b*) Fifty to be nominated by the Governments of the self-governing Colonies and the Governor-General of India in Council. The number of members assigned to each Colony and to India to be fixed in the Act creating the reformed Second Chamber, and varied from time to time by subsequent Acts.

   (*c*) A hundred to be chosen from among their own number by the Mayors of Municipal Boroughs, the Chairmen of County Councils, the Chairmen of Chambers of Commerce, the Bench of Bishops, the Chairmen of Free Church Congresses, and the Councils of the various organisations which control the affairs of the legal, medical, artistic, and engineering professions. The number of members assigned to each organisation to be defined in the Act and capable of alteration from time to time.

In this way we should obtain an assembly among

whose members might be found experts in almost any subject. They would be men of ability and judgment, more anxious for sound legislation and good administration than for the triumph of a party. Colonial interests would be directly represented, and the common affairs of the Empire would be discussed by members coming from all parts of it.

What functions would it be wise to bestow on such an assembly? It has been already suggested that the Second Chamber should not have an absolute veto on legislation, or be entrusted with the fate of ministries. It should, however, have power to compel second thoughts, and give opportunity for a definite expression of the national will after full information had been placed before the people and their representatives. It might send down to the popular Chamber *Suggestions for Consideration*, and these suggestions should be debated respectfully, and either adopted or rejected. If the Houses disagreed, the ancient device of a Conference might be resorted to. If this failed to produce a happy result, the House of Commons would pass the Bill with the provisions to which the House of Lords objected. It would then come before the Lords, who would have to choose between accepting or rejecting it. If they adopted the latter course, the Bill should lie dormant for the remainder of the session. But next session the Government, or any private member who might be in charge of it, should not be compelled to carry it again through all its stages, but have the option of moving that the Bill be recommitted or moving a resolution

affirming all its provisions, or affirming it with certain changes. If the first course were adopted, the Bill might be remodelled in Committee : if the second, it might be reaffirmed either *in toto*, or with certain small alterations. It would, of course, be liable to defeat in the House of Commons ; but if it passed, the passage should be final. The Second Chamber's work is done when it secures reconsideration in the light of expert knowledge. For good or evil, the people's will must decide in the last resort.

Here then is a plan which must be taken for what it is worth. But before leaving it to the judgment of the readers of this book, I should like to answer in a word or two the question, How is any Bill, which embodies such a plan, to be carried? I reply, just in the same way that any other Bill is carried. The existing House of Lords would not pass it willingly ; but the Royal Prerogative of creating Peers could be used on the advice of the Ministry of the day. Probably the threat to do this would be enough, as it was in 1832. But if not, a determined Prime Minister, with the country enthusiastically at his back, could do what Earl Grey only contemplated. But without the support of the great bulk of the people, nothing could be effected; and therefore, as we saw early in this paper, it is hopeless to attempt the reform of the House of Lords till the average elector feels he has a grievance against it. What we have to do now is to prepare for action then.

XIV

By Rev. Samuel Vincent,
President of Baptist Union

I think the conduct of Irishmen has greatly strengthened the House since Mr Parnell's fall. If the Lords were only moderately wise when the next Liberal Government is in power, it would be still further strengthened. But if old obstructive tactics prevail, Mr Gladstone's last speech in the Commons will end them, or leave them but with a one-session Veto. Free Churchmen will not tamely see their next opportunity for having justice done them, in the matter of education, for example, frittered away by the Lords. I believe a movement amounting to a revolution would peacefully but resistlessly depose them. Nonconformists would laugh to scorn any proposed representation in the Lords.

XV

By Francis Seymour Stevenson, M.P.

THE question of the relations between THE REPRESENTATIVE AND THE UNREPRESENTATIVE CHAMBERS is one which will have to be faced boldly and resolutely, and at no distant date, by the Liberal party and by the country as a whole. When that time comes it will be desirable, in my view, that public attention should be directed not so much to the defects which principle and logic must perceive to be inherent in the constitution of the House of Lords, as to the practical evils which have resulted from the exercise of its existing rights. It is more important that a speedy and effectual end should be put to its power of doing harm, than that years should be devoted to the task of replacing it by a body less widely diverging from the standard of theoretical perfection.

If it were possible to begin again from the beginning, and to establish and develop a new order of things, it might well be asked whether, in the place of the hereditary transmission of titles of honour which has become habitual among most European nations, it would not be better to adopt the Chinese method of ennobling the ancestors of the distinguished man rather than his descendants,

inasmuch as the former have unquestionably contributed their share to his distinction, while there is no guarantee that the latter will show themselves worthy of the rank which will be conferred upon them by an automatic and indiscriminating process.

Except, however, in countries in which the nobility has become a caste, as was the case in France before the Revolution, and as is still the case, to a great extent, in Austria, and except in so far as the laws affecting the ownership of land have been indirectly affected, the Western system of creating and transmitting titles of dignity is not in itself calculated to cause any serious injury to the community. The harm arises when a hereditary title carries with it a hereditary right to legislate, based upon an assumed hereditary capacity for legislation, and when an unrepresentative Chamber thus constituted is enabled to override the deliberate judgment of the people's representatives.

In dealing with the House of Lords it is not sufficient to point out that it is, on abstract grounds, an anomaly and an anachronism. It is necessary to show, as might easily be shown by reference to the history of the past sixty-six years, that, in the discharge of its functions, it has destroyed or mangled measures which made for progress, while the forces of reaction have found within its walls the support which has encouraged their encroachments and given zest to their malignity.

It is no answer to say that most of the measures of reform which the House of Lords has opposed have been ultimately carried in spite of its opposi-

tion. The delays have been vexatious to the community and dangerous to the best interests of the State. Often, too, what was best in a Bill has had to be sacrificed in order to ensure its passage; it has been compelled to lose either its life or its character, and *propter vitam vivendi perdere causas.* A Conservative administration finds in the House of Lords a docile and subservient instrument. Under a Liberal Government it does not hesitate to reject or to mutilate proposals put forward by the elected Chamber, and to hinder, instead of helping, the work of the executive.

WHAT, THEN, IS THE REMEDY? Abolition, reconstruction, and a limitation of powers, have all been suggested. It is probable that reconstruction and a limitation of powers will both be necessary, if abolition is to be averted. They stand, however, on different footings, and are not of equal urgency. A reconstruction of the Second Chamber necessarily involves a large number of considerations affecting not only the United Kingdom but the Empire as a whole, and may well be postponed to a later occasion, provided that in the meantime the House of Lords, in the form in which it now exists, be deprived of the means it has now at its command for the purpose of impeding or arresting the course of useful legislation.

The experience of the past, therefore, and especially that of the Parliament which sat from 1892 to 1895, viewed in the light of the important and far-seeing declaration made by Mr Gladstone in the last speech which he delivered in the House

of Commons as leader of the Liberal party, ought to convince Liberals that to limit the powers of the House of Lords is a manifest duty on the fulfilment of which they will be called upon to concentrate their energies with a view to the removal of the obstacles standing in the way of social and political reform. It will not be enough to deprive it of its right of veto. It will also be needful to prevent the virtual destruction of a Bill through the elimination of its most valuable provisions.

In addressing itself to the task of limiting the powers of the House of Lords, the Liberal party, backed by public opinion, will be assisted by the recollection of various precedents which have led to the recognition of at least two important constitutional principles, according to one of which a hostile vote passed by that Chamber does not involve the resignation of the Ministry, whilst by virtue of the other it is unable to interfere with financial legislation. The limits thus imposed upon two forms of parliamentary activity may well be applied in other directions also. Let the principle established at the time of the repeal of the Newspaper Duties be extended by similar methods to measures not of a financial nature, and what is required will have been accomplished.

It may be suggested that the process here described would be unfair to the numerous Peers of distinguished ability and character whose powers would be circumscribed and who would have at the same time no means of escape into a more

congenial atmosphere. The obvious reply to any such suggestion is that the influence exercised upon the House of Lords by its more enlightened members is, under existing conditions, so slight that it could hardly be affected by a further diminution of the powers of that Assembly; and, furthermore, that the House of Lords would still retain its judicial functions and that its weight as a deliberative body would be increased, rather than loosened, by the fact that it had lost its power of doing mischief. For my own part, however, I see no valid reason why a Peer of the United Kingdom should be prevented from being elected a member of the House of Commons provided that he were enabled previously to surrender, on behalf of himself and of his representatives during his lifetime, the whole of his and their rights to a seat in the House of Lords. In any case, whether it be possible or not to entertain a proposal of that description, which is, after all, a matter of detail, it IS IMPERATIVE THAT THE LARGER QUESTION SHOULD BE APPROACHED IN AN EARNEST AND DETERMINED SPIRIT, and THAT THE POWERS OF DESTRUCTION AND MUTILATION which have been so detrimental in the past SHOULD BE WITHDRAWN IN THE FUTURE.

XVI

By Walter R. Warren, LL.B.,
Barrister-at-Law.

I

THE EXERCISE OF THE ROYAL PREROGATIVE IN RELATION TO THE CREATION OF PEERS

The Crown's right to create Peers is undoubted, and subject only to the following restrictions :

(i) It cannot create a Peer of Scotland.

(ii) It can only create a Peer of Ireland according to the conditions laid down in the Act of Union.

(iii) It is doubtful whether in directing the devolution of a dignity it is confined to limitations recognised by law in the case of other grants.

Beyond these restrictions its prerogative in this regard is unlimited. In 1454 only fifty-three lay Peers attended Parliament. In 1485 only twenty-nine received Writs of Summons to the first Parliament of Henry IV. The greatest number summoned by Henry VIII. was fifty-one, which had increased at the death of Elizabeth to fifty-nine. James I. created sixty-two ; Charles I., fifty-nine ; Charles II., sixty-four ; and James II., eight ; so

that in all, the four Stuart kings created 193 new Peers. As many of these Peerages were sold by James I. and Charles II., it is surprising that the creations were not even more numerous. And during their reigns ninety-nine Peerages became extinct, so that at the Revolution of 1688 the number of the Peerage stood at about 150, which was raised by William III. and Anne to 168. The House was further increased in 1707, on the passing of the Act of Union, by the addition of sixteen representative Peers from Scotland, elected at the commencement of every Parliament.

In 1711 Anne and her ministers successfully attempted to pack the House of Lords by the creation of twelve new Peers, and so secured a majority for the Parliamentary approval of the Peace of Utrecht. It was this, no doubt, that excited and increased the fear and jealousy of the Lords as to the exercise of this royal prerogative, and led to the measure which was proposed by them in 1719, to confine within very narrow limits the creation of new Peers.

With the concurrence of George I. bills were introduced in 1719 and 1720, providing that, with an exception in favour of princes of the blood, the Crown should be restrained from increasing the then existing number of 178 Peerages by more than six (although new Peerages might be created in the room of any becoming extinct), and that twenty-five hereditary Peers should be substituted for the sixteen elective Peers of Scotland. This unconstitutional scheme was strongly opposed in

the Commons by Walpole and others, and finally rejected by 269 to 177. Its passing would have transformed the Lords into a close aristocratic body, independent alike of the Crown and people.[1] It would have eliminated from the complex mechanism of the constitution what has been termed its "safety-valve," namely, the power of the Crown to create Peers on the advice of its responsible ministers, and thereby, in cases of great emergency, to compel the Peers to bow to the people's will as expressed by the Commons, and so to render possible the smooth and efficient working of parliamentary government. At the accession of George III., Peers only numbered 174, but throughout his reign they were rapidly multiplied.

In the earlier part of his reign the King employed this constitutional power as one means of carrying out his attempt to destroy party government and strengthen the influence of the Crown in Parliament. In the first ten years of this reign forty-two Peers were created, or raised to a higher order in the Peerage. Lord North also liberally created Peers to strengthen his own position and carry out the policy of the Court.

In 1776 ten new Peers were created, one baron made a viscount, and three promoted to earldoms.[2] Altogether, during his Administration, he created or promoted thirty British Peers. Pitt the younger made use of it, through the King, for a different purpose. While anxious to consolidate his own

[1] Bagehot, "Eng. Const.," 229.
[2] "Lord North's Admin.," 257.

authority as Minister was one object, he also desired to reform the Upper House. He wished, he said, "to reward eminent merit, to recruit the Peerage from the great landowners and other opulent classes, and to render the Crown independent of factious combinations among the existing peers."[1] With this object, during the first five years of his Administration he created forty-eight new Peers; at the end of eight years he had created between sixty and seventy, the greater part of whom owed their elevation to the parliamentary support given to the Minister, or to their interest in returning members to the House of Commons; and in 1796-7 he created thirty-five.

At the end of his seventeen years' Administration, in 1801, his creation of Peers had reached a sum total of 141. Many, if not most, of these he created to consolidate his own power, as it had been the object of the King in his earlier years to destroy the Whig majority which had existed in the House of Lords ever since the Revolution, and at the same time to make the grant of Peerages a means of maintaining his influence in the House of Commons. Edmund Burke's Economical Reform Bill had swept away most of the sinecure offices by which political services had been rewarded hitherto, and now, consequently, Peerages became much more habitually the rewards of public service.

Nearly all Pitt's creations were "men of strong Tory opinions, promoted for political services, and the vast majority of these were men of no real dis-

[1] Cobbett's "Parl. Hist.," xxvii. 942, 943.

tinction, and they changed the political tendencies and greatly lowered the intellectual level of the Assembly to which they were raised."[1] The example set by Pitt was followed by his successors, and at the end of George III.'s reign the actual number of Peerages conferred by that King (including some promotions of existing Peers to a higher rank) reached the enormous total of 388.

The vast increase under George III. affected the whole character of the House of Lords. "Pitt revolutionised the House. It became the stronghold, not of blood, but of property."[2]

In 1810 a condition was imposed by the Regent against the right of exercising the royal prerogative of creating Peers, but as the restriction was limited to one year only, it was not strongly opposed.

The constitutional position of the Lords as to legislation of which they disapprove, but which is supported by the Crown Ministers, the Commons, and the people, may be said to have been definitely determined by the result of the memorable struggle in 1831 and 1832 on the passing of the Reform Bill. After sixteen Peers had been created to aid the progress of the measure, the continued opposition of the Lords was finally overcome by the private persuasions of the King and the knowledge that he had consented to the creation of a sufficient number of Peers to ensure a majority.[3] This

[1] Lecky, "5 Hist. of Eng. in 18th Cent.," 27.

[2] Green, "Hist. of Eng. People," 792.

[3] "The King grants permission to Earl Grey, and to his Chancellor, Lord Brougham, to create such a number of Peers as will be sufficient to ensure the passing of the Reform Bill,—first calling up Peers' eldest sons. WILLIAM R.—Windsor, May 17th, 1832."

threatened creation of Peers was denounced as unconstitutional, but it was admirably answered by Earl Grey : " I ask what would be the consequences if we were to suppose that such a prerogative did not exist, or could not be constitutionally exercised ? The Commons have a control over the Crown by the privilege, in extreme cases, of refusing supplies ; and the Crown has, by means of its power to dissolve the House of Commons, a control upon any violent and rash proceedings on the part of the Commons ; but if a majority of this House is to have the power, whenever they please, of opposing the declared and decided wishes both of the Crown and the people, without any means of modifying that power, then this country is placed entirely under the influence of an uncontrollable oligarchy. I say that, if a majority of this House should have the power of acting adversely to the Crown and the Commons, and was determined to exercise that power, without being liable to check or control, the Constitution is completely altered, and the Government of this country is not a limited monarchy ; it is no longer, my Lords, the Crown, the Lords, and the Commons, but the House of Lords—a separate oligarchy—governing absolutely the others." [1] An extraordinary creation of Peers in every such case of emergency is not only a perfectly constitutional act, but also essential to the safety of the Constitution itself.[2]

[1] Hansard, Deb., 3rd ser., xii. 1006.
[2] May, " Const. Hist.," i. 315.

II

(i) MONEY BILLS

In the reign of Henry IV., an affair took place in Parliament which is of historic and popular interest, since it was not only the first occasion on which the two Houses came into collision, but affords the earliest authority for what are now two well-established principles of Parliamentary law, namely:

(i) That all Money Bills must originate in the House of Commons; and

(ii) That the King ought not to take notice of matters debated in Parliament until a decision be come to by both Houses, and such decision be regularly brought before him.

It seems that in the second year of the reign the King had refused to give answers to the Commons' petitions before they had granted supplies, stating that that was the custom, and that he would not change the good customs of ancient times.[1]

In 1407 (9 Henry IV.), in the King's presence the Lords had discussed the state of the Kingdom, and had specified certain subsidies as requisite for the national defence. The King then requested the Commons to send a deputation to the Lords to hear and report to the Commons what they should have in command from the King, in order that they might expeditiously comply with the intention of the Lords. Accordingly, twelve Commons attended the Lords

[1] Rot. Parl., 2 Henry IV., No. 23.

and reported to the Lower House, who thereupon declared that the whole thing was much to the prejudice and derogation of their liberties.[1] At length the dispute terminated in an "indemnity," the King commanding that it be entered upon record in the Rolls of Parliament. After stating that the King was not willing that anything should be done against the estate represented by the members of the House of Commons or against the liberties of the Lords, the entry says that he willed and granted and declared, by the advice and assent of the Lords, in manner following: "That it shall be lawful for the Lords to commune amongst themselves in this present Parliament, and in every other in time to come, in the absence of the King, of the state of the realm, and of the remedy necessary for the same. And that in like manner it shall be lawful for the Commons, on their part, to commune together of the state and remedy aforesaid. Provided always that the Lords on their part, and the Commons on their part, shall not make any report to our said Lord the King of any grant by the Commons granted, and by the Lords assented to, nor of the communications of the said grant, before the Lords and Commons shall be of one assent and one accord in such matters and then in manner and form accustomed, that is to say, by the mouth of the Speaker of the Commons, in order that the Lords and Commons may have their will of our said Lord the King."[2]

[1] Rot. Parl., iii. 611.

[2] *Ibid.*

It may be remarked that, originally, not only grants of money, but almost all statutes originated in the proceedings of the House of Commons.

The above record embraces three main points in regard to the procedure of voting supplies. They were (*a*) to be granted *by the Commons*, (*b*) to have *assent of Lords*, (*c*) to be reported to the King by the Commons' Speaker. This did not preclude suggestions being made by the Lords to the Commons.

However, the method of granting supplies did not assume their modern state until a much later period.

Long intervals between the summoning of Parliament, and the granting of supplies for long periods, occasionally for the lifetime of the sovereign, gave the method an air of irregularity, and sometimes defeated the very aims which it was intended to accomplish. It was only gradually that the grants assumed the form of Acts of Parliament. Some appear in this form in the reign of Henry VIII., when also subsidies voted in Convocation were confirmed by Statute.[1]

In 1593 an attempt was made by the Lords to encroach on the Commons' privilege of originating Money Bills. The Lords sent a message to the Commons referring to the Queen's want of supply, and requesting the appointment of a committee to confer. This request was granted, but it quickly

[1] 32 Henry VIII., c. 23; 37 Henry VIII., c. 24, c. 25. The practice of taxing the clergy in Convocation was discontinued in 1664, after which they were taxed in the same manner as the laity.

appeared that the Lords and Commons differed in opinion. Sir R. Cecil reported from the committee that the Lords would not consent to grant anything less than three subsidies, while the Commons only desired to give two. Thereupon Mr Bacon (afterwards Lord Chancellor) rose and deprecated the committee of conference as being contrary to the customs and privilege of the House of Commons, which had been first to make offer of the subsidies from thence, and then to send it to the Upper House.

The Court party in the Commons tried hard to bring about another conference with the Lords, but their motion for that purpose was defeated on division by 217 votes to 128.[1]

After the abolition of feudal tenures, immediately succeeding the Restoration, everything that was necessary for the public service had to be raised by some form of taxation; and the Commons represented almost the entirety of those who were to be taxed. Consequently, when they claimed the exclusive privileges in respect of Money Bills, they had a strong argument in the interests with which they were entrusted, as well as historic support.

In 1661 the Commons objected to a Bill sent down from the Lords, with reference to paving the streets of Westminster. They said that such Bills should be first considered by them (the Commons);[2] and they, themselves, drew up and sent to the Lords a Bill of their own, which the Lords amended, but

[1] D'Ewes, 486; Hallam, "Con. Hist.," i. 276.

[2] Journals of the House of Commons, vol. viii. 315.

the Commons rejected the Lords' amending clause as an infringement upon their privileges. This the Lords would not admit, and, neither party giving way, the Bills fell.

Again, in 1671, the Commons successfully disputed the right of the Lords to reduce the amount of an imposition. They resolved "that in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords."[1] Since that year the Lords have tacitly acquiesced in the contention of the Commons.

In 1678 the Commons resolved "that all aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which ought not to be changed or altered by the House of Lords."[2] This did not deprive the Lords of their power to reject a Money Bill; they could not be taxed without their own consent, but, on the other hand, they could not direct the course of taxation.

Since then, whenever amendments have been made by the Lords, the Commons, if desirous of accepting them, have invariably saved their privilege by throwing out the amended Bill, and sending up to the Lords a *new* Bill embodying the Lords'

[1] Journals of the House of Commons, Apr. 14, 1671.

[2] *Id.*, vol. ix. 509.

amendments. And this restriction on the Lords has been practically acknowledged. And so, again, when, in 1790, the Lords amended a Bill for regulating Warwick Gaol, by shifting the proposed rate from the owners to the occupiers of land, the Commons vindicated their privilege by throwing out the Bill.

The right of the Lords to reject a Money Bill was explicitly admitted by the Commons in 1671 and 1689 ; but even this power has been threatened by the Commons, both by direct resolutions and by tacking particular money clauses to Bills of a more general application. But for a long period the Lords ceased even to discuss financial measures.

In 1763, when they opposed the third reading of the Wines and Cider Duties Bill, it was observed that this was the first occasion on which they had been known to divide on a Money Bill.

At length, in 1860, the Lords exercised their right of rejection. The Commons had sent up a Bill for the repeal of Acts imposing duties upon paper. The right of the Lords to reject any Bill whatever was beyond dispute. "Yet it was contended," says Sir Erskine May, "with great force, that to undertake the office of revising the balances of supplies and ways and means—which had never been assumed by the Lords during 200 years—was a breach of constitutional usage and a violation of the first principles upon which the privileges of the House are founded. If the letter of the law was with the Lords, its spirit was clearly with the Commons."

After the lapse of six weeks, the Commons re-asserted their rights in the following series of resolutions :—

(i) That the right of granting aids and supplies to the Crown is in the Commons alone ;

(ii) That, although the Lords had sometimes exercised the power of rejecting Bills relating to taxation, yet the exercise of that power was justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant supplies, and to provide the ways and means for the service of the year ; and

(iii) That to secure to the Commons their rightful control over taxation, this House has in its own hands the power so to impose and remit taxes, and to frame Bills of supply, that the right of the Commons as to the matter, manner, measure and time, may be maintained inviolate.[1]

Next session the Commons effectually prevented the Lords' interference by including the repeal of the paper-duty in a great and general financial measure which the Lords were constrained to accept and so reversed their action of the previous year.

"It would seem that, should the Commons always follow the same policy, the Lords would lose even the power of throwing out a Money Bill, or would be able to assert it only at the risk

[1] May, "Con. Hist.," ii. 104-112 ; T. E. May, "Law and Usage of Parliament," 540-550 ; Hansard, 3rd series, clix., pp. 1383-1606.

of interrupting all legislation affecting the public revenue and expenditure."[1]

(ii) THE PAPER DUTIES REPEAL

After the Restoration the entire control of printing was placed in the hands of the Government by the Licensing Act of 1662, which was renewed from time to time, until in 1695 it finally expired. Although the Press then became theoretically free, the summary jurisdiction of Parliament kept it constantly in check by the imposition (among other means) of the Stamp Duty on newspapers and advertisements. The first Stamp Act was passed 10 Anne, c. 19, and being found an effective check on circulation of cheap periodicals and a source of revenue, the stamp gradually rose to fourpence. At the end of George III.'s reign it was extended, by one of the series of statutes known as the Six Acts, to tracts and other unstamped periodicals which professed not to be newspapers. Evasions of the Stamp Duty were frequent, and the State and the contraband press were at odds until after the Reform Act, 1832.

In 1833 the Advertisement Duty was reduced in amount, and in 1853 relinquished altogether.

In 1855, the stamp on newspapers was abandoned; while the duty on paper, which had latterly proved a serious rock of offence to popular education, was swept away in 1861.

It appears that in 1860 the Commons deter-

[1] Pike, "Con. Hist. House of Lords," 345.

mined to balance the year's ways and means by an increase of the Property Tax and Stamp Duties, and the repeal of the duties on paper. The increased taxation had already received the assent of Parliament and of the Crown, when the Lords rejected the Paper Duties Repeal Bill, and thus over-ruled the financial arrangements voted by the Commons. After the lapse of six weeks, during which a committee of the Commons had searched for precedents and reported to the House, Lord Palmerston addressed the House, deprecating a collision with the Lords, and expressing his opinion that in rejecting the Paper Duties Bill they had been actuated by motives of public policy merely, without any intention of entering upon a deliberate course of interference with the peculiar functions of the Commons. He said:

> "The Commons House of Parliament have claimed from time immemorial particular privileges in regard to particular measures. They have claimed—and I think justly claimed, as is stated in these Resolutions—the exclusive right of determining introductions connected with the taxation of the people. We (the Commons) have claimed to ourselves the right of originating such measures. We have denied the Lords the right of originating such measures; we have, moreover, denied to them the right of altering or amending such measures. And both these assertions of right we have the power to enforce. . . .

I cannot bring myself to believe that the Lords, in the step which they have now taken, intended to enter on a course, their progress in which, if they did enter upon it, it would be the duty of this House to resist by every constitutional and legal means which are at our command. . . . If we believed that such was their intention, and that this is only the first step in such a course, then, Sir, I say that it would become us to resolve in our minds to take those measures which are in our power to defeat and frustrate it ; but until the House has some more decided proof that such an intention was entertained, I would adjure the House to content itself with the record of that declaration which is contained in the Resolutions which I have the honour to lay upon the table, and not, without being driven to it as a matter of necessity, to enter upon a formal conflict with the other House of Parliament. . . . Some may think that I entertain too favourable a view of the conduct of that House, but I say that if we have not proof sufficient to satisfy us that the rejection of the Paper Duty Bill was the first step in a new system of constitutional conduct, we had better pursue the policy which we now recommend for the adoption of the House.

" Perhaps in ordinary times, we might have advised this House to pass again the Bill

which was rejected by the Lords; to suspend all other business till it was passed, and by the exercise of those means which we have in our hands, to render it necessary for the Lords to give way. But, Sir, the circumstances of the moment do not render that course of action desirable."[1]

And upon the same occasion Mr Stansfeld said:

"The House knows perfectly well that the claims which it has been accustomed for centuries to assert, have not been claims in the discretionary use of a co-ordinate power, but have been claims to the possession of a superior constitutional right which it is a breach of privilege on the part of the House of Lords even to attempt to infringe upon. . . .

"Let the House remember that we are making history to-night. We are about to maintain or to surrender a part of the constitutional rights of the oldest, freest, and the greatest representative assembly in the world. The precedent of 1860, whether we will or no, for good or for ill, to our honour or to our shame, is about to take its place in the inevitable historic page, by the side of those older and greater precedents which have been laid before us, and which are the laurels and traditions of our past."[2]

And Mr Disraeli said, in agreeing to the Resolu-

[1] Hansard, Deb., clix., 1386-1395.
[2] Hansard. *Id.*, 1478-1484.

tions, "the test of privilege is that it can be asserted."[1]

The Resolutions were at length put and carried. And in accordance with these Resolutions, during the next session, 1861, the financial scheme of the year was presented to the Lords for their total acceptance or rejection. The Commons included, *in one and the same Bill*, the repeal of the paper duties, together with measures as to the property tax, the tea and sugar duties, and other ways and means, for the service of the year; and this the Lords were constrained to accept.

(iii) ABOLITION OF PURCHASE IN THE ARMY, BY ROYAL WARRANT

The following is an extract from the Warrant whereby purchase in the army was abolished.

After reciting that by 5 and 6 Edward VI., c. 16, entituled "Against buying and selling of offices," and by 49 George III., c. 126, entituled, "An Act for the prevention of the brokerage and sale of offices," all officers in the army were prohibited from selling or bargaining for the sale of any commission in the army under penalty, but that the latter Act exempted from the penalties of the said Acts, purchases, sales, &c., of commissions for prices fixed by any regulation made by or on behalf of the Crown, the Warrant proceeds:—

> "And whereas we think it expedient to put an end to all such regulations, and to all sales and purchases, and all exchanges for money

[1] *Id.*, 1499.

of Commissions in Our Forces, and all dealings relating to such purchases, sales, or exchanges.

"Now our Will and Pleasure is, that on and after the 1st day of November, in this present year, all regulations made by us or any of Our Royal Predecessors, or any officers acting under Our authority, regulating or fixing the prices at which any Commissions in Our Forces may be purchased, sold, or exchanged, or in any way authorising the purchase or sale or exchange for money of any such Commission, shall be cancelled and determined.

"Given at Our Court at Osborne this 20th day of July, in the 35th year of Our Reign.

In 1871 an Army Regulation Bill, a bill of some length, dealing with various reforms and alterations, and which included Abolition of Purchase, was introduced into the Commons, where, after long debates, which were continually adjourned, it was read a second and third time, and passed on July 3rd by a vote of 289, as against 231.

On 4th July the Bill went to the Lords, where it was debated, read, and ordered to be printed; on July 17th, after adjourned debates, the Bill was thrown out by a majority of 25; there being 130 Contents, as against 155 Not-Contents.

The Bill was really defeated by the adoption of an ingenious amendment moved by the Duke of Richmond. "It did not pledge the House of

Lords to reject the Bill; it did not directly oppose the second reading, the House was anxious to know more fully the plans of the Government for the general re-organisation of the army."[1] Mr Gladstone, who was then in power, thereupon took a course which became the topic of keen controversy. Purchase in the army was only obtainable by Royal Warrant. The whole system was created by the Crown. The Commons had pronounced against the system, and the House of Lords had, in fact, not actually rejected the measure, but merely asked for postponement and more light. Mr Gladstone, consequently, devised a method of forestalling the Lords, by announcing that "as the system of purchase was the creation of Royal regulation, he had advised the Queen to take the step of cancelling the Royal Warrant which made purchase legal." Whereupon the new Royal Warrant above referred to was immediately issued, declaring that all regulations as to the purchase and sale of commissions should be cancelled on and after November 1st.

The House of Lords were foiled. They had nothing left to discuss. All that was left of the Government scheme to discuss was that which referred to compensation for those deprived of interests by the abolition of the purchase system. "For the Lords to reject the Bill as it now stood would merely be to say that such officers should have no compensation. . . . The tables had been turned on the Peers. . . . Nothing was left for the House of Lords but to pass the Bill as quickly

[1] MacCarthy's "History of our own times," vol. iv. 131.

as possible, coupling its passing, however, with a resolution announcing that it was passed only in order to secure to officers of the army the compensation they were entitled to receive, and censuring the Government for having attained, 'by the exercise of the prerogative and without the aid of Parliament,' the principal object which they contemplated in the Bill."[1]

The exercise of the Royal prerogative was undoubtedly legal, nor was there any need to spend time debating that point; the real question at issue was whether the settlement of a controversy in the House of Lords, and the achievement of an end submitted to both Houses for deliberation, should have been effected in any other manner than that of the ordinary parliamentary procedure. To that question the answer must depend upon what view is taken of all great precedents established throughout the course of our long history of the Constitution.

III

THE JUDICIAL FUNCTIONS OF THE HOUSE OF LORDS

It has been remarked that the Witenagemot had judicial powers, and these powers were subsequently continued by the *Curia Regis* which superseded the Witenagemot. Even after the permanent establish-

[1] MacCarthy's "History of our own times," vol. iv. 132-133.

ment of Parliament (temp. Edward I.), the baronage, spiritual and temporal, still retained, independently of Parliament, certain powers which had been exclusively theirs when they were the Commune Concilium Regni, and these powers they ultimately transmitted to the House of Lords. The Commons never participated in these judicial functions. As far back as Henry IV. it was said "les juggements du Parlement appertiegnent soulement au Roy & as Seign^rs *and nient as* Communes."[1] Under the title of Magne Concilium Regis et Regni they met occasionally throughout the thirteenth and fourteenth centuries, and as the Commons took no part in the *judicial* power of Parliament, its function as the King's government and extraordinary court of justice was performed by the King's Great Council—*i.e.*, the Lords' House in Parliament blended with the Ordinary Council. From the mixed powers of this assembly, and the twofold capacity of the peerage as members of Parliament or the legislative council, and of the deliberative and judicial council, the House of Lords derives its judicial character as an Appeal Court, and the Privy Council obtained its legislative character which it attempted to carry out in the shape of Ordinances.

The original tribunal, the King's Continual Council, retained its extraordinary jurisdiction and finally transmitted its judicial powers to the Privy Council, by whom, through a Judicial Committee, they continue to be exercised.

[1] Rot. Parl., 1 Henry IV.

When sitting in Parliament the Peers formed (together with the Lords spiritual) a branch of the supreme legislature of the kingdom, and constituted a court of judicature; and in this capacity they had a distinctive character as the highest tribunal of the realm. The Lords had an original and exclusive jurisdiction in the trial of Peers, and under reference from the Crown upon claims of peerage and affairs of honours. By the Acts of Union they have a like jurisdiction over cases of contested elections, or the rotation of the Scottish or Irish representative Peers. They also had until recently a general jurisdiction as the Supreme Court of Appeals.

Until the establishment of the Supreme Court of Judicature (1873-75), the Lords had jurisdiction over writs of error and appeals from the Courts of Common Law and Equity. The former was of great antiquity, the latter dated from 1621.

The right to exercise it was not asserted without being questioned by some of the first lawyers of the time, Sir Matthew Hale among them. It was maintained by the Earl of Shaftesbury that the Lords' power of review extended over all the courts of the realm, civil, criminal, and ecclesiastical; but from the last-named courts the Lords have apparently never entertained appeals. In like manner, orders made on motion or petition in matters of idiocy, lunacy, or bankruptcy were not carried up to the Lords, but to the King in council. Writs in error to the Lords were confined to matters of law. They might lie from all judgments of the Ex-

chequer Courts in England and Ireland, and from all judgments in common law of the Exchequer Court of Scotland; from such judgments of Courts of Queen's Bench in England or Ireland, as were not intermediately reviewable by the Courts of Exchequer Chamber of the said two countries; from all judgments of the common law or "petty bag" side of the Chancery Court; and from the decisions of the Commissioners of error appointed to review the common law proceedings of the London municipal jurisdictions. The Judicature Act, 1873 (the operation of which was to have commenced in November 1874, but was postponed until November 1875), which created the Supreme Court of Judicature, took away entirely from the House of Lords its jurisdiction over writs of error and appeals from the several superior courts of England, and transferred it to "Her Majesty's Court of Appeal" thereby created and constituted.

The House of Lords have always had original and exclusive jurisdiction to try Peers; but of the ancient judicature of the *Curia Regis*, or of the *Commune Concilium Regni*, little now remains to the House of Lords.

The important power of impeachment was of later growth, the first case of such being in 1376. Either a Peer or a commoner may be impeached before the Lords for high treason or for other high crimes and misdemeanours; and the Sovereign's pardon is not pleadable to in bar of an impeachment, though it may be granted after sentence. Every Peer (except a Peer of Ireland, who is a

member of the House of Commons) and every Peeress, if indicted of high treason or felony, or misprision of either, has a right to be tried in the House of Lords (the Court of Our Lady the Queen in Parliament), or, when Parliament is not sitting, in the Court of the Lord High Steward. In trials for treason or misprision of treason all Peers who have a right to sit and vote in Parliament are to be summoned to attend, whether Parliament be sitting or not, and if they appear they must vote. The House of Lords can always call, and has frequently called, for the assistance of the judges, especially in questions relating to the peerage. This privilege seems to be derived from the days when judges were summoned by and sat with the King in his *Concilium* in his Parliament.

In ancient times, when no Parliament was sitting, petitions of parties could not be properly presented; but it was enacted by a Statute, 14 Edward III., that on the assembling of every Parliament there should be chosen a Prelate, two Earls and two Barons, who, with the advice of the Chancellor, the Treasurer, the Justices of the two Benches, and others of the King's *Concilium*, should have power to direct the Justices as to petitions delivered to such body. And this new body or tribunal having power to act independently of Parliament, was really the representative of the King in his Council in his Parliament.

The Council also transacted a great amount of judicial business, civil as well as criminal, sometimes by virtue of specific Acts of Parliament, sometimes

upon petitions forwarded to them by Parliament, and sometimes by virtue of their own authority as the Council of the King—and often they far exceeded their constitutional limits.

By the time of the early part of Richard II. the Council was entirely separated from Parliament; but the Parliament without the Council was a different body from the Parliament in which the Council had sat, and the judicial functions of the House of Lords sustained a corresponding alteration.

The Lords at this time (Richard II.) took the authoritative jurisdiction into their own hands, and made use of the judges and other members of the Council only as assistants and advisers, as they still continue to be in the judicial proceedings of the Lords.

Concurrently with the development of the jurisdiction of the Courts of Equity, and the growth and settled practice of the Courts of Common Law, the jurisdiction of the House of Lords in civil cases, as a Court of first instance, became less, and after the dispute in 1668-9 between the two Houses, in the case of Skinner *v.* East India Coy., the original jurisdiction of the House of Lords in civil causes may be regarded as having ceased. The principle of the jurisdiction was a delegation by the Crown of its final authority; and in acquiescing in the position of the Lords, the Commons had come to feel that it would be safer to entrust this jurisdiction to the *peers* than to judges or commissioners, who might only be nominees of the Crown. In criminal causes

the House of Lords asserted their right in the seventeenth century to an original jurisdiction, independently of their right to try peers, &c. But it appears they had lost this right in criminal matters in Edward III.'s time by an Act in that reign prohibiting apprehension without due indictment; although a few cases, perhaps irregular, appear of later date. In any case their right expired, and it is thought that this took place contemporaneously with their abandoning their right to try civil causes in the first instance, soon after the Restoration.

The Lords formerly enjoyed the jurisdiction of deciding in cases of controverted elections, but this was of short duration. The Lords, likewise, had jurisdiction over error in the King's Bench. The writ of error to bring an erroneous judgment into the House of Lords always retained the ancient form. The King in his Parliament was the Court of last appeal, but the House of Lords was the tribunal which actually determined the cause. Proceedings in error were not abolished until the Judicature Act, 1875, and even then there were reservations.

The Acts of Union with Scotland and Ireland had their effect upon the judicial powers of the Upper House.

It was provided by the Act of Union with Scotland that no causes in Scotland should be cognisable by the Court of Chancery, Queen's Bench, Common Pleas, or any other Court in Westminster Hall. But jurisdiction of the House of Lords as a Court of Appeal was not excluded, and was regulated in relation

to Scotland by subsequent statutes; and it was fully recognised in 1809, although then limited to certain kinds of cases.

In regard to Ireland, the House of Lords stood differently for many centuries. Theoretically, English laws long prevailed in Ireland, and the Irish Courts, in subordination to the English Courts and the Irish House of Lords, had not the same jurisdiction as the English House of Lords. In 1783, the appellate jurisdiction over Irish cases was taken away from the House of Lords of Great Britain and transferred to Ireland; but by the Act of Union, this jurisdiction was restored to the House of Lords of the United Kingdom.

Although there have been many changes affecting all inferior Courts, the House of Lords still remains, at least in name, the Supreme Court of Appeal; that is to say, the Court which gives final decision, except in such cases as come within the particular jurisdiction of the Judicial Committee of the Privy Council.

The House of Lords exercised their appellate jurisdiction at least from 1278; the old procedure of appeal being generally by petition to the Crown, or by Writ of Error. After 1413 the Lords seem to have scarcely exercised this jurisdiction until after the accession of James I. The Lords did not assume an equitable appellate jurisdiction until the time of Charles I.

It may be here mentioned that, as early as 33. Edward I. (1305), receivers and tryers of petitions were appointed by the King at the assembling of

Parliament, with the object of relieving the Lords of judicial business, so as to leave them free to devote due attention to the weightier matters of State and legislation. The receivers comprised two classes —one for England, Ireland, Wales and Scotland; the other for lands and territories beyond the seas; and the tryers were similarly divided into two bodies.

The receivers were originally clerks, and afterwards masters, of Chancery. The tryers consisted of bishops, abbots, earls, barons and judges, who might call in the assistance of the Chancellor, Treasurer, Steward, Chamberlain, &c., when needful.

The duty of tryers was sometimes *pur oyer les petitions*, and at other times *pur responder al petitions*, or *pur oyer et tryer petitions*. Their decisions, however, were not final, as they were liable to be reviewed in Parliament, and modified or set aside. In course of time, the prelates disappeared from the list of tryers, and a large proportion of lay Peers introduced, and subsequently the judges were admitted, and later still the judges filled the places of receivers.

In James I.'s reign, the authority of receivers and tryers practically fell into abeyance. Yet, from the period of their institution down to the present day, receivers and tryers have been regularly appointed. One of the first proceedings in the House of Lords, on the opening of a new Parliament, is the reading aloud their names by the Clerk at the Table, in Norman French, according to ancient usage.

Owing to the great increase in the amount of

judicial business (largely due to the influx of Scotch appeals) at the close of last century, an Appeal Committee was appointed in 1872 to assist in getting rid of the arrears of cases; and this Committee has been appointed regularly ever since. But the arrears continued after ten years, and having regard to the many and onerous duties of the Lord Chancellor, it was proposed that the House should sit five days a week, and Deputy-Speakers, *being law-lords or eminent judges*, were appointed to preside on the Woolsack on certain days, to enable the Lord Chancellor to sit in the Court of Chancery. When the Deputy-Speaker was not a Peer, he had liberty to express his opinion, and give his reasons for it, before the question as to what the judgment should be was put; and that opinion guided the lay Peers in giving their votes. This was supplemented by requiring a quorum of three members, which is necessary to constitute a House, as well for judicial as legislative business.

By a system of rotation, every Peer was compelled to attend once in the session, under a penalty of £50 (subject to the usual exceptions, such as old age, illness, &c.).

Upon the introduction of this new mode of hearing appeals there was an outcry by some of the Peers against the *compulsory* attendance, and their being placed in the peculiar position of neither joining in the investigation nor participating in the decision of causes, and also against permitting a judge of inferior rank to occupy in the Supreme

Court of Appeal the place of the highest judge of the realm ; but the new method was persevered in and resulted in the removal of all arrears.

Formerly, of course, the Peers from their superior advantages in point of position, education, and general capacity, were peculiarly qualified to sit as a Supreme Court of Appeal, and had also the aid of the Chancellor and other legal luminaries, whose attendance in the House was regular and obligatory.

But in course of time the judges, except when specially summoned, ceased to attend ; and when questions of law became more numerous and difficult, and, especially after the appeals from courts of equity commenced, the House practically left the decision of causes to the Lord Chancellor and the other law lords, who were willing to devote themselves to judicial business. But the ever-recurring condition of arrears has continually called attention to the defects in the constitution of the House for the performance of judicial functions. During the controversy about the Lords' judicature, Sir M. Hale, whose theory was that the supreme judicature was *not* in the Lords alone, but in the King, Lords, and Commons combined, suggested the appointment of a select number of Lords, spiritual and temporal, to whom, together with the judges, should be referred petitions for reversal of decrees, and also writs of error, the judges not only being assistants to advise, but to possess the power of voting.

At the close of the session of 1834 Lord Brougham presented a Bill for transferring the Lords' appellate powers to the judicial committee

of the Privy Council (which had been established by 3 and 4 William IV., c. 41), but the Bill was abandoned, and two similar Bills introduced by Lord Cottenham in 1836 met with the same result.

In 1842, three Bills brought in by Lord Campbell to transfer the judicial business of the Privy Council to the House of Lords, to empower the Crown to summon the Vice-Chancellors, the Judge of Admiralty Court, and the Judge of the Prerogative Court of Canterbury, in addition to the Common Law Judges, to the House of Lords for judicial purposes, and the third Bill to enable the House of Lords to sit for judicial business when Parliament was prorogued, were debated and abandoned.

The attempt later on, in 1856, to strengthen the legal element in the House of Lords by creating life peers proved futile. In the same session a select committee was appointed by the Lords themselves to report on the expediency of making any proposals upon the subject of their judicial functions, which resulted in their proposing :—

(1) That there should always be three judges at a hearing.

(2) That Her Majesty should confer life peerages on two salaried judges of certain standing.

(3) That the House should sit as an Appellate Court, notwithstanding prorogations, as long as might be necessary for the discharge of judicial business.

(4) That the Court should include a member well versed in Scotch law.

A Bill embodying these recommendations was

introduced by Lord Cranworth, passed, sent to the Commons, who referred it to the Select Committee, where it remained.

There was in 1870 a further plan for the formation of a Judicial Committee, which was likewise abandoned.

In 1872 Lord Hatherley moved a resolution that it was expedient to establish one imperial Supreme Court of Appeal, which should sit continuously for hearing all matters heard by way of appeal before the House of Lords, or the Judicial Committee of the Privy Council, and that the appellate jurisdiction of the House of Lords should be transferred to such Supreme Court of Appeal.[1] A Bill drawn in conformity with this resolution was withdrawn on the suggestion of Lord Cairns, and a Select Committee appointed, which produced no practical results. But in 1873 public opinion was strong for the abolition of the Lords' judicial jurisdiction in favour of a better administration of justice; and it would appear that the Lords themselves were apathetic in the matter or not averse from this movement. Hence they consented to a clause in Lord Selborne's Bill, which ultimately became the Supreme Court of Judicature Act, 1873, taking away their appellate jurisdiction so far as England was concerned; the intention being to pursue the same course in regard to Scotland and Ireland, and to construct a new Imperial Court of Final Appeal, totally independent of the House of Lords.

[1] Hansard, 3rd series, vol. 210, p. 1246.

By sec. 3 of that Act, the existing Courts were united and consolidated into one Supreme Court of Judicature in England.

Sec. 4:—"The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of 'Her Majesty's High Court of Justice,' shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned; and the other of which, under the name of 'Her Majesty's Court of Appeal,' shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal."

Sec. 18:—"The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say):—

"(1) Of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy.

"(2) Of the Court of Appeal in Chancery of the County Palatine of Lancaster. . . .

"(3) Of the Court of the Lord-Warden of the Stannaries. . . .

"(4) Of the Court of Exchequer Chamber.

"(5) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord-Chancellor, or any other person having jurisdiction in lunacy."

Sec. 19:—"The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this Act," &c.

Sec. 20:—"No error or appeal shall be brought from any judgment or order of the High Court of Justice, or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this Act, of the Court of Chancery of the county palatine of Lancaster to the House of Lords, or to the Judicial Committee of Her Majesty's Privy Council. . . ."

Sec. 21:—"It shall be lawful for Her Majesty, if she shall think fit, at any time hereafter, by Order in Council, to direct that all Appeals and Petitions whatsoever to Her Majesty in Council which, according to the laws now in force, ought to be heard by or before the Judicial Committee of Her

> Majesty's Privy Council, shall, from and after a time to be fixed by such Order, be referred for hearing to and be heard by Her Majesty's Court of Appeal; and from and after the time fixed by such Order, all such Appeals and Petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such Appeals or Petitions, and incidental to the enforcement of any such Orders as may be made by the said Court of Appeal or by Her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal."

This section further similarly provides for the hearing of appeals in Ecclesiastical causes by the Court of Appeal. It may be said at once that secs. 20 and 21, above quoted, were repealed before the Act came into force.

The effect of this Act would have been to abolish the appellate jurisdiction of the House of Lords in relation to all Courts in England. It was to have come into operation on 2nd November 1874, and in February of that year the Government proceeded in their course by passing a further Bill to bring about the same effect in regard to Ireland and Scotland. The Bill went down to the Commons, but was stopped by pressure of business.

In 1875 it was re-introduced, but a change of opinion in and out of both Houses having set in, the Bill was withdrawn. By the Supreme Court of Judicature (Commencement) Act, 1874, the operation of the previous Act (1873) was deferred until November 1875; and in 1875 another Supreme Court of Judicature Act was passed, by which the Act of 1873 was amended in various particulars, and it was provided that the said Act of 1873 should be further postponed until 1st November 1876.

This gave the Government an opportunity of considering the whole question of final appeal, and in due course Lord Cairns introduced a Bill which ultimately became the Appellate Jurisdiction Act, 1876, and also came into force on 1st November of the same year.

By this last-mentioned Act an appeal was made to lie to the House of Lords from the Court of Appeal in England, and from any Court in Scotland or Ireland, from which error or appeal to the House of Lords previously lay by common law or statute. It was also thereby enacted [sec. 4] that every appeal should be by way of *petition to the House of Lords*, praying that the matter of the order or judgment might be reviewed "before Her Majesty the Queen in her Court of Parliament," in order that the Court might "determine what of right, and according to the law and custom of this realm, ought to be done." It was also provided that during prorogation the House of Lords should thenceforward hear appeals in manner appointed by

the House during the preceding session. By sec. 9, Her Majesty was enabled to authorize the "Lords of Appeal," in the name of the House of Lords, to exercise the jurisdiction of the House of Lords, in relation to appeals, as if the House were sitting. By sec. 5, no appeal shall be heard unless *three at least* of following persons be present (all of whom bear the name of "Lords of Appeal"):—The Lord Chancellor, the Lords of Appeal in Ordinary, such Peers as are holding, or have held, certain high judicial offices.

This Act, therefore, designated certain persons "Lords of Appeal," and further created a new body known as "Lords of Appeal in Ordinary," who were to be appointed on well-defined qualifications. The effect of all this was further to divert the judicial business into the hands of the Law Lords, but there was nothing in the Act which would exclude any members of the House of Lords from sitting in the Court of Final Appeal, except the provision made for the hearing of appeals during a dissolution of Parliament.

By the Appellate Jurisdiction Act, 1887, every Lord of Appeal is empowered to take his seat and his oaths at any such sitting and hearing during prorogation; and every retired Lord of Appeal in Ordinary is entitled to sit and vote as a member of the House of Lords during his life, instead of merely during the tenure of office. Finally, it may be said that the Appellate Jurisdiction Act, 1876, as amended by the Appellate Jurisdiction Act, 1887, the Appeal (*Formâ Pauperis*) Act, 1893, and the

Statute Law Revision Act, 1894, now governs the practice in the House of Lords.

But, as has been hinted above, the House of Lords is by no means the only final Court of Appeal. By 3 and 4 William IV., c. 41, a Judicial Committee was constituted, to consist of all members of the Privy Council holding, or having held, the office of Lord President or Lord Chancellor, or any of the high judicial offices set out in the Act, since extended by the Appellate Jurisdiction Acts of 1876 and 1887.

The Lords of Appeal in Ordinary are also members of this Committee. By subsequent Acts the number of law members of the Committee has been from time to time increased. This Court deals with appeals in ecclesiastical matters, appeals from judgments and orders under the Naval Prize Act, 1864, and there is an appeal to *Her Majesty in Council* from the highest Civil Court of each separate colony or province of her dominions beyond seas. The jurisdiction of the Committee is derived from the orders of reference made by the Queen in Council. In the month of November in each year a General Order is made, referring all appeals to Her Majesty in Council to the Committee. Her Majesty may also refer legal questions of a general nature to this Committee. In some cases, questions which are both legal and political are referred to a mixed committee, and where the removal of a colonial judge is in question, the Colonial Secretary sits with the members of the Judicial Committee.

IV

SUMMONS AND PATENT

THE prerogative of summoning Parliament is in the Crown, subject to the statutory restriction in the Triennial Act, 6 and 7 William and Mary, c. 2; but, practically, it is necessary for Parliament to meet every year for passing the annual Army Act and voting the annual taxes. It is now customary to call a new Parliament in the Proclamation dissolving the old one. The Royal Proclamation ordering the Chancellors of Great Britain and Ireland to issue Writs is made by the advice of the Privy Council, and passed under the Great Seal.

By 15 Victoria, c. 25, the Writs are now made returnable within not less than thirty-five days. Special Writs are sent to persons entitled to summons to the House of Lords, with the exception of Scotch representative Peers. The latter are summoned by Proclamation in all the county towns of Scotland to meet within ten days, and to proceed to the election of sixteen representative Peers for the new Parliament.

The Writ of Summons to the temporal Peer of England is as follows:

"VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to Our ———, GREETING. WHEREAS, by the advice and consent of Our Council for

certain arduous and urgent affairs concerning Us, the State and defence of Our said United Kingdom and the Church, We have ordered a certain Parliament to be holden at Our City of Westminster on the ——— day of ——— next ensuing, and there to treat and have conference with the Prelates, Great Men, and Peers of Our Realm. We, strictly enjoining, command you, *upon the Faith and allegiance by which you are bound to Us*, that the weightiness of the said affairs and imminent perils considered (waiving all excuses), you be at the said day and place personally present with Us, and with the said Prelates, Great Men, and Peers, to treat and give your council upon the affairs aforesaid. And this, as you regard Us and Our honour, and the safety and defence of the said United Kingdom and Church, dispatch of the said affairs in no wise do you omit.

"Witness Ourself at Westminster the ——— day of ———, in the ——— year of Our Reign.

"To ———. A Writ of Summons to Parliament the ——— day of ——— next."

The corresponding Writ, issued to the Lords Spiritual, differs little from the above; attendance is commanded "*upon the faith and love by which you are bound to Us*," &c., and concludes with the following sentence:

> "Forewarning the Dean and Chapter of your Church of ——— and the Archdeacons and all the Clergy of your Diocese that they, the said Dean and Archdeacon, in their proper persons, and the said Chapter by one, and the said Clergy by two, meet Proctors severally, having full and sufficient authority from them, the said Chapter and Clergy, at the said day and place, to be personally present to consent to those things which then and there, by the Common Council of our said United Kingdom (by favour of the Divine Clemency) shall happen to be ordained. Witness, &c."

A Peer of the United Kingdom is now invariably created by Letters Patent, and these are accompanied with a Writ of Summons to the House. Richard II. was the first to confer the peerage by Letters Patent, irrespectively of tenure. On a new Peer's introduction to the House, in his robes, between two other Peers of his own dignity, also in their robes, the new Peer presents his patent of peerage to the Chancellor, kneeling on one knee. Peers by descent or by special limitation in remainder are introduced under Standing Orders Nos. 13 and 14:—

> "All Peers of this realm by descent, being of the age of twenty-one years, have right to come and sit in the House of Peers without any introduction; no such Peers ought to pay any fee or fees to any herald upon their first coming into the House of Peers;

> no such Peers may or shall be introduced into the House of Peers by any herald, or with any ceremony ; every Peer of this realm claiming by virtue of a special limitation in remainder, and not claiming by descent, shall be introduced."

A Peer who succeeds when of full age makes application to the Chancellor for a Writ of Summons to Parliament. The mode of application rests on custom. Usually, a relative of the Peer who desires to claim his Writ of Summons communicates with the Lord Chancellor. The Peer then produces certificates of his father's marriage, of his own baptism and of his father's burial, an extract from the Journals of the House showing that the late Peer took his seat, and the patent which directs the devolution of the peerage. A near relative makes a declaration that the person described in these documents is the Peer who claims his seat ; and, unless the case is one of doubt, the Writ is issued at once, and he takes his seat without the formalities in the case of a newly-created peer. If the case should be doubtful, the Chancellor may decline to order the issue of the Writ ; the claimant must then petition the Queen, through the Home Office, and the decision is referred to the Lords, not as a matter of right, but by custom ; for the Queen might, if she chose, determine the question upon any advice that she was pleased to ask.

It would seem that if a Peer, on succeeding to his Peerage, did not apply for his Writ of Summons,

he would nevertheless be liable to be summoned to Parliament in the House of Lords.

It is now settled that the right to sit in the House of Lords by reason of tenure of particular lands has long been discontinued and does not now exist. There the right to a Writ of Summons by tenure had been abandoned as early as 23 Edward I.[1]

The most ancient mode of creating a Peer was by Writ of Summons, which, however, did not ennoble unless the person summoned to Parliament actually took his seat there. The reason why the more recent and frequent mode of creation by Letters Patent is complete without sitting, is that Letters Patent cannot, like a Writ of Summons, be countermanded by the Sovereign. It is believed that the last occasion on which Letters Patent limited the inheritance to the heirs *general* of the person ennobled was in 1861: but to-day the Crown by the patent invariably restricts the inheritance to the heirs male of the body of the person ennobled.

When a person is to be ennobled by Letters Patent a warrant, signed by Her Majesty, is issued to the Lord Chancellor commanding him to cause "these, Our letters, to be made forth Patent in form following":—

"VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, TO ALL

[1] Per Lord Cranworth, in Berkeley Peerage Case.

Archbishops, Dukes, Marquesses, Earls, Viscounts, Bishops, Barons, Knights, Provosts, Freemen, and all other Our Officers, Ministers, and Subjects whatsoever TO WHOM THESE PRESENTS SHALL COME GREETING: KNOW YE that We of Our especial Grace certain knowledge and mere motion HAVE advanced, preferred and created Our Right, trusty, and well-beloved ——— to the state, degree, dignity, and honour of ———. And him, the said ——— aforesaid, DO BY THESE PRESENTS advance, create, and prefer. And We have appointed, given, and granted and by these Presents for US, Our heirs, and successors DO APPOINT, GIVE, AND GRANT unto him, the said ———, the name, state, degree, style, dignity, title, and honour of ——— aforesaid, TO HAVE AND TO HOLD the said name, state, degree, style, dignity, title, and honour of ——— aforesaid, unto him the said ——— and the heirs male of his body lawfully begotten and to be begotten; WILLING, AND BY THESE PRESENTS GRANTING for Us, Our heirs and successors that the said ——— and his heirs male aforesaid, and every of them successively may bear and have the name, state, degree, style, dignity, title, and honour of ——— aforesaid. And that they and every of them successively may be called and styled by the name of ———, and that he, the

said ———, and his heirs male aforesaid and every of them successively may in all things be held and deemed ——— aforesaid, and be treated and reputed as ———, and that they and every of them successively and respectively may have, hold and possess a seat, place, and voice in the Parliaments and Public Assemblies and Councils of Us, Our heirs, and successors within Our United Kingdom of Great Britain and Ireland, amongst other ——— as ——— of Parliament and Public Assemblies and Councils. And also that he, the said ———, and his heirs male aforesaid may enjoy and use and every of them successively may enjoy and use by the name of ——— aforesaid All and singular the rights, privileges, preeminences, immunities, and advantages to the degree of a ——— in all things duly and of right belonging, which other ——— of this Our United Kingdom of Great Britain and Ireland have heretofore honourably and quietly used and enjoyed, or as they do at present use and enjoy. Lastly, WE WILL, and by these Presents for Us Our heirs and successors DO GRANT to the said ——— that these, Our Letters Patent or the Inrolment thereof, shall be sufficient and effectual in the Law for the dignifying, investing, and really ennobling him, the said ———, and his heirs male aforesaid with the name, title, dignity, and honour of

——— aforesaid, and this without any investiture, rites, ornaments, or ceremonies whatsoever in this behalf due and accustomed, which for some certain reasons best known to Us We could not in due manner do and perform any ordinance, use, custom, rite, ceremony, prescription or provision due or used, or to be had, done, or performed in conferring honours of this kind or any other matter or thing to the contrary thereof, notwithstanding. IN WITNESS, &c."

The Letters Patent are then sealed with the Great Seal. The above form of Letters Patent varies very slightly indeed according to the difference of dignity and degree conferred upon the grantee, to meet the particular requirements, but this verbal variation in no way affects that part which has reference to the grantee's right to a seat in Parliament, &c.

As has been remarked, such Letters Patent are accompanied or followed by a Writ of Summons to Parliament in form as above stated, with the following variations in the event of Parliament being (*a*) then sitting; or (*b*) prorogued or adjourned :—

(*a*) WHEREAS Our Parliament for arduous and urgent affairs concerning Us, the State, and defence of our said United Kingdom and the Church is now met at Our City of Westminster, &c.

(*b*) WHEREAS by reason of certain arduous and urgent affairs concerning Us, &c. (*supra*), We did lately with the advice and consent of Our Council ordain Our present Parliament to be holden at, &c.

&c. (*supra*) . . . which Parliament hath been from that time by several adjournments and prorogations adjourned prorogued, and continued to and until the ——— day of ——— now next ensuing at Our City aforesaid to be then there holden, We strongly enjoining, &c.

In ancient times sitting in Parliament was as often considered a burden as a privilege; and more often deemed a duty than a right. Indeed, Richard II.'s reign witnesses to an Act [5 Richard II., st. 2 c. 4] enforcing attendance, and every one who received the summons and absented himself was liable to be amerced and otherwise punished according to ancient custom. But when, subsequently, the creation of different kinds of Peers by Letters Patent became common, the desire for precedence made its appearance among the nobility, and the Peers came to regard the special summons to Parliament in a new light—that of a privilege peculiar to their rank and status. Anyway, this was so in the reign of Charles I., for at that period the Peers deemed the summons to Parliament as one of their inherent rights. There are many instances on record of petitions to the House of Lords by Peers for their Writs of Summons. And in the first year of Charles I., the King, under the influence of the Duke of Buckingham, *withheld* the Earl of Bristol's summons to Parliament. The Earl then petitioned the House of Lords for his Writ of Summons, and the House of Lords addressed the Crown to send Writs of Summons to Earl of Bristol and to other lords from whom they had

been withheld. The summons was sent to Lord Bristol, but with it went a letter from the Lord Keeper intimating the King's pleasure that the Earl should not attend Parliament. Bristol replied saying that the Writ of Summons commanded him to attend, and the letter missive expressed his Majesty's wish for him to stay away, and that he doubted which command he ought to obey. His doubt was not resolved, for the Parliament was abruptly dissolved.

It has been declared by more than one eminent authority (among whom was Lord Chancellor Cranworth) that the Peer's Writ of Summons is neither a right nor privilege belonging to the Peer, but rather a power vested in the Crown by virtue of its prerogative, and that the Crown may exercise or refrain from exercising the power of issuing such Writ of Summons at its own pleasure.

A great politician of to-day has ranked the attendance of Lords in Parliament among their DUTIES and such, formerly, it was ever held to be. The King summoned arbitrarily whom he wished, and the prerogative has never been legally curtailed; what, then, is there to prevent the Crown from refusing to summon Lords to Parliament? The exercise of the prerogative of the Crown has been virtually transferred to the Cabinet, who are responsible to the Commons, who, in turn, represent the people. Could not the Writ of Summons be withheld on the advice of the Cabinet, backed by the Commons? It is submitted that it could be, and that the Crown has the power to withhold any

Lord's Writ of Summons to Parliament, and thus to relieve from the arduous duties of legislation each and every Peer whom the Crown may deem it advisable so to relieve. It is even questionable whether any such Peers, if they felt aggrieved, would have any legal or constitutional redress. Would it be possible for them to proceed against the Lord Chancellor, as the Keeper of the Great Seal, when supported by, and acting under the instructions of the Cabinet and Commons? It is thought that if such process were now possible, it must, in such circumstances, inevitably fail. A prerogative of the Crown can only be limited by legislation, but it can be exercised by the Cabinet. And it is to be remembered that THE PREROGATIVES OF THE CROWN HAVE BECOME THE PRIVILEGES OF THE PEOPLE,[1] and must be exercised in behalf of the peace and welfare of the commonweal. By the exercise of the royal prerogative as thus indicated the *rights* and social prestige of Peers would be in no way affected or impaired.

If the Crown creates a Peerage by Letters Patent with an accompanying Writ, a limitation in the patent to the life of the grantee will be held to invalidate the grant, so far as it is intended to convey the right to a Writ of Summons. This question arose and was argued at length and finally disposed of by a Committee of Privileges in the case of the Wensleydale Peerage.

In the latter part of the seventeenth century it had been decided in the Clifton Peerage case that a

[1] Dicey on the Constitution, 396.

Writ of Summons issued *without* Letters Patent and followed by the taking of the seat constituted a descendible peerage. In debate on the Wensleydale Peerage Lord Campbell said :—

> "The Writ without the patent is conclusive evidence of an intention to create a barony in fee, which is clearly within the prerogative of the Crown : but the *Writ with the patent* as clearly shows the intention merely to give operation to the patent, and that the nominee shall have nothing beyond the dignity and privileges which the patent may lawfully confer."[1]

Lord Wensleydale's patent contained what was ultimately regarded as two inconsistent clauses—a limitation to his life, and a provision that he should be entitled to a Writ of Summons as a Lord of Parliament. It was agreed, in that case, by the House that "neither the Letters Patent, nor the Letters Patent with the usual Writ of Summons issued in pursuance thereof, can entitle the grantee to sit and vote in Parliament."[2] And with the exception of the Lord Chancellor Cranworth, all the law lords supported the resolution.

The Crown's right to create a life peerage by patent was undisputed, but it was denied that such a peerage conferred any right to sit in Parliament. It was treated as a mere title of honour, but not bestowing a place in an hereditary legislative chamber. As there had been no kind of life-

[1] Hansard, 3rd series, cxl., p. 331.

[2] *Ibid.*, vol. cxl., pp. 1152, &c.

peerage created for upwards of 400 years, it was maintained that the Crown could not alter the constitution of the realm as established by law and usage, and that the Crown could no more change the constitution of the House of Lords by admitting a life-peer to sit there, than it could change the constitution of the House of Commons by issuing writs to places not entitled, or by refusing writs to any body of electors entitled thereto. Further, it was contended that there was no satisfactory precedent of a "commoner being sent under a peerage for life to sit and vote in the House of Lords."[1] Anyway, there was no case of any such kind for over 400 years.

The balance of the Wensleydale debate was strongly against the claim put forward by the Crown. The Crown can confer such dignities and with such limitations as it may please, but a Lord of Parliament must be an hereditary Peer, except in the special cases of the bishops and the Lords of Appeal in ordinary.

Having detailed the law and custom of Letters Patent and Writs of Summons, it may be well to conclude by setting out the form of Writ issued for the summoning and assembling of the representative House of Commons.

And here let it be remarked, no special and personal summons is issued to each individual member elect, but the Writs of Summons are addressed and sent to the several returning officers

[1] Hansard, pp. 266 and 335.

of the respective counties and boroughs, and a return made by them of the person elected into the Chancery of the Crown.

The form of such writs addressed to returning officers for the election of members of House of Commons has been considerably abbreviated by The Ballot Act, 1872. These writs must be delivered by the messenger of the Great Seal or his deputy to the General Post Office (except such as are addressed to the sheriffs of London and Middlesex), and must be dispatched free of charge, by post.

The form runs thus :—

"VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the [sheriff or &c.] of the county [or borough] of ———, greeting: WHEREAS by the advice of our Council, we have ordered a Parliament to be holden at Westminster on the ——— day of ——— next. We command you that, notice of the time and place of election being first duly given, you do cause election to be made according to law of ——— members [*or* a member] to serve in Parliament for the said county [*or* the division of the said county, *or* the borough, *or* &c.] of ——— and that you do cause the names of such members [*or* member] when so elected, whether they [*or* he] be present or absent,

to be certified to us, in our Chancery, without delay.

Witness Ourself at Westminster, the ——— day of ——— in the ——— year of our reign, and in the year of our Lord 18 ..

To the ——— of ———."

V

THE LORDS SPIRITUAL

THE early history of the Lords spiritual is obscure. It seems that the first bishops were appointed in the chief cities of Christendom, and each bishop had a certain territorial area allotted to him, that the city was termed his *see* (sedes), and the district his diocese (*διοίκησις* = housekeeping; hence management, jurisdiction). Every person to be ordained a bishop must be a learned presbyter, of full thirty years of age, born in lawful matrimony, and of good life and behaviour.

The ecclesiastical state of England and Wales is now divided into two provinces, CANTERBURY and YORK. Each archbishop has within his province bishops of several dioceses. By 6 and 7 William IV., c. 77, which created the two bishoprics of Ripon and Manchester, the state of the old dioceses was entirely remodelled by a new adjustment of the revenues and patronage of each see, and by extending or curtailing parishes and counties formerly subject to their spiritual juris-

diction. These territorial alterations were all effected by schemes confirmed by Orders in Council, between 1836 and 1852.

The bishopric of Sodor and Man has since been confirmed in its existence as an independent bishopric by 1 Vict., c. 30; and the bishoprics of St Asaph and Bangor were preserved by 10 and 11 Vict., c. 108. ONLY TWENTY-SIX BISHOPS AND ARCHBISHOPS ARE SUMMONED TO SIT IN THE HOUSE OF LORDS as Lords spiritual, and this number cannot be exceeded, as the summoning of Lords spiritual to Parliament is now regulated by statute. It was enacted by 10 and 11 Vict., c. 108, that when any vacancy occurs in any see, except those of Canterbury, York, Durham, or Winchester, the newly-appointed bishop shall not be entitled immediately to a Writ of Summons, unless translated from the see of a bishop actually sitting as a lord in the House. So that, owing to the above-mentioned reconstructions and new foundations since 1847, there are now always *eight* bishops waiting their turn for a Writ of Summons according to their seniority of appointment.

One bishop, the bishop of the Isle of Man (who is called the bishop of Sodor and Man), is not a lord of Parliament and, therefore, not entitled to sit in the House of Lords.

The origin of the episcopacy in Britain yet remains to be discovered; but British bishops appeared, in the fourth century, at the Council of Arles. The four Welsh bishoprics which represent the old British Church at a later time constituted

the CHURCH OF WALES (Ecclesia Walensica), and were not merged in the province of Canterbury until the thirteenth century.

St Augustine was the first Archbishop of Canterbury (A.D. 507-604), but York was not finally constituted into a separate province until A.D. 735.

The Episcopacy throughout all ecclesiastical vicissitudes has been regarded as the essential order of the Church of England; but THE EXPRESSION Lords spiritual does not occur before 13 Richard II.

In earlier times the assent of the Lords to an Act of Parliament was generally said to be by the prelates, dukes, earls, &c. In stat. 3, Richard II., the whole House was described collectively as "the Lords," and down to the thirteenth century they are variously designated.

In the thirteenth century, however, a new description appears—"*the prelates and Lords temporal*"; while, as has been stated, the expression "Lords spiritual and temporal" occurs, for the first time, in an ordinance of the King in his "Great Council" in 13th year of Richard II. There the following words occur:—

> "That in many of our Parliaments heretofore holden, and, namely in the Parliaments last holden at Cambridge and Westminster, grievous complaint and great clamour hath been made unto Us, *as well by the Lords spiritual and temporal* as by the Commons of our said Realm," &c.

But the expression "Lords spiritual and temporal" was not immediately introduced into *statutes*, although in the 2nd year of Henry IV. it is used as synonymous with prelates, dukes, earls and barons.

In the fourth year of Henry IV., however, the words are used for the first time in the commencement of a statute:

> "To the Honour of God and Holy Church, and for the common Wealth and Profit of all the Realm of England, Our Lord the King, *by the Assent of the Lords spiritual and temporal*, and at the Special Instance and Request of the Commons, assembled at the Parliament holden at Westminster," &c.

With few exceptions the term is henceforward employed as the usual mode in statute of describing the whole body of the House of Lords. Although the words "*Lords* spiritual and temporal" are used for the first time in reign of Richard II., a *similar* expression occurs as early as *the ninth century*, in the reign of Aethelred, where we read of an Ordinance being "settled and fixed upon, *with the consent of his spiritual and temporal advisers*." Long before the Conquest, prelates and nobles—the originals of Lords spiritual and temporal—sat in the WITENAGEMOT, which was the National Council and essentially an aristocratic body, summoned and presided over by the King. The influence of the clergy even in pre-Norman times was very great. They obtained, through laws, their tithes, and, besides the right to these

ecclesiastical revenues, the church was greatly endowed with glebe for parochial churches and broad lands for her cathedrals and monasteries. Many of our towns have grown up round the ancient cathedrals. The highest ecclesiastical officers, the archbishops and bishops, were also recognised among the chief ministers of the State. Laws which dealt exclusively with ecclesiastical matters were settled by the ecclesiastical Witan, while those matters which affected the whole people were considered and disposed of by the spiritual and temporal Lords together. The powers of the Witenagemot were most extensive. They could depose the King for misgovernment; they had the power of electing the King; they had a *direct* share in every act of government; in conjunction with the King they enacted laws and levied taxes for public service, made alliances and treaties of peace, raised land and sea forces upon occasion, appointed and deposed the great officers of State and Church, and authorised the enforcement of ecclesiastical decrees, and sometimes acted as a Judicial Court in cases civil and criminal.

And in all these deliberations the bishops and archbishops and other ecclesiastics were competent to participate. And that they availed themselves of these privileges, as well as obeyed the summons of the King by attending the National Councils, is evidenced by the fact that in a full National Assembly at Winchester, in A.D. 934, there were present two archbishops, seventeen bishops, and four abbots, besides the King, four chiefs from

Wales, twelve ealdormen, and fifty-two thanes—that is, the spiritual element exceeded a third of the assembly. Indeed, generally all the bishops and archbishops were present at these assemblies.

The Lords spiritual sat in virtue of a double title, (*a*) by immemorial custom of being summoned by the King throughout the whole Anglo-Saxon period; and (*b*) by reason of the baronies which they held of the Crown.

William I. continued to summon the Witenagemot thrice a year. For some little time it retained its ancient name, but as the feudal principle gained vigour, the National Council imperceptibly became merged in the Curia Regis, or the Court of the King's feudal vassals. And very shortly the ecclesiastics became subject to the same influence and power. And although it has been denied that the King *applied* military tenure to Church lands, it is certain that after the Conquest the bishops and abbots *held* baronies in chief of the Crown by military service. It is equally certain that it was laid down as a clause in the Constitution of Clarendon (temp. Henry II.) that "archbishops, bishops, etc., shall hold their possessions of the King as baronies and answer for the same to the King's justices, and do suit and service, and observe all the King's customs, except in cases of life and limb." And this fact is consistent with the bishops' subsequent claim to be considered Peers of the realm in virtue of their holding by barony. Furthermore, they continued to sit in Parliament because they held baronies

which, indeed, enabled them to retain their right when others lost it; and now since the lands of their sees have been transferred to the Ecclesiastical Commissioners, the bishops still sit in Parliament, as Professor Freeman says, "in their old character of Witan of the land, as an integral part of the same House as the earls and barons of England."

Under Henry I. and Henry II. the bishops and abbots, as tenants-in-capite, sat with the barons and granted aids, etc. The political power of the bishops was so great in early and mediæval times that it seems to have been necessary that their nomination should rest with the supreme civil authority. Not only were the bishops the Crown's nominees, but they were by that very reservation removed out of their own spiritual sphere, so to speak, into the realm of politics. And this dates from long before the primacy of Dunstan in the tenth century on to the Reformation, and throughout the intervening period the bishops were great secular powers who placed their wealth and influence at the disposal of the King, among whose constant councillors they ranked. The church never became feudalized. The bishop clung to the Crown, the province was his diocese, and he sat by the ealdorman's side in the local Witenagemot and furnished a standing check on the independence of the great nobles.

Shortly after the Conquest the power of the bishops was for a time lessened by the withdrawal of ecclesiastical cases from the civil courts into separate courts of the bishops, which had the effect of re-

moving the bishops themselves for a time from their traditional contact with the popular assembly and so effacing the idea of the original equality of the religious with the civil power. This was, however, but temporary, for we find Henry I., in creating a strong administrative body, was assisted by the Bishop of Salisbury, who acted as his justiciar, and throughout the reign was "the great constructor of judicial and financial organisation."

During Stephen's reign the ecclesiastical power was increased through the Council of Westminster and by the papal chair becoming, in this reign, the court of appeal for all contending factions.

In Henry II.'s reign the King sat in person in the National Council, which transacted business political, fiscal, legislative and judicial; and the King decided all complaints of his people by the advice of his bishops and judges. And when regular parliaments were convened in the thirteenth century, and writs issued to the bishops and other clergy, summoning them to attend, it was usual to insert a clause in the summons directed to each of them, which is commonly called the PRAEMUNIENTES clause. The Archbishop of Canterbury, for instance, was commanded to warn the prior and chapter of his church and all the clergy of his diocese to attend with himself—the prior and archdeacons in person, the chapter by one procurator, and the clergy by two. This summons resembled in form the summons to Convocation of a later period. The summons doubtless included all the clergy in order to have their assent to taxation. Abbots and priors were

summoned only as holding by barony, and excused when not so holding.

It was Edward I.'s intention to make the clergy an effective branch of a great national Parliament, but they had grown averse from interfering in secular legislation. They unwillingly obeyed the summons which generally only had in view their taxation. They had their own Convocation ; and in the fourteenth century the clergy ceased to attend parliament altogether, but for two hundred years afterwards they retained the right of taxing themselves in Convocation. Henry VIII., however, forbade Convocation from enacting constitutions or canons without royal licence ; and from that time it was usual for the subsidies granted in Convocation to be confirmed by Parliament. Finally, in 1664, ecclesiastical taxation was discontinued without enactment, and the clergy were taxed uniformly with the laity.

It would appear that the bishops and archbishops, on the other hand, vigorously retained their places in the councils of the King and nation. We find that in 1310, when the bishops and barons assembled in council at Westminster, there were present, *inter alios*, two archbishops and eighteen bishops. In 1327 it was the Bishop of Salisbury who drew up the six articles assigning reasons why young Edward (III.) should be crowned king, to which Edward II. assented.

The bishops had temporal jurisdiction within the limits of their own franchises. Much of their jurisdiction was exercised in the popular courts, in the hundred-moot, and shire-moot.

The position of the bishops in the middle ages was shortly this. They and the abbots were Lords spiritual sitting in the House of Lords; they were also members of the estate of baronage. They recognised the King as supreme in matters temporal, and the Pope in matters spiritual; and the jurisdiction of these two powers frequently overlapped and caused friction, followed by a struggle for mastery in the State. During the earlier stage of the struggle the civil power retreated before the superiority of the church. Then from Edward I. to the end of Richard II. the State turns to the resolute assertion of its rights, endeavouring to restrain the Church within such limits as were consistent with the welfare of the State.

From Henry IV. to the Reformation was a time of comparative peace; both parties quietly maintaining their irreconcileable views. As early as Edward III. a temporary resting-place had been reached in the conflict between Church and State. THE HOUSE OF COMMONS HELD THE CHURCH IN CHECK. The Church had to acquiesce in the principle that the law of Parliament must ultimately decide upon the competence of spiritual as well as of temporal authorities. The mortmain legislation was kept permanently in force.

Exemption of the clergy from secular jurisdiction continued within the limits to which it had hitherto been confined. It was only under Henry VII. that this privilege began to be curtailed.

The first law against heretics dates from 1401; another was made under Henry V. In these laws

great power was conferred upon the bishops, and it was the duty of the royal officials to give effect, without further enquiry, to the judgments of the Church. In this way the clergy became accustomed to regard secular forms of law as regulating procedure against heretics. From the middle of the fourteenth century the archbishops of York were almost always papal legates; but the Archbishop of Canterbury, from his greater area and population, enjoyed a more prominent position than the Archbishop of York; and from the fourteenth century the latter admitted the precedence of the former.

The Commons, who were continually hostile to the clergy, made attacks from time to time upon the convocations, which resulted in the submission of the clergy, in 1532, to convocation only being summoned at the King's command, and that new canons, &c., should not be promulged without royal licence.

It has been said that the King retained the right of nominating the bishops. In the early Norman times, the nominations of bishops were always made at the National Councils, until the right of canonical election was admitted by Henry I., and even then the election took place in the King's Court.

Thomassin lays it down that, during the first centuries (1) the BISHOPS exercised the chief influence in the election of another bishop; (2) that though the people were always among the electors, their voice carried with it less weight than that of the clergy; (3) that the consent of the Prince was an indispensable preliminary to the consecration of

the bishop by the metropolitan. But as the numbers of the clergy increased, THEY GRADUALLY EXCLUDED THE PEOPLE ENTIRELY. But before the thirteenth century, the clergy's own influence was transferred to the cathedral chapters, who became, and are to-day, *nominally* the sole electors of the bishop.

The King has always maintained the right of joining in the election of bishops.

Coke establishes the right of the Crown on the principle of foundation and property. The conflict was always between the King and the Pope.

By 25 Edward III., st. 4, it was enacted that the free elections of archbishops, bishops, &c., in England should hold henceforth, as they were granted by the *King's* progenitors and the ancestors of other lords, founders of the said dignities, &c., with certain powers ceded to the Pope.

By 25 Henry VIII., c. 20, sec. 3, all papal jurisdiction whatsoever in this matter was taken away. The same Act sets out the new procedure for filling such a see, and the rules there laid down have remained in force to the present day. Thus, when a see is vacant, the King grants to a cathedral chapter a licence to elect (*congé d'eslire*), and at the same time indicates in a separate communication the name of the person to be chosen. The chapter must elect this person, and certify the election under seal to the King, to whom the elected has to take "oath and fealty." The election is then to be confirmed, and the elected consecrated and invested by the archbishop, or archbishops and two bishops, ac-

cording as the office to be filled be that of bishop or archbishop.

There is to be no procuring of bulls or other things from Rome.

By 26 Henry VIII., c. 1, the Sovereign is declared to be "the only supreme head in earth of the Church of England."

Henry VIII. followed this law by the appointment of Thomas Cromwell as his representative in ecclesiastical affairs, and directed a visitation of the monasteries and of the whole clergy, during which the bishops were forbidden to exercise any jurisdiction.

The King then transferred to the bishops for the period of visitation these rights of jurisdiction as emanating from himself and subject to revocation.

The suppression of the monasteries, &c., followed in 1536, and "the King's injunctions to the clergy." The Act 31 Henry VIII., c. 13, VESTED IN THE CROWN the property of all the suppressed and relinquished monasteries.

THE SUPPRESSION OF MONASTERIES BROUGHT ABOUT THE EXTINCTION OF THE NUMERICAL PREPONDERANCE OF THE CLERGY IN THE HOUSE OF LORDS WHICH HAD HITHERTO PREVAILED.

As the monasteries had grown in importance, the abbots had appeared in Parliament in increasing numbers. The *tenants-in-capite* comprised many abbots, and a few canons and parish priests.

From time to time, from the end of the twelfth to the end of the thirteenth century, the deans and

archdeacons attended the King's Court in answer to his summons.

The bishops sometimes deliberated apart from the secular members, especially during the development of Parliament into its modern form.

They abstained from participating in any enactment levelled against the Pope's power, in order to avoid coming into open conflict with him. Moreover, their principle that the Church sheds no blood, caused them generally to withdraw from the House of Lords when, in its *judicial* capacity, it was about to pass sentence of death or mutilation ; although the bishops have taken part in such judicial functions, joining in the pronouncement of the sentence or acquittal, notably in 4 Edward III., in the cases of Roger de Mortimer, Berisford, Mantrevers, and others ; in 15 Edward III., Archbishop Stratford's case ; in 5 Henry IV., Northumberland's case ; in 3 Henry V., Earl of Cambridge's case ; in 5 Henry V., Sir John Oldcastle's case.

On the other hand, the King and the secular members of Parliament have at all times maintained that the Lords spiritual were on an equal footing with the rest, and did not form a separate whole, and that their separate assent was therefore not necessary to render valid any act done by that House.

It is true that in 1641 twelve bishops stated that all proceedings in the House of Lords in their absence were void, when they had been detained from attending by menaces of the crowd ; but it is equally true that this assertion on their part

formed the ground of a charge against them for high treason. And instances are upon record when they have abstained from voting, and others in which they voted against measures introduced into the House, and yet such measures have passed, and been given the full validity of law. THE BISHOPS HAVE NEVER BEEN ALLOWED TO PERMANENTLY DETACH THEMSELVES FROM THE REST OF PARLIAMENT, as in the case of the lower clergy.

Archbishops and bishops from the first were, generally, all summoned. The number of the abbots, priors, &c., who were summoned to the Upper House, varied largely at different periods. Upon occasion, ONE HUNDRED AND TWENTY-TWO abbots and FORTY-ONE priors of various monasteries were summoned. After 1341 the number gradually became fixed at TWENTY-FIVE abbots, TWO priors, and THREE heads of orders. Formerly, the higher and lower prelates were together more numerous than the Lords temporal, but as a consequence of the dissolution of the monasteries, all the lower prelates disappeared within a few years, and the preponderance of the Lords spiritual in the House of Lords was put an end to completely.

IN 1539, ABBOTS SAT FOR THE LAST TIME under Henry VIII. in the House of Lords. Under Mary, and in first session of Elizabeth, the Abbot of Westminster alone sat in that House.

In the filling of bishoprics, the Act 1 Edward VI., c. 2, substituted appointment by royal letters patent for the nominal election introduced by Henry VIII.

In the time of Mary, many bishops were re-

moved from their offices who opposed her plans and belonged to the reform party.

In 1640, the Convocations which were summoned simultaneously with Parliament, but which, contrary to custom, continued their session after Parliament was dissolved, passed a series of canons binding all the clergy never to consent "to alter the government of this church by archbishops, bishops, deans, archdeacons, et cetera, as it stands now established." BUT THE COMMONS IN DECEMBER 1640, PRONOUNCED THE CANONS NOT BINDING. After the Restoration, the Act 13 Car. II., st. 1, c. 12, left the question of the validity of these canons undetermined.

In 1641 a Bill to disqualify bishops from sitting as members of Parliament was thrown out by the House of Lords, but the Commons renewed their endeavours in this direction, and THE BISHOPS QUITTED THE HOUSE OF LORDS ON 27TH DECEMBER 1641. Then followed the protest of the twelve bishops already referred to, and their subsequent impeachment for high treason.

IN 1642 THE LORDS ACCEPTED A BILL, BY WHICH ALL TEMPORAL POWER OF THE CLERGY, ESPECIALLY THE RIGHT OF THE BISHOPS TO VOTE IN THE UPPER HOUSE, WAS ABOLISHED.

It ran:—

"That no archbishop, or bishop, or other person that now is, or hereafter shall be, in Holy Orders, shall at any time after 15th February 1641, have any seat or place, suffrage or voice or use, or execute any power or

> authority in the Parliament of this Realm, nor shall be of the Privy Council of His Majesty, his heirs or successors, or Justice of the Peace, of Oyer and Terminer or Gaol-Delivery, or execute any temporal authority by virtue of any Commission, but shall be wholly disabled, and be incapable to have, receive, use, or execute, any of the said offices, places, authorities, and things aforesaid."

But THIS ACT was REPEALED upon the Restoration, by 13 Car. II., st. 1, c. 2. At the Restoration, indeed, all Ordinances issued during the Commonwealth without royal assent, and all dispositions based upon them, were treated as null and void, and THE BISHOPS RETURNED TO THE HOUSE OF LORDS.

During the Reformation, Parliament had supported the Crown in its endeavour to destroy the independence of the Church; and as a consequence of the Reformation, the Church had largely become subject to the Crown, which had gained strength. During the seventeenth century, for various reasons, the Crown espoused the cause of the established church against the protestant sects, and the Church promoted the objects of the Crown. Impulses towards independence on the part of the Church were suppressed by the prorogation in 1717 of convocation, which did not meet again, except formally, for more than a hundred years. And owing to the patronage of large-landowners during the eighteenth and the beginning of the nineteenth centuries, the

administration of the Church was little more than a branch of the general administration of the State, and as such, was largely under the influence of Parliament.

Lastly, from the middle of the nineteenth century there has been a strong endeavour on the part of a section of the Church to assert its independence of the State.

At the risk of repetition it is well to note here the relative proportion of the Lords spiritual to the Lords temporal in the Upper House. The number of bishops summoned to the Upper House in the time of Edward VI. was TWO archbishops and TWENTY-FOUR bishops. As there were no new sees created until the nineteenth century, that number was not increased; and the relative importance of the spiritual element in the House of Lords was diminished.

IMMEDIATELY AFTER THE REFORMATION THE BISHOPS FORMED ABOUT ONE THIRD OF THE HOUSE OF LORDS. Then the temporal Lords began to be multiplied. By the end of the eighteenth century the Lords spiritual commanded but a small minority of votes, and the proportion has since been continuously reduced. At the accession of George I., the number of Lords temporal was 181; at the accession of George III. they were 372; and to-day they are over 500.

The union of Ireland with England gave the archbishops of Ireland ONE seat, and the Irish bishops THREE seats in the House of Lords; these archbishops and bishops were to sit by rotation

of the sessions. An increase of the spiritual element in the Upper House might have occurred when in the present century new bishoprics were created, but this was prevented by the movement against the preference of any church as a State church. Frequent proposals were indeed made in the early decades of the present century to exclude the bishops wholly from the House of Lords, and subsequently similar attempts on the part of the Commons have been unsuccessful.

During the present century many alterations and new foundations of sees have been effected. By 6 and 7 William IV., c. 77, it was proposed to combine old dioceses at the same time that new ones were marked off. By 10 and 11 Vict., c. 108, it was enacted that one of the projected unions of sees was not to take place; but that a see of Manchester was to be created; and that the number of the Lords spiritual was not to be increased by such foundation of the new bishopric; the TWO archbishops and the bishops of London, Durham, and Winchester were always to be summoned; but of the rest only the legal number according to priority of appointment; translation to another see was not to destroy the right to be summoned. A similar reservation has also been inserted in all subsequent Acts for the creation of new sees. At the disestablishment of the Irish Church it was provided by 32 and 33 Vict., c. 42, that thenceforth Irish bishops as such had no right to be summoned to the House of Lords.

Reference has been made to the fact that the bishops

once claimed to be PEERS OF THE REALM in virtue of their baronies. It is quite certain that they have been called Peers of the land in many Statutes, notably in 25 Edward III., st. 6, c. 6, and 1 Eliz., c. 3. So both bishops and abbots have enjoyed the right to some of the privileges enjoyed by Peers in civil actions, such as having knights on the jury. Whenever it was asserted the right was always based upon the barony held of the Crown.

The bishops were never in the same position as Lords temporal even with regard to their lands. No spiritual Lord, as such, could transmit his lands or his dignity to his heir. After his death his lands and dignity devolved upon his elected successor. If he were attainted the corruption of his blood in no way affected the devolution of his lands and dignity, inasmuch as the Lord spiritual was always a corporation. Further, he was subject to deprivation, might be translated. His dignity was purely ecclesiastical; his summons to Parliament was presumably in virtue of his barony, for he could not sit in Parliament until he was seised of his temporalities.

THEY, HOWEVER, ABANDONED THEIR RIGHT TO BE CALLED PEERS by abstaining from acting as Peers in the passing of judgments, &c., on which account not one of them was ever summoned to the Court of the Lord High Keeper. Moreover, not one of them was ever tried by the Peers on indictment. By the reign of Henry VIII. the doctrine that a Lord spiritual was a Peer seems to have been extinct; but they continued to be Lords of Parlia-

ment in respect of their baronies. Nevertheless, the Lords spiritual had an amount of power in the House of Lords equal with the Lords temporal until the dissolution of the greater monasteries by Henry VIII.

They were invariably as numerous as and often in excess of the Lords temporal ; new lay Peers were created, but old ones became extinct, while the prelate always had his successor. But after the dissolution of monasteries, as has been remarked, the abbots and priors, &c., disappeared from the House of Lords.

Finally, in 1692, by a resolution passed by the House of Lords itself, it was declared that "THE BISHOPS ARE ONLY LORDS OF PARLIAMENT, NOT PEERS, for they are not of trial by the nobility."

The Lords spiritual in the Upper House continued to grow relatively weaker ; this was further intensified by the enactment which limited the number in the Upper House to less than the actual number existing. FURTHER, IN 1835 (6 and 7 William IV., c. 77, sec. 1), THE ECCLESIASTICAL COMMISSIONERS were first appointed TO WHOM THE LANDS OF THE SEES WERE TRANSFERRED and by whom portions of them are now assigned to the bishops from time to time. Powers were given the Commissioners to deal with and fix the remuneration of the archbishops and bishops, the scale of payment to be subject to revision septennially.

TO THIS LOW WORLDLY ESTATE, says Mr Pike, fell the successors of those archbishops and bishops

who had once proudly boasted that they held by barony AND WERE PEERS OF THE REALM.

The power of the Lords spiritual in early times is manifest from the continual concessions made by the Crown in favour of the clergy generally. For example, in the reign of Stephen, we meet with one Convention of the Estates, and that was in the first year of his reign. The King, desirous of securing his throne, signed a charter which gave most extensive rights and immunities to the Church. The charter is interesting as showing in the preamble the absence of any distinct mention of the nobles, while the clergy are prominently in evidence. It runs as follows [1136]:—

> "I, Stephen, by the grace of God, the consent of the clergy and people, being elected King over England, and consecrated by William, Archbishop of Canterbury, legate of the Holy Roman Church, confirmed by Innocent, pontiff of the same see; for the respect and love I bear to God, do declare holy church to be free, and do confirm all due reverence unto it," &c.[1]

And it is witnessed by the signatures of fourteen bishops and archbishops, besides the chancellor and other great personages. Further, in the same reign (1152), the King called a council, and wished the archbishop (whose ancient right it was to consecrate the kings) to perform the ceremony of crowning Eustace (Stephen's son) as heir to the throne after Stephen. The archbishop boldly refused to do so,

[1] "Statutes of the Realm," vol,

being forbidden by the Pope in consequence of Stephen's usurpation.

This refusal resulted in the incarceration of all the bishops, with their primate, so that the King might extort that which, says Richard, the Prior of Hexham, neither by price nor prayer he could prevail in. But some of the bishops, being intimidated, began to waver. Whereupon the primate escaped and went beyond sea. For this resolution of his and for his flight, the King seized and spoiled all the lands and possessions of the primate.

The causes and consequences of the Constitution of Clarendon are too well known to be mentioned here.

We are told that Richard I., when he was invited to join the French in a crusade against the Saracens, convened the bishops, earls and barons of the realm ; and later, in 1194, when he summoned a Parliament, Roger Hoveden says, " the King sat in state, with Hubert, Archbishop of Canterbury, on his right hand, and Geoffrey, Archbishop of York, on his left." Moreover, it was by the advice of Stephen Langton, Archbishop of Canterbury, that John called a Parliament in London in St Paul's Cathedral, where the archbishop produced a famous charter of liberties granted by Henry I. ; and it was in the presence of the archbishop that the barons swore to spend their blood for these liberties. Another Magna Carta itself is witnessed by the Archbishops of Canterbury and Dublin, and by many other bishops.

When Henry III. met the barons at an assembly

in London, and the Archbishop of Canterbury asked the King to confirm Magna Carta, one of the King's council objected that such liberties had been extorted and ought not to be observed. Whereupon the archbishop in a passion reproved him, and bade him, as he loved the King, not to hinder his peace. The King observing the archbishop's emotion, assured him that he had bound himself by oath to preserve their liberties, and what was sworn he would observe.

And upon many other occasions in this reign did the bishops exhibit to the full both their power and intention of protecting the liberties and privileges they themselves exercised and those enjoyed by the people at large.

The conflict between the Papal See and the English Crown is evident in the following speech made by the Archbishop of Canterbury to the Lords of Parliament in 1296 (temp. Edward I.) against granting an aid to the King to carry on the war against France :—

> "My Lords,—It is very well known to you and all the world, that, under the Almighty God, we have both a spiritual lord and a temporal one. The spiritual lord is our Holy Father the Pope, and the temporal, our lord the King. And, though we owe them both obedience, yet we are under more subjection to the spiritual. . . . And so, my dear lords, we desire that you would send some select persons out of your body to inform the King of this matter, for we verily, notwithstanding we know the King's anger to be raised against us, dare to speak the truth at all times."

In Edward III.'s reign, when the King suddenly

returned from the Continent to enquire the causes of his not receiving supplies, he imprisoned some of the bishops, and intended to proceed against the Archbishop of Canterbury. The King called a Parliament at Westminster, to which the Archbishop of Canterbury came, with many clergy and knights, though he was not summoned. On his entrance the high steward met him, and forbade him, in the King's name, to enter Parliament till he had undergone a trial in the Exchequer for various charges laid against him. Upon the archbishop vouchsafing to do so, he was admitted to Parliament, where, before the whole assembly, he said he was there "for the honour, rights and liberties of the Church, for the profit and commodity of the realm, and for the interest and honour of the King, &c." Later, when hindered from entering the Parliament, he said to those who flocked about him that he had been summoned by the King's writ, and that he was the chief Peer of the Realm, and, next to the King, had the first voice in Parliament.

In the year 1371 a petition of the Commons was granted by the King, that the tenure of State offices by the clergy should be abolished, and that all such offices should be held only by laymen of sufficient abilities and no others. And, shortly after, the Bishop of Winchester, who was also lord chancellor, delivered up the great seal to the King, who immediately gave it to Sir R. Thorp, one of the King's law judges; and the Bishop of Exeter was, at the same time, removed from the office of

lord treasurer, and was succeeded in that office by a layman.

Very broadly, it might be said that the policy of the bishops in the early centuries was "For the Church and the King, when he was not against the Church."

The Archbishop of Canterbury was, also, generally the spokesman for or against the King upon all great and important occasions, such as the deposal and coronation of the King, the granting or refusing of subsidies, &c.

And here is an extract from what is called "a pithie oration in the Parliament-House," in which the Archbishop of Canterbury declared that King Henry V. was entitled not only to certain duchies in France, as lawful and only heir, but also to the whole realm of France, as heir to his great-grandfather Edward III.:—

> "We all know, great Sir, with what royal wisdom and care you have established the peace and prosperity of your people, and we all enjoy the blessings of your excellent government. But while your designs and actions have been directed to our common good, we have not done anything for the increase of your Empire. . . . Now, since I owe all my fortune to your favour, gratitude, as well as the duty of a subject, obliges me to propound what I think may promote the Honour of so gracious a Sovereign, and enlarge his power. . . . The glory of a great king consists not so much in a reign of serenity and plenty, in great treasures, in magnificent palaces, in populous and fair cities, as in the enlargement of his dominions; especially when the assertion of his right calls him out to war; and justice, not ambition, authorizes all his conquests, &c."

[1] "Parliamentary History of England," vol. i. 325.

In his "History of the Life and Reign of Henry VII.," Lord Bacon gives an account of the Parliament called in 1488, at which Morton, who was Archbishop of Canterbury and also Lord Chancellor, addressed the House.

The following is extracted from Lord Bacon's account of his speech; having urged that the King is anxious for industry and prosperity at home and a stout independence of foreign manufactures, the archbishop concludes with this appeal for a grant of supply:—

> "And, lastly, because the King is well-assured that you would not have him poor that wishes you rich; he doubteth not, but that you will have care, as well to maintain his revenues of customs, and all other natures, as also to supply him with your loving aids, if the case shall so require. The rather for that you know the King is a good husband, and but a steward in effect for the public; and that what comes from you is but as moisture drawn from the earth, which gathers into a cloud, and falls back upon the earth again. And you know how the kingdoms about you grow more and more in greatness, and the times are stirring, and therefore not fit to find the King with an empty purse."

When the doctrines of Martin Luther were gaining ground everywhere, and the people were secretly approving them, many abuses which the laity suffered daily at the hands of the clergy were loudly complained of, and finally found their way into Parliament, where Bills for regulating clerical proceedings were introduced. When these Bills came up before the Lords for debate [circ. 1530]

Bishop Fisher of Rochester made a strong speech, from which the following is taken :—

> "My Lords, here are certain Bills exhibited against the clergy, wherein there are complaints made against the viciousness, idleness, rapacity, and cruelty of bishops, abbots, priests, and their officials. But, my Lords, are all vicious, all idle, all ravenous and cruel priests or bishops? And for such as are such, are there not laws provided already against such? Is there any abuse that we do not seek to rectify? . . . Shall men find fault with other men's manners while they forget their own; and punish when they have no authority to correct? . . . But, my Lords, there is a motion made, that the small monasteries should be given up into the King's hands, which makes me fear that it is not so much the good as the goods of the Church that is looked after. . . . But, my Lords, beware of yourselves and your country; beware of your holy mother the Catholic Church; the people are subject to novelties, and Lutheranism spreads itself amongst us. Remember Germany and Bohemia, what miseries are befallen them already; and let our neighbours' houses that are now on fire teach us to beware of our own disasters. Wherefore, my Lords, I will tell you plainly what I think; that, except ye resist manfully, by your authorities, this violent heap of mischiefs offered by the Commons, you shall see all obedience first drawn from the clergy, and secondly from yourselves; and if you search into the true causes of all these mischiefs which reign amongst them, you shall find that they all arise through want of faith." [1]

In reply to this we are told by the same authority that the Duke of Norfolk answered: "My Lord of Rochester, many of these words might have been well spared; but I wist it is

[1] Dr Thomas Bailey's "Life and Death of John Fisher, Bishop of Rochester," [1655]. Reprinted 1739.

often seen that the greatest clerks are not always the wisest men." To which the bishop not very graciously retorted, "My lord, I do not remember any fools in my time that ever proved great clerks."

All this greatly annoyed the Commons, and brought the bishop before the King, who reproved him and advised him to use his words more temperately another time. These things could not be attempted against the clergy prior to this time, owing to their immense influence and weight with the Government; for, as the chancellors were always bishops, and had sole command about the king, no one could presume to do anything contrary to their wills and advantages. The first *lay* Lord Chancellor was Sir Robert Bourchier, appointed 1341.

However, Acts were now formulated and passed into Law, regulating matters of probate and mortuary, and many other things touching the government of spiritual persons, such as pluralities, &c. In 1 Edward VI. (1547), a bill was read a third time by the Lords, for suppressing chauntries and colleges; and passed, by the consent of all the Peers, except the Archbishop of Canterbury and the Bishops of London, Durham, Ely, Norwich, Hereford, Worcester, and Chichester, who dissented from it.

When, about the same time, a measure was brought in to repeal certain statutes for treason and felony (dealing with liberty of conscience in the matter of religious thought and scriptural interpretation), many of the bishops dissented, notably bishops

of London, Durham, Hereford, &c. While many of the same bishops opposed various clauses of the Act for Uniformity in Religion, 1549; and they also, with others, opposed, though unsuccessfully, the Act for allowing priests to marry.

In the reign of Queen Mary, the bishops joined in the general repeal of all Acts of the Pope, and in the revival of formerly repealed Acts against Heresy; and many other things of great interest set out by Bishop Burnet in "The History of the Reformation." Yet they also were signatories to the joint petition of both Houses for the execution of the laws against Jesuits, &c., in 1624 (temp. 22 James I.), presented the King by the Archbishop of Canterbury.

In 1640 a petition of some interest was presented against the bishops, signed by 15,000 citizens of London. It complained of the government of archbishops and lord bishops, deacons and archdeacons, &c. Among other complaints lodged against them were:—the great increase of idle, ignorant, and erroneous men in the ministry, which swarm, like the locusts of Egypt, over the whole kingdom, with liberty to preach and vent what errors they wished, and neglect preaching at their pleasure, without control; the discouragement of many people from bringing up their children in learning; the gross and lamentable ignorance among the people; popish practices among the clergy.

At this time, too, feeling ran strong against the bishops, as may be seen by the speech of Mr

Grimston, when Archbishop Laud was charged with high treason. Speaking of the bishops generally, Grimston says in his speech :

> " These are the men that should have fed Christ's flock, but they are wolves that have devoured them ; the sheep should have fed upon the mountains, but the mountains have eaten up the sheep."

In the same year measures were introduced to disable bishops, &c., from holding civil offices, and restrain them from intermeddling with secular affairs, as being a hindrance to their spiritual function. Upon this occasion Bishop Hall (of Exeter) made a lengthy and important speech, which is printed in his " Works."

> " My Lords, this is the strangest Bill that I ever heard since I was admitted to sit under this roof: for it strikes at the very fabric and composition of this House, at the style of the laws. . . . As for the ground of this Bill, that he who warfares to God should not entangle himself with this world, it is a sufficient and just conviction of those who would divide themselves betwixt God and the world, and bestow the main part of their time upon secular affairs ; but it hath no operation at all upon this tenet which we have in hand, that a man, dedicated to God, may not so much as, when he is required, cast a glance of his eye, or some minutes of his time, or some motions of his tongue, upon the public business of his King and country. Those that expect this from us may as well hold, that a minister . . . must have no body to tend to, but be all spirit. My Lords, we are men of the same composition with others, and our breeding hath been accordingly ; we cannot have lived in the world, but we have seen it, and observed it too ; and our long experience and conversation, both with

men and books, cannot but have put something into us for the good of others; and having a double capacity, we are ready to do our best service in both. One of them is in no way incompatible with the other. . . . Neither is this any new grace that is put upon our calling, but is an ancient right and inheritance, inherent in our station; no less ancient than these walls wherein we sit, yea, more. Before ever there were parliaments, in the Magna Concilia we had our places. . . . In short, then, my Lords, the Church craves no new honour from you, and justly hopes that you will not be guilty of pulling down the old. . . . If you please, abridge us of intermeddling with matters of common justice; but leave us possessed of those places and privileges in Parliament which our predecessors have so long and peaceably enjoyed."

Upon the same discussion the Bishop of Lincoln said:

"Now, I hope no Englishman will doubt but this vote and representation in Parliament is not only a freehold, but the greatest freehold that any subject in England, or in all the Christian world, can brag of at this day. The prelates of this kingdom, as a looking-glass and representation of the clergy, have been in possession hereof this 1000 years and upwards."[1]

In reply to which Lord Say and Sele made answer, that "their ambition, and intermeddling with secular affairs and State business, hath been the cause of shedding more Christian blood than anything else in the Christian world; and this no man can deny that is versed in history." The same speaker distinguishes between the presence and privilege of the Lords temporal and spiritual thus:

[1] "Parl. Hist.," vol. ii. p. 805.

"The one, sitting by an honour invested in their blood, and hereditary; which, though it be in the King to grant alone, yet, being once granted, he cannot take away. The other, sitting by a barony, depending upon an office which may be taken away; for if they be deprived of their office, they sit not. And their sitting is not so essential, for laws have been, and may be made, they being all excluded; but it can never be showed that ever there were laws made by the King and them, the Lords and Earls excluded."[1]

In fact, during the whole of this particular period the bishops were in anything but sweet odour, and measure after measure was taken to curtail their power and deprive them of their privileges, *e.g.* impeachment of bishops, a bill to disable the clergy from exercising any temporal jurisdiction; then a conference concerning bishop's sees, petitions against them, followed by popular assault and menace. The bishops abstained from Parliament, and protested against all proceedings in the House of Lords during their absence. They were punished for their pains. A Bill for taking away the bishop's votes in Parliament passed the Lords, 1641—and was assented to by the king.

In 1644 their Archbishop of Canterbury was tried and beheaded; and, perhaps, matters could no further go when the king having been beheaded, the Commons abolished the House of Lords, and then the Court of Chancery and a few other institutions of minor detail. And so matters remained until the Restoration, when the bishops were also restored (1661) to their seats, &c., in Parliament. In

[1] "Parl. Hist. of England," vol. ii. 810.

1688 we find that the Lords spiritual and temporal, to the number of sixty, met the Prince of Orange at St James's on December 21st.

When the Bill of Attainder against Sir J. Fenwick was voted upon in the House of Lords, twelve bishops (including the Archbishop of Canterbury) voted for, and eight voted against, its passing. When the Bill against Occasional Conformity was introduced and debated in the Upper House the famous Bishop Burnet spoke bravely and strongly against it, saying that such a bill would in nowise help the church. However, the bishops in general were almost equally divided upon it; there were two more against than for the bill. Bishop Burnet, giving his reason for voting, says on this subject:—

> "For I have long looked upon liberty of conscience as one of the rights of human nature antecedent to society, which no man could give up, because it was not in his own power; and our Saviour's rule, of doing as we would be done by, seemed to be a very express decision to all men who would lay the matter home to their own conscience, and judge as they would willingly be judged."[1]

Upon the actual voting it appears that nine bishops voted for, and fourteen bishops against, the Bill. In the reign of Anne the bishops stood mostly on the side of the Crown and for the defence of the Church; they took a very full and important part in the debates concerning the danger of the Church. Sometimes differences of opinion drew insinuations

[1] Bishop Burnet's Works.

from Lords temporal which evoked such replies as that given by the Bishop of Oxford in the debate upon the union with Scotland:—

> "I hope and beg that we may be allowed the common privilege of the House, to differ from any Lords when we cannot bring our opinions up to theirs, and to vote according to our judgments and consciences without being exposed to unkind reflections for so doing."

Some of the bishops were against the admission of the sixteen Scotch Peers, because they would be against Church of England matters. They largely voted against the introduction of a Bill, in 1718 (temp. 5 George I.), for removing many oppressive laws against the dissenters, both the archbishops being against the Bill.

In the debate on the Quakers' Affirmation Bill, 1722, it was the Bishop of Rochester who endeavoured to prove that the Quakers were no Christians; and he, with the Archbishops of Canterbury and York and other bishops, joined in and supported a petition against the Bill, urging in it that the Quakers were "a set of men who renounce the divine institutions of Christ," and could not be deemed worthy of the name of Christians; but the majority of the bishops were against the petition and in favour of the Bill, which passed by a large majority.

The bishops were almost unanimous in their opposition to the Pension Bill in 1731. Upon the Quakers' Tythe Bill, 1736, fifteen bishops

[presumably all that were present] voted against its being committed.

In the case of the Spirituous Liquors Bill, all the bishops who were present, to the number of ten, voted against the Bill, which was described as one "by which vice is to be made legal."

Many of them opposed, though unsuccessfully, the Bill for Licensing a Play-house to Manchester in 1775. They did not oppose the passing of the Bill for the Relief of Roman Catholics in 1778 and 1791. It is to their great credit that they were in favour of and voted for the Abolition of the Slave Trade.

Bishop Warton of Landaff, in 1799, spoke eloquently in favour of the Union with Ireland, and most, if not all, of them voted in its favour.

In the course of the debate on the Bill to prevent persons in Holy Orders from sitting in Commons, the Bishop of Rochester said, "that holy orders were of divine institution, and that on this account the clerical character was indelible." And, in 1804, upon the Priests' Orders Bill, the Bishop of St Asaph remarked that "the sacerdotal character in itself could not be done away by the secular power." In the debate on the Roman Catholic Petition, in 1805, the Bishop of Durham remarked that "religious toleration is the primary principle and peculiar characteristic of our Established Church; and by the practice of it, we have been enabled to preserve harmony and goodwill, not only between Protestant sects, but between every denomination of Christians"; yet he voted for the rejection of

the Petition, in order "to keep inviolate the barriers of our religious and political constitution." Upon frequent occasions, when Bills were brought in to render valid marriages solemnized in certain churches and chapels without a publication of the banns, the bishops have strenuously opposed them [to wit, in 1808], and hoped that the introduction of such Bills would cease. In 1807 the bishops joined in rejecting a Bill which appointed a Committee of Council for Education; likewise, in 1810, they opposed a Bill to abolish capital punishment for stealing goods of the value of 5s.

In 1812 only two bishops voted in favour of a Committee to consider the claims of Roman Catholics; and in 1813 the bishops of Oxford, London, Chichester, Gloucester, Chester, &c., presented petitions against the Catholic claims.

In 1813 five bishops (including Archbishop of Canterbury) voted against the abolition of capital punishment for shop-lifting, and not one voted in its favour, and the Bill was then rejected, and again in 1816! In 1822, twenty-one bishops voted against the Roman Catholic Peers' Bill. The bishops voted against the Dissenters' Marriages Bill in 1823, the Archbishop of Canterbury saying it was a Bill "to accommodate sects who founded their faith and religious belief on private and unlearned interpretations of the Scriptures."[1] Throughout many years of persistent agitation for the removal of restrictions upon Roman

[1] "Parl. Debates," vol. ix. 970.

Catholics, the bishops steadily pursued, both in and out of the House of Lords, a consistent policy of strenuous opposition to such relief.

In 1831 two bishops voted for, and twenty-one voted against, the Reform Bill, which was rejected! In 1832 they joined in the endeavour to weaken the force of the new Reform Bill by supporting amendments in Committee.

In opposing the Reform Bill for Ireland, the Archbishop of Armagh said the consequence of such a Bill would be "the downfall of Protestantism—the elevation of the Roman Catholic faith—the dismemberment of the Empire—or the dreadful option of civil war."[1]

In 1832 they joined in the refusal to open the Universities to Dissenters. In 1833 a petition from Scotland was lodged, praying for the removal of the bishops from the House of Lords; and in the same year three bishops voted for, while twenty voted against, the Bill for the Emancipation of the Jews; and also joined in the rejection of the Bill for National Education in Ireland.

In 1834 the Bishop of Landaff presented a petition against admitting Dissenters to the Universities, because to do so "would necessarily sever those institutions from the national Church," and because "religion was an essential part of education, and the admission of persons, without looking to the tenets which they professed, would be destructive of religious education."[2]

And in the same year in opposing the Religious

[1] "Parl. Debates," vol. xiv. 762. [2] *Ibid.*, vol. xxiv. 806.

Assemblies Bill, the Bishop of Exeter declared that "the thirty-nine Articles of the Church of England were part of the unalterable Constitution of the State." [1]

In like manner they almost unanimously rejected the Bill for regulating the Tithes and Reforming the Church (Ireland), in 1835; nor did they assist in extending the franchise to those disabled in Ireland.

In 1834 they joined in the thrice-repeated rejection of the Abatement Bill, and resisted the endeavour to legalise marriages in Dissenting Churches.

In 1836 a motion was proposed in the House of Commons that the presence of the bishops in the House of Lords was injurious to religion, and asking for their exclusion.

During the present reign, the bishops have steadily opposed every extension of political opportunities and economic improvement to the people, while there has been no great measure for the political, economical, social, or educational advancement of the community which they have not consistently contested and religiously opposed; and where they have not actively opposed, they have refused to assist its passage by either abstaining from giving their votes in its favour, or by absenting themselves from the House upon division. They have ever clung to their traditions and their tithes, championed the cause of their Church, to their shame, through admitted wrongs; and throughout the whole course of this illustrious reign they have stood out

[1] Hansard, 3 [25] 29.

as the defenders of an unenlightened past, and the staunch opponents of every movement for enlarging the liberty of the oppressed, for the humane emancipation of those who differed from them in beliefs, and for the just extension of the parliamentary franchise to all who have to bear the burdens which other people impose. They did not save the Bill for the Custody of Infants in 1838, but let it be defeated by two votes.

In 1839, led by the Archbishop of Canterbury, they thwarted the movement for a better scheme of national education, publicly desiring that the education of the people should be left in the hands of THE CHURCH, "that there might be no interference with them in the performance of their duty with the young, as well as the old, so that the children of their flocks might be educated in the same principles, and in the same faith and doctrines of religion, which they would afterwards hear preached in church."[1] "They insisted that they should all be instructed in the principles of the Established Church."[2] And upon this occasion, too, the Bishop of London said: "If the Church falls, all the other glorious and happy institutions of the country will follow; if ever the Church (*i.e.* by law established) should be cast down, it will involve the Throne in its ruin."[3] Consequently they opposed national education. Yet a protest was entered by Lord Concury that the Church had neglected its

[1] Hansard, "Parl. Debates," 3rd series, vol xlviii. p. 1235.

[2] *Id.*, p. 1238.

[3] *Id.*, "Parl. Debates," vol xlviii. p. 1294.

duty in respect of education, "as has been proved by the gross ignorance of the peasantry, more particularly in the vicinity of Canterbury."[1]

In the same year (1839) the Bishop of London objected to the Bill for Registers of Births, &c., because "it would give the same legal weight to copies of registries kept by dissenting bodies, but certified by the Registrar-General, as was now given to the originals of our own parish registrars, every entry in which was personally certified by the clergyman. . . . For so important a subject the Bill was introduced at a very late period of the Session."[2] So it was put off; and, in like manner, they helped to put off the Bill for abolishing the death penalty for sheep stealing. It was the Bishop of Exeter and others who, in 1839, exerted themselves to overthrow the work of such men as Mr Robert Owen, the Social Reformer, whose beneficial contributions to the welfare of the country have been universally acknowledged. They persistently opposed the Bills in relief of Jews, because they were not Christians, and those in relief of Dissenters of every kind, because, although Christians, they were not in favour of the Church of England. That, ultimately, is always the root objection. So, in 1841, they threw out the Jews' Declaration Bill; in 1845 they in no way endeavoured to counteract the resistance to compensate Irish tenants for improvements upon land, nor during the course of many years next ensuing. In 1844, the Bishop of Exeter brought in many petitions

[1] Hansard, "Parl. Debates," vol. xlviii. p. 1336.
[2] *Id.*, vol. xlix. pp. 1140-1.

against, and personally opposed, the Dissenters' Chapel Bill with great force, and spoke of the Dissenters' worship as being profane and impious. And the bishops assisted in presenting petitions against the Bill. When matters of reform, touching the deplorable condition of the poor, have been in question the bishops have been conspicuously silent, as in the sanitation enquiry in 1844, and later.

In 1844, in the debate on The Brothels, &c., Suppression Bill, the Bishop of Exeter, while supporting the Bill, declared that the punishment of prostitution was a thing impossible, as it carried its own suffering and degradation; the Bill was subsequently withdrawn.

In 1858 Lord Shaftesbury withdrew his Religious Worship Act Amendment Bill because of the entire episcopal opposition; and so again in 1862.

They have been more concerned in the consecration of churchyards, as in 1868, than in the more adequate representation of the people in Parliament.

In 1860 they successfully resisted The Church Rates Abolition Bill, because it would throw them on the mercy of the people who would give voluntarily. "The clergyman would have no other resource than to place himself under *an annual obligation* to his parishioners,—for the repairs of his church and the maintenance of public worship"[1] —in fact become like Dissenters. So fifteen

[1] Hansard, vol. clix. p. 647.

voted for the rejection of the bill and *none* in its favour.

In 1867, when it was moved that "the Education of the Working Classes in England ought to be extended and improved," no bishop raised his voice to support the motion.

See table of Bishops' votes in the Appendix.

XVII

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I

PROPOSALS

It is now generally admitted that some alteration of the House of Lords is imperatively necessary. The changes proposed may be conveniently divided into five classes, viz. :—

(1) *Removal of "Black Sheep."*

In 1888 the Marquess of Salisbury introduced a Bill proposing that the Courts of Law should report to the Lord Chancellor every case in which a Peer of Parliament had been proved to have been guilty of disgraceful conduct. Then, on presentation of an address from the House of Lords, the Sovereign might direct that the Writ of summons issued to the peccant Peer should be cancelled and that he should not be entitled to sit during the existing Parliament.[1] This Bill was withdrawn, and when the Earl of Carnarvon

[1] Discontinuance of Writs Bill. H.L. 1888. No. 162 : "Constitutional History of the House of Lords," by L. O. Pike (Macmillan & Co.), p. 277. For text of Bill see Appendix, p. 406.

in the following year introduced a somewhat similar Measure,[1] the House brushed it aside by means of "the previous question."

Of course if the House of Lords is to continue to exist in any shape or for any purpose, we would gladly see it rise to such a moderate amount of decency as to lead it to free itself from disreputable persons. It would be inhuman to try and prevent such an effort after virtue. But this reform, if effected, would do nothing to remove the evils of which we complain.

(2) *Strengthening the House.*

Several proposals have been made with this object.[2] It need only be said that the effect would be to strengthen our Masters, and to make bad worse.

(3) *Abolition of the House of Lords, with Substitution of a Second Chamber.*

There are two serious objections to this course, viz.: (*a*) it involves a more drastic change than most people desire. The "remedy" would go much further than the disease. The evil is not the existence of Lords, or of a House of Lords, nor does it arise from the fact that such a House has legislative functions, but that it can, by law, veto, and permanently veto, legislation desired by the people's representatives. There is a second

[1] Discontinuance of Writs Bill, 1889, No. 18. Peers who are traitors, felons, or bankrupts are disqualified. Pike, pp. 274-5.

[2] For details see Pike, pp. 379-386.

and even more serious objection, viz.: (*b*) if a strong Second Chamber were formed, and were allowed to have a permanent veto, it would, whatever its name, be in effect a new and stronger House of Lords.

(4) *Abolition of the House of Lords without the Substitution of a Second Chamber.*

This proposal, even more than the former, is open to the objection that the remedy goes further than the disease. Moreover, if a single Chamber were best, the United Kingdom is not ready for such a change.

(5) *Abolition of the permanent power of veto of the House of Lords.*

This is the plan which I recommend. At present, the Gilded Chamber may, by law, session after session, and parliament after parliament, reject the Bills of the House of Commons. This power should be reduced to a right to reject *for a single session;* and then if the Lower House pass the Bill again next session, such Bill, after having the Royal assent, should become law without the consent of the House of Lords. The delay of a session would give time to the Constituencies to make themselves heard, should it happen that the House of Commons had misrepresented their views. It has been suggested that the Lords' Veto should be allowed to operate not only for a session, but for a whole Parliament; so that no Bill should become law without the consent of the Lords,

unless passed by the House of Commons in two successive Parliaments. In this way a sort of Referendum would be obtained. Such a course would, however, cause great delay; and, moreover, it would enable the Lords to a large extent to domineer continually over the Commons by holding a threat of dissolution over their heads. They could on any occasion, by simply refusing to pass Bills, make a dissolution necessary. On these grounds, we should prefer that the Lords' power should be limited to return of a Bill to the Commons for further consideration, conference with the Commons, and rejection for a single session. The Lords should also retain their present powers of initiating legislation.

It will be seen that the proposed alteration in the law would be by no means a revolutionary one. The Lords would still individually retain their honours, their titles, the ennoblement of their blood, and all their privileges of peerage.

Moreover, the House of Lords would retain all its privileges, personal, judicial and legislative—except the legal right to a permanent veto. Many constitutional defenders of the present position say that the Lords do not claim a permanent veto, but only a suspensory one, until they are certain that the country has made up its mind. If this be so, the change would not be from a permanent to a suspensory veto, but merely shorten and regulate the period of suspension.

Should the country, by a large majority, definitely and clearly declare its will that such a change should

be effected, there is little doubt that the House of Lords would (however reluctantly) pass a Bill for that purpose.

It is easy to prophesy if you know what is going to happen, but, in default of such accurate knowledge, the best way to forecast the future is to study the past as well as the present. If we glance for a few moments at the history of Parliament, and of its constituent parts, and at the various modes by which the Legislative Commands now styled "Acts of Parliament" have come into existence, we shall see, 1st, that the change proposed is comparatively small; 2ndly, that it is in the "natural" direction, *i.e.*, in the same direction as other changes which have taken place during the last few centuries; and 3rdly, that we have constitutional means of effecting the change, even if the Lords should remain unwilling and obstinate.

II

GRADUAL RISE OF POWER OF THE HOUSE OF COMMONS

FOR some generations after the Conquest there was no House of Commons at all. Legislation was effected by the King or by the King and Baronage, or Council. And when the "Common people" first began to send representatives to Parliament, or perhaps we should rather say were first compelled to send representatives, the King merely

summoned them because he wanted to tax the people they represented. They obtained, only by slow degrees, even an equal share of legislation with the Lords.

> " Before Representatives of the Commons were summoned to Parliament (and they were not summoned before the time of Simon de Montfort's assembly in the forty-ninth year of Henry III.), it is clear that new laws could be brought into being, and that existing laws could be modified only by the Sovereign and those persons whom he called to advise him." [1]

The burgesses had not (before this) the slightest power to alter the laws of the land.

At first, moreover, their share was but a lowly one ; they were merely humble petitioners. They had no share at all in many legislative matters.[2] When they did obtain a voice it was pitched in a minor key. They were called up only to provide for the wants of the King and to approve of the resolutions taken by him and the Assembly of the Lords.[3] In 1283, Edward I. held a Parliament at Shrewsbury, where the Lords sat in a castle, and the Commons in a barn.[4] This incident well illustrates the respective positions of the two bodies.

[1] Pike, p. 310. See also p. 312, and Sir Erskine May's "Parliamentary Practice" (Butterworth) pp. 17-21. By the Great Charter, the lesser Barons were to be summoned to Council by general writ addressed to the Sheriff. In 1254 Knights of the Shire were summoned to Parliament. Stubbs, ii. pp. 67, 68 ; May, p. 20.

[2] "The British Constitution," by Henry, Lord Brougham, p. 185

[3] De Lolme, p. 26. [4] *Id.*, p. 24.

In some of the ancient statutes they are not so much as named, in others they are distinguished as simply petitioners, the assent of the Lords being expressed in contradistinction to the request of the Commons.[1] The petitions from the Commons were entered on the Rolls of Parliament with the King's answer subjoined, and at the end of each Parliament the judges drew up these imperfect records into the form of a statute which was entered on the Statute Rolls. But somehow matters were often found in the Statute-Rolls which Parliament had not petitioned for or assented to.[2] Sometimes the King caused the redress, which the Parliament had sought, and which he had promised them, to be omitted from the Statute.[3] Sometimes the officials changed the terms of the law. To come down to a later date, even Henry VI. and Edward IV. occasionally added new provisions to statutes without consulting Parliament.[4]

> "The constitutional form of legislation by Bill and Statute agreed to in Parliament undoubtedly had its origin and sanction in the reign of Henry VI."[5]

De Lolme (p. 37) succinctly describes the growth of the power of the Commons in the following terms:—

> "Under Edward II. the Commons began to annex petitions to the Bills by which they

[1] De Lolme, 26n; Stubbs, ii. 287, *et seq.*

[2] May, p. 479.

[3] Brougham, p. 188.

[4] Notwithstanding the Royal Promise in 2nd Henry V. See May, p. 480.

[5] *Id.*, p. 480.

granted subsidies; this was the dawn of their legislative authority. Under Edward III. they declared they would not in future acknowledge any law to which they had not expressly assented. Soon after this they exerted a privilege in which consists at this time one of the great balances of the Constitution: they impeached and procured to be condemned one of the first Ministers of State. Under Henry IV. they refused to grant subsidies before an answer had been given to their petitions."

It will be seen then, from the History of England, that it was only gradually, and with many struggles, that the Commons obtained a share in legislation equal to that of the King and of the Lords. Even as late as the reign of Queen Elizabeth it was possible for the Sovereign to signify to the House of Commons (through the Speaker) her pleasure that no Bills concerning religion should be received, unless they should be first considered and approved by the Clergy; and, on another occasion, to send for the Speaker, and "command" that no Bill touching matters of state or reformation of causes ecclesiastical should be exhibited, and to enjoin him on his allegiance, if any such should be offered, not to read it.[1] Let us

[1] Hallam, "Constitutional History," i. 346, 353; D'Ewes, 213, 214, 474; Heywood Townsend (or Townshend), 62, 63. The Speaker actually delivered this imperious message to the House of Commons (Townsend, 63).

now turn our eyes to our modern Parliament, and see how the royal power with regard to law-making has diminished.

The Royal Assent now Formal.

"The form of words," says Sir E. May,[1] "used to express a denial of the Royal Assent would be, 'La Reyne s'avisera.'" "The necessity of refusing the Royal Assent," adds this constitutional authority, "is removed by the strict observance of the constitutional principle that the Crown has no will but that of its Ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a Bill for settling the Militia in Scotland." In other words, the Royal Assent has long become a mere matter of form; it is never refused, and laws are really now made by the Lords, spiritual and temporal, and the Commons.

It may be mentioned that an Act can be passed without the assent, and notwithstanding the dissent of the Lords spiritual,[2] if their votes are outnumbered by those of the Lords temporal. Their votes are intermixed and the joint majority determine every question.[3] It will be seen, there-

[1] P. 549.

[2] At one time it seems to have been thought by some that their consent was necessary, Pike, p. 326.

[3] May, p. 15. Presumably Bills could be passed by the Bishops if they out-voted the Lords temporal. There are, however, some subjects on which Bishops do not vote.

fore, that the present formula of enactment[1] somewhat fails to convey a just idea of the situation.

III

POWER OF THE COMMONS OVER THE LORDS

Sir T. Erskine May, in his "Parliamentary Practice,"[2] remarks as to the Commons' right of voting supplies :—

> "The most important power vested in any branch of the legislature is the right of imposing taxes upon the people, and of voting money for the exigencies of the public service. It has been already noticed that the exercise of this right by the Commons is practically a law for the annual meeting of Parliament for redress of grievances; and it may also be said to give to the Commons the chief authority in the State. In all countries the public purse is one of the main instruments of political power; but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure, is one of absolute supremacy."

Further illustration of the "absolute supremacy"

[1] "Be it enacted by the Queen'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, as follows :—"

[2] P. 516.

of the Commons will be found in the recognised practice as to supply and taxation.

It is remarkable that although a grant from the Commons is not effective in law without the ultimate assent of the Queen and the House of Lords, it is the practice to allow the issue of the public money, the application of which has been sanctioned by the House of Commons, before it has been appropriated to specific services by the Appropriation Act, which is reserved until the end of the session.[1] In other words, the public officials obey the House of Commons and Her Majesty's Ministers, knowing that the formal assents of the Crown and Lords will be certain to follow. In the imposition and alteration of taxes, the effect given to a vote of the House of Commons, in anticipation of the passing of a statute, is still more remarkable. The Government levies the new duties instead of the duties authorised by law, as soon as the House of Commons shall have agreed to them. Afterwards the statute is passed altering the duty from the day mentioned in the Resolution of the House of Commons.[2]

This is an excellent example of legislation by Resolution, and illustrates the power of the Ministers of the Crown and the House of Commons to act without asking the opinion of the Lords.

The Lords formerly could, and did, alter and amend Bills of Supply, but the Commons have

[1] May, p. 591. [2] *Id.*, pp. 593-4.

prevented them by Resolution, notably by that of July 3, 1678.[1]

In this way the functions of the House of Lords, in matters of supply and taxation, were reduced to either a simple assent or to a rejection of the Bill, without any alteration being possible. In 1860 the Lords (in exercise of their right) rejected the Paper Duties Repeal Bill.[2] The House of Commons accordingly passed some resolutions,[3] beginning, "that the right of granting aids and supplies to the Crown is in the Commons alone." They then resolved on the repeal of the paper duties, and included the repeal in the Budget for the year, which the Lords "were constrained to pass."[4] If the Lords had not done so, they would have upset the whole finance of the year. If the Commons always follow this policy, the Lords will lose their "right" even to reject a Money Bill.

In connection with the rejection of Money Bills a very interesting address of the Lords in 1677 may be cited.

"An Address of the Lords to the King, in 1677, in relation to amendments," remarks Mr Pike,[5] "might seem to describe very appositely the more recent position of the House in relation to the rejection of Money Bills. The Lords had then made some amendments in a Supply Bill for building ships of war. The Commons 'disallowed' them. The Lords gave their reasons, but the Commons remained 'unmoveable.' The Lords then said: The

[1] May, p. 594.
[2] They did not like cheap newspapers.
[3] *Id.*, p. 602.
[4] *Id.*, p. 603.
[5] P. 345, note.

> Commons 'have put upon us the extreme difficulty either of shaking our privileges by withdrawing our amendments, or of hazarding the safety of the nation by letting a Bill fall that is necessary to this time.' They yielded against their judgment, 'and out of tenderness that the whole may not suffer by our insisting on *that which is our undoubted right.'*—*Journals of the House of Lords*, April 16, 1677 (vol. xiii., p. 119)."

This is another interesting example of surrender of the Lords.

A more recent instance of the supremacy of the Commons in money matters is the passing of the Finance Act, 1894, which imposes new, and, in case of large landed estates, far heavier death-duties. The Lords strongly objected to this Bill, which not only imposed substantial taxation upon themselves and their class, but was (as they conscientiously believed) also unjust and disastrous to the well-being of the kingdom as a whole. Yet they had to consent to it.

So far we have alluded to the victories of the Commons over the Lords as to money matters; it will be as well to mention a few cases of another nature.

In December 1711, twelve new Peers were created at once, for the purpose of over-ruling, or rather inverting, the majority of the Upper House on an important political question.[1]

[1] Earl Stanhope's "Queen Anne," p. 507; Todd, p. 212.

This was done by the Tories.

Then it will be seen that the Tories subdued the House of Lords by the creation of Peers. A few years earlier they endeavoured to effect a like subjugation by means of the Commons' power as to Supply.

> "The Tories held stubbornly to their purpose of carrying the Occasional Conformity Bill [1] through, and that too as had already been done in other cases by uniting it [2] with the Subsidies Bill which the Upper House would be obliged to accept if the war continued."

At that time, however, the Bill failed to pass the Commons, but still this Tory precedent is of great value. It would be quite feasible to tack an anti-veto bill on to Supply, and the Peers would practically be bound to pass it.[3]

The most interesting and instructive of the Humblings of the Lords, however, is that connected with the passing of the Reform Bill in 1831-2.

"Never since the days of Cromwell," says Sir T. Erskine May,[4] "had that noble assembly known such perils." The Whig Ministry had received a

[1] "Ranke," v. p. 321.

[2] This jumbling up of the two Bills was called "the tack." At that date it did not pass the Commons. Subsequently, however, the "Schism" Bill was passed. *Id.*, p. 348.

[3] In 1700 the Commons tacked a Bill about Irish forfeitures on to Supply, and, at the instance of the King, the Lords succumbed. (Gardiner, "Student's History of England," p. 670.)

[4] "Constitutional History of England," vol. i. p. 308.

large majority in the House of Commons for the Bill. "The King's Ministers, the House of Commons, and the people, were demanding that the Bill should pass. Would the Lords venture to reject it? . . . Should they brave the storm and stand up against its fury, they could still be overcome by the Royal Prerogative." Before the second Reading, the King created sixteen new Peers, but was very strongly averse to creating a sufficient number to overcome the resistance of the Lords. The Bill was accordingly lost. The House of Commons then supported the Ministers by a vote of confidence. Parliament was prorogued[1] for the purpose of introducing another Reform Bill, which was passed by the Commons with a yet larger majority than the last. A strong popular cry arose for the creation of new Peers "to swamp the House of Lords," and the Prime Minister, Lord Grey, though declaring himself averse to such a proceeding, justified its use in case of necessity. Under these circumstances the Lords passed the second reading by a majority of nine, but shortly after, in Committee, the Ministers were defeated by a majority of thirty-five. The Ministers then advised the King to create such a number of Peers as would pass the Bill unimpeded. The King refused, the Ministers accordingly resigned, and the Duke of Wellington was "sent for" and attempted to form a Ministry which should carry some modified measure of reform. The greatest excitement prevailed in the country, and

[1] Observe, not dissolved.

the Duke wisely gave up his futile attempt. The King had to yield, and gave in writing his formal consent to create Peers. The words of this remarkable document were as follows :[1]—

"The King grants permission to Earl Grey, and to his chancellor, Lord Brougham, to create such a number of Peers as will be sufficient to ensure the passing of the Reform Bill,—first calling up Peers' eldest sons.—William R. —Windsor, May 17th, 1832."[2]

And on the 18th May, the King wrote to Earl Grey :—

"His Majesty authorises Earl Grey, if any obstacle should arise during the further progress of the Bill, to submit to him a creation of Peers to such extent as shall be necessary to enable him to carry the Bill," &c., &c.—William R.[3]

However, it became unnecessary to exercise this power of creation, for the King personally sent round a circular letter to a number of opposition Peers, suggesting that they should drop this opposition.[4] They took the Royal hint, and a sufficient number abstained from attending the House until the Bill passed.[5]

[1] May, "Constitutional History," vol. i. p. 312, note.

[2] Roebuck's "History of the Whig Ministry," vol. ii. p. 331.

[3] Earl Grey's "Correspondence," ii. p. 434. No. 450.

[4] May, "Const. Hist.," i. 144. [For text of circular, see Appendix, p. 408.]

[5] Another recent important instance of Royal personal interference to pass a Bill through the Lords is that of Queen Victoria with regard to the passing of the Irish Church Disestablishment Bill. See "Life

It will be seen from the above sketch that there are at least three effective means of coercing the House of Lords into passing a Bill to curtail their own veto—viz. (1) refusal of Supply;[1] (2) tacking the Bill on to Supply;[2] (3) creation of Peers in accordance with the precedents of 1711 and 1832.[3]

These weapons cannot be effectively wielded by Ministers except with the concurrence of a large majority of the House of Commons, and with an assured large majority in the country. Ministers in such a position can, in the strongest terms, "advise" the Sovereign to create new Peers,[4] knowing that if they resign, and the Crown appoints new Ministers unfavourable to such a Bill, the new Ministers will be promptly compelled to resign. Also, in such a case, if the Sovereign dissolves Parliament, the people will only return members even more determined to carry the Bill. If the Commons refuse Supply, the Army will disappear, the Civil Service, Civil List, Judges, and legal officials will all go unpaid, and the State collapse. No monarch desires anarchy or revolution, and few seek penury.

Fortunately, the constitution of this country

of A. C. Tait, Archbishop of Canterbury," by Randall T. Davidson and W. Benham, pp. 20-27, 35, 36, 39, 41. "Thanks to the Queen a collision between the Houses has been averted." Diary of Archbishop Tait, quoted at p. 42 of above work.

[1] See pp. 289-292, above. [2] See p. 293, above.

[3] See pp. 292-295, above. This power to create Peers so as to produce a change of conduct in the House of Lords is constitutional. See Earl Grey's "Correspondence," vol. ii. p. 99.

[4] "The Crown has no will but that of its Ministers," per Sir T. E. May, p. 288, above.

coincides here with the rules of common sense; and the Sovereign will have regard to the precedents and follow the advice of his Ministers, and will threaten the creation of new Peers in sufficient number to over-rule, or rather, "invert," the majority in the Upper House.[1]

The threat will be sufficient. The Lords dislike revolution, &c., as much as Kings do. They have nothing to gain and much to lose; while, after all, the regulation of the suspensory veto will not deprive them of their lordly privileges, so that they are not likely to drive the Commons to refuse Supply; and it would obviously both lessen the value of their Peerages, and weaken the prestige of their House, if they waited till the Sovereign created a number of new Peers to out-vote them.

A Bill passed by the Lords appears to be far more satisfactory than a mere resolution of the Commons, even if the latter were recognised by the executive and judicial authorities.[2]

IV

DISCONTINUANCE OF WRITS

THERE is, however, still another way by which the same goal may be reached. Instead of adding new Peers favourable to the Anti-Veto Bill, the result

[1] Compare pp. 292-295, above.

[2] Like the money resolutions, see p. 290, above.

would be the same if the Peers opposed to it were withdrawn.

"In early times," says Sir T. Erskine May, "the summons of Peers to attend Parliament depended entirely upon the Royal will."[1] The number of Barons summoned in the reigns of Edward I. and Edward II. varied with almost every Parliament, as will be seen from the following table[2]:—

Date of Parliament.	Number of Earls summoned.	Number of Barons summoned.	Remarks.
Nov. 13, 1295.	9	41	Reign of Edward I.
Nov. 3, 1296.	6	37	
Mar. 6, 1299-1300.	11	99	
Jan. 20, 1306-7.	12	86	This included Prince of Wales as Earl of Chester.
Oct. 13, 1307.	9	71	Reign of Edward II.
April 27, 1309.	9	81	
July 15, 1321.	9	90	
Nov. 14, 1322.	10	52	One Earl, whose name has not been found among the writs of summons sent a proxy.
Feb. 23, 1323-4.	10	49	
Nov. 18, 1325.	4	40	

At the beginning of the reign of Edward III. a like uncertainty still prevailed with regard to the number of Lords temporal who were to come to Parliament, but about the twenty-fifth year of that monarch the numbers become a little more regular. "The summons to Parliament gradually became hereditary, and no longer dependent on the caprice

[1] "Parl. Practice," p. 6. [2] Compiled from Pike, pp. 95-97.

of the Sovereign."[1] At the present time a new Writ of Summons is issued to every Peer, except Scotch Representative Peers, at the commencement of each new Parliament;[2] and the Lords present their Writs before taking the oath.

It would seem possible for Ministers, if assured of the support of the House of Commons and of the country, to revert to this ancient practice, and "advise"[3] the Sovereign to direct that writs of summons should not be sent to the English Peers who were likely to oppose the Bill. It is no doubt true that for some centuries it has been considered that the Peers have a "right" to be summoned; but at the same time it does not appear that the Peers unsummoned would be able to sit or vote, or have any practicable remedy. There need be no apprehension that a revival of the ancient custom would strengthen the royal prerogative in such a manner as to be injurious to liberty, as obviously no such discontinuance of writs would be possible, except it were advised by Ministers with a large majority in the House of Commons.

CONCLUSION

Looking back at history, it may be confidently affirmed that, should the country strongly desire to deprive the Lords of their veto, such desire will certainly be attained, and that in all probability the

[1] Pike, p. 100. So also May, "Parl. Practice," p. 6.

[2] May, 190.

[3] See pp. 288 and 296, note (4), above.

Peers will themselves pass an anti-veto Bill. The practical question, therefore, is whether and when the country will return to the House of Commons a large majority of members pledged to such a Bill.

XVIII

By Andrew Reid

I

ONE PEOPLE, ONE HOUSE

It is hardly likely that the word House was applied at first to an assembly which probably at its dawn met in the open air. Mr Pike, in discussing the relation between the words *Gerefa* (Reeve) and *Rôf* (Roof) falls into a curious mistake. "The last thing," he says, "of which, according to Tacitus, one of the ancient German *Comites*, as the Roman called them, would have thought was a roof. Not only were his dominant ideas those of glory in the field, but he, and his fellow-countrymen, had no knowledge of the use of mortar or tiles." As if a roof could not be made without tiles or mortar!

The first Parliaments, no doubt, met under the roof of heaven. Such was the great dome which covered the memorable Runnymede Parliament. Such was the grand canopy under which the Witan gathered.

It was not Nature, but Art which made two Houses of Parliament. Even in the later days of the barons, lord and tenantry met at a common table. And probably at one table, when they came

to be seated, Commons and Lords were seated and, necessarily, in one House.

Hallam says:—"It has been a very prevailing opinion that Parliament was not divided into two Houses at the first admission of the Commons. If by this is only meant that the Commons did not occupy a separate Chamber till some time in the reign of Edward III., the proposition, true or false, will be of little importance. They may have sat at the bottom of Westminster Hall, while the Lords occupied the upper end."

We have an early example of a wider local separation between Commons and Lords than even the top and bottom of one hall. Thus the Commons sat at Acton Bumell, while the Upper House was at Shrewsbury. This was in the eleventh year of Edward I.

Mr Pike says:—"Various opinions have been advanced in relation to the time at which the Lords and Commons began to sit in two separate Houses. Regarded from one point of view, the question seems almost insoluble; regarded from another, it is extremely simple. It is difficult to prove when a permanent physical barrier was set between the two Houses; it is easy to show that the two Assemblies were always distinct."

This does not seem to me to be stated with Mr Pike's usual caution. If the two Assemblies were *always* distinct, how is it that Parliament itself is in its origin "indistinct?" The word "Parliament" was given to several different kinds of assembly. In the two sentences following the

above the Commons are described in two situations —in the first, they do not appear to have been "summoned" even, but look like beggars at the gate ; in the second, they are represented as in one House with the Lords.

"The *Curia Regis*, or King's Court, the King, in his Council in Parliament of a somewhat later time, never included the Commons, or, at any rate, the burgesses never intermixed with them.

"It could have mattered but little whether the Commons, who in the early stages of Parliament appear chiefly as petitioners, formulated their petitions at the bottom of a hall while the Lords were at the top, or in one chamber or building while the Lords were in another. No wall could make the two bodies more distinct than they already were in nature. On the other hand, however, the King and the Three Estates were an organised whole, and there were times when they had to act collectively as the Parliament. These occasions arose at dates considerably later than any of those which have usually been assigned to the division of the two Houses. There are several instances in which a Peer newly advanced to a particular dignity takes his seat in the presence of Lords and Commons. This occurs at least as late as the reign of Henry V., when Thomas Beaufort, Earl of Dorset, was created Duke of Exeter in Parliament, and was there commanded by the King to take the seat assigned to him 'in the presence of the Lords Spiritual and Temporal, and of the Commons of the Realm assembled in this same present Parliament.'

There is no question here of any deputation from either House to the other. The ceremony must have been in full view of all the members of both Houses who were present. The Rolls of Parliament, it may be here repeated, extend to the reign of Henry VII., and there are no separate Journals of the Lords before the reign of Henry VIII."[1]

The phrase "either House to the other" or "both Houses" is, of course, a modern term. "House" in its parliamentary use applies both to the Assembly and the building in which the Assembly meets. In the phrase "House of Brunswick" or "Royal House," we have a "House" without walls or roof. I forget whether Mr Gladstone's two Irish orders were to meet in one House, but it is quite possible, of course, for two Houses to meet in one House, and even for one House to meet in two Houses.

The only plan of two Houses, to which I could give my own humble consent, would be, the one that would consist of one Commons in two Houses. It may be an advantage to have debates going on simultaneously and Bills introduced in two Houses. The votes could be taken in common when the Bill has been debated separately by each House. This scheme would give more opportunity for the discussion of questions by the Commons than the single Chamber affords. On what principle, however, could we divide the Commons into two Chambers? There is the difficulty.

One great disadvantage of two Chambers is that

[1] Pike's "Constitutional History of the House of Lords," pp. 322-3.

they split not simply Parliament, but the Cabinet into two compartments. By precedent a certain number of the Secretaries of State must be in each House; and if the Chief Secretary of State is in one Chamber, his Under Secretary is in the other. For example, at the present time the Prime Minister and the Foreign Secretary are both in one House. Of the present Cabinet, numbering nineteen members, nine are in the House of Lords. The Cabinet may be considered a third House, for while its members are distributed between the two Chambers when they sit, yet outside the two Houses there is a function called Cabinet meetings where they assemble in one House.

The Cabinet meetings, however, are not held in public; their discussions and decisions are secret proceedings. Its public appearance is alone in Parliament, and there it is presented split in two compartments.

It is notorious that the half of the Cabinet which is in the House of Lords does not strikingly suggest that the Cabinet, though split, is one Cabinet. The Cabinet is the supreme executive implement of State in this country. It is not happy to have the head of the axe stowed away in one barn and the handle in another, when the whole axe ought to be laid at the root of the tree. And the root of the tree is in the House of Commons.

The Cabinet is not only seated in two compartments, but one compartment is first-class and the other second-class. A different State principle is applied to the members of the Ministry who are

in the House of Lords from that applied to its members in the House of Commons. The member of Parliament on accepting office must resign his seat and get the sanction of his appointment by the Electorate. No such sanction is needed by the Lord. He is neither elected nor re-elected, but is a House of Lords fixture. Lords have been known to resign their seats in the Cabinet, but very seldom, if ever, are they so affected by public opinion as to resign in obedience to it.

All these distinctions, when assembled, make a formidable case both against the House of Lords and two Chambers. The Cabinet is the last child of the constitution. It cannot pass laws, neither can the Sovereign. Yet it may be said to be the best child of all. The Cabinet made its first appearance in 1698. The Earl of Sunderland is credited with the invention. One great argument for a single Chamber is that it secures a whole Cabinet. The whole of the Ministry ought to be in one House, and subject to one law. No future Liberal Party could exist for long with its Prime Minister in the House of Lords. And looking at the very able statesmen, like Lord Salisbury and Lord Rosebery, and a number of lesser men in the House of Lords, who yet could hold their own in the House of Commons as Cabinet ministers, it is a pity that their services can only at present be used by dividing and weakening the Cabinet, which is of far more importance than any House of Lords, or even any Second Chamber. In the House of Lords there is no use for it. No Lord puts any

serious question to a minister on any subject whatever, except, perhaps, foreign affairs. The Cabinet initiates no Bills in the House of Lords. It never resigns, or is affected in the least in its popular conscience by any vote of the House of Lords. When the latter vetoes any measure, the people don't condemn the Cabinet but the Lords. It is a very different matter with the House of Commons. A majority vote there against the Cabinet will, as a rule, instantly overturn it. In the Commons the Cabinet may be in a majority, when in the Lords it is, simultaneously, in a permanent minority.

The Cabinet can dissolve Parliament, but Parliament is, as to this, only the House of Commons. The Lords can never be dissolved like the Commons. The Cabinet is absolutely powerless to submit the *personnel* of the Upper House to the Electorate, though the latter has made the impudent attempt to drive not only the Cabinet, but the Commons, to a General Election.

The Cabinet is the only Second Chamber which we want. It is the solitary House where neither the hereditary (as in the case of the Crown) nor the elective (as in the case of the House of Commons) principle has been applied. The Cabinet is selected by the Prime Minister, who himself is the product of natural selection, or at least of a concatenation of circumstances, which at times are so delicate or so vulgar that they are often indescribable. It is the finger, however, of the people, or of party, and not of the Sovereign, which now points

out the Prime Minister. And it is all done without any direct vote.

Another plan of two Houses is where they are divided by time instead of place, and yet where the members could be all elected simultaneously or separately, and by the same electorate. One House, say, sits between January and June, and the other House between July and December. This is a plan different from the adjournment of Parliament to a second session in one year. Instead of 600, there could be 1200 members, but 800 members distributed among two Houses, or 400 to each House, is perhaps the best numerical proportion. There would be no jealousy as to which Chamber a member belonged, since the only distinction between the two Houses would be the "Summer House" and the "Winter Chamber." All the senior members could select which House they wished to be attached to. The remainder could ballot for it, or each House could be separately elected.

Here there is provided a Parliament for the whole year, and at the same time a change of *personnel.* Is it well that for six months in the year the Government should be free from the criticism of Parliament? The only answer is this: that Ministers need the six months' rest from Parliament to prepare bills and for health's sake. However, if there be an interval of two months between the two Houses, and the whole Cabinet has only to supply ministers to one Chamber at a time, there is the needed rest provided.

The Second Chamber is being weighed in the balance and found wanting by the English-speaking race all over the world.

It is idle to say that almost every country in the world has a Second Chamber, and to imply that, therefore, it is good. Almost every country in the world adopts "Protection," but that does not prove that Free Trade is wrong. I have made some enquiry in the United States and the British Colonies, and I produce some of the correspondence and evidence to hand. First, I will give this extract from *The Chicago Times.*

"There never was a Senate more thoroughly out of touch than the one now existing. It is the stronghold of plutocracy. The scandal which its treatment of economic and financial questions has created is notorious. The Senators who hold coal lands and want a tariff on coal, the Senators who speculate in sugar certificates and demand a tariff on sugar, the Senators who have profitable relations with New York millionaires and fight an income-tax, are well known to the country. They are the agents of the People, but they utilize their agency to plunder their principals. It would be a good thing for the People if the senatorial nest of mercenaries could be annihilated." [Lord Rosebery's phrase was, "the annihilation of the legislative preponderance of the House of Lords."] "There is hardly one man in that body who fitly represents the People. Stock jobbing and the defence of the privileged classes for a good and valu-

able consideration are the specialities of this body. It is a clog on the wheels of progress, a load on the shoulders of the People, a masked battery ever ready to open fire on the advancing forces of popular emancipation. The Senate ought to be abolished and will. Not this decade surely, nor perhaps the next, but sooner or later, the absurdity of the theory that the House of Representatives speaks for the People, and that other official forces must be maintained to nullify the action of that House will be understood. THEN THE SENATE WILL BE ABOLISHED, though the theory applies to undemocratic features of our national government other than the Senate."

No impeachment of the House of Lords could be more eloquent or more scathing. Now let me copy a few letters I have received from leading men from the United States.

"S.S. *Victoria*,
"*August* 5, 1898.

"MY DEAR SIR,—I have been too much engaged during the last few days in making preparations to leave for home to reply to letter of July 28.

"What you ask is rather a large matter. Under 'The Articles of Confederation,' which was the original constitution of the United States, there was no president, and but a single legislative body. This instrument developed many weaknesses, the chief one of which was that there was no provision for compelling the States to pay their quota of

revenue into the general treasury, nor was there any way authorized in which the general Government could collect the revenue for itself. These weaknesses brought about the adoption of the present constitution of the United States. The Senate was established as a compromise with the smaller States, who feared that their individuality would be lost if there should be but one legislative body, and the representations in that body were according to population.

"It was therefore agreed that there should be a second body in the Senate, in which each State, irrespective of size or population, should have the same representation, so that in the Senate each State has two Senators, while representation in the House of Representatives is entirely according to population.

"There are two tendencies in the United States respecting the U.S. Senate:—one is to elect Senators by direct vote of the people, they now being elected by the State legislatures; and the other being to abolish the Senate.

"The first-named tendency is strong, and is likely soon to be carried into effect by an amendment to the constitution. The other is not so generally supported as yet, and its end is not likely soon to be effected.

"I personally believe in a single legislative body as best calculated to fix responsibility.—I am, yours very truly,

"HENRY GEORGE, Jr."

The following is from the Rev. Ruen Thomas, dated Sept. 13, '98 :—

"I may say that it appears to me the Americans are just now very disappointed with their Senate.

"Through the introduction of men from new States, it has ceased to be the dignified deliberative assembly it once was, and seems to outsiders to be the prey of great money syndicates. Constitutionally, the thing seemed all right ; but in its practical working in late years it has been filled with men who represent 'interests,' and has been a sore disappointment to the best elements in the country.

"As to Americans wanting a hereditary Chamber, I think that is rubbish. They want to get the best and wisest men, elected in such a way as will give a Senate they can be proud of. The game of politics is played by too many unprincipled schemers in the States—bad men in good places.—Yours very truly, "RUEN THOMAS."

The Rev. Washington Gladden (Aug. 8, '98) writes :—

"I do not think that there is any serious thought in our country of 'ending' our Upper House, but we talk sometimes of 'mending' it. On the whole, I think that we are satisfied of the value of a bi-cameral legislature ; but some of us do not like the present method of electing our Senators by the State legislatures, and would prefer to have them chosen by the popular vote in each State.

"A hereditary Chamber is, of course, a very

different thing. About that it does not become me, as an American, to express any opinion. You quote the remark that 'the United States would have an hereditary Chamber if it had an hereditary aristocracy.' That is possible, but it is like saying that, if we were something other than we are, we should not be what we are.—Very truly yours, "WASHINGTON GLADDEN."

The bicameralists will seize hold of the sentence —"On the whole, I think that we are satisfied with a bicameral legislature." But, practically, what is the good of it to them? The Americans have had experience only of their present Second Chamber, and the best section of them are dissatisfied with it. What proof is there that some other kind of Second Chamber, which has not been put on its trial, will be any more satisfactory than the present one? "Constitutionally, the thing seemed all right," remarks Mr Ruen Thomas. And, no doubt, of the new Senate elected by "the popular vote in each State," it will hereafter be said, "Constitutionally, the thing seemed all right."

What do we hear from the British nations over the seas? These are probably destined to teach Great Britain a great deal more than she has learnt of them. And to-day they have a lesson for us.

1. What is their experience of a Second Chamber? 2. What is their view of their representation in the House of Lords, or in the Westminster Parliament?

We have heard of an "Imperial House" as a

Second Chamber. At least, it has been vaguely hinted that the House of Lords might be turned into an Imperial Assembly, in which the British Colonies should be represented. India, I believe, is to be left out in the cold. Yet India is the only one who probably could be brought into the Parliamentary fold.

Before the Imperial schemers concoct their plans, it would save a great deal of time if they just ascertained what the British Colonies themselves think. If they not only don't want, but will absolutely refuse, to be represented in the London Parliament, what is the use of all these fine schemes? The Colonial democracies apparently look upon them as spiders' webs. "'Come into my parlour,' said the spider to the fly." They will not come. They are growing independent. It is idle to suppose that if the Queen were to nominate some persons to represent the Colonies, that therefore the Colonies would be represented. And, "from information received," I believe the democracies over the seas would not only repudiate this representation, but would revolt against any connection with the House of Lords. And they would not tolerate a class of Lords among them.

If you want an Imperial Chamber, the House of Lords must go; and if you made a Second Chamber into an Imperial Chamber, the House of Commons must go.

The following are some of the communications I have received from leading colonials. There are to hand several letters marked "Private," which are

from official sources. I cannot, of course, use these, but I think that I may give one extract.

"I feel justified in saying that there is practically no public opinion in favour of representation in the Imperial Parliament. The government of South Australia are introducing a measure for Household Suffrage in the Legislative Council on the ground that the householder is practically the unit of the State from the Conservative aspect, and that the line of limited franchise can be much more rationally drawn in his favour as such than by any artificial and shifting scale of rent or property."

The Hon. C. Fitzpatrick, Solicitor-General, Canada, dated Paris, 25th July, 1898 (not marked "Private"):—

"My views and those of other Canadian Radicals are fairly well expressed in a chapter on the Senate in Goldwin Smith's book—*Canada and Another Canadian Question*. I leave for home in a few days, when I reach possibly I may write you more fully."

And what does Goldwin Smith say in this book referred to? Here is an interesting extract from it:—

"Evidently the image of the House of Lords hovered before the minds of the builders of the Canadian Constitution. But the House of Lords has never acted as a Court of legislative revision or as an organ of the nation's sober second-thought. It has acted as a House of a privileged order, resisting all change in the interests of privilege. . . . All the power which it retains is the power of

hereditary rank and wealth. Nothing analogous to it exists or can exist in Canada, and in framing Canadian institutions it ought to have been put out of sight."

Mr W. H. Drewett is the next witness. He writes :—

"My Dear Sir,—I must apologise for not replying before to your letter of Aug. 13th. Though I have not had the pleasure of meeting you, you are not a stranger, as I have read, with profit and full sympathy, what has come from your pen and under your editorship upon social questions.

"I fear what I am able to say may not have much value for the purpose in view, though fourteen years residence in New South Wales and Queensland, and considerable opportunity for conversation with all sorts and conditions of people, have given me some claim to speak from personal knowledge.

"As regards imperialistic propaganda, I think the overwhelming weight of opinion in Queensland, as in the other colonies, would be in favour of the *status quo*. Of course there is a glamour in the idea of belonging to a world-wide dominion, and there is a strong sentiment of attachment to Great Britain, which in time of need would rally Queenslanders round the old flag, but there is no desire to merge what is practically independence in an empire. Any definite proposal aiming at this would be coldly received. Colonials generally would not wish for representation in the British Parliament unless they thought they were getting the thick end of the stick, and this, as everyone knows, is impossible.

No doubt, were any strong desire for representation existent, the House of Lords would be a difficulty. The sway of democratic ideas is complete, and to these the House of Lords, with its present constitution and powers, is an absurdity. But there is a feeling of aloofness from British politics which is likely to increase. Every year there comes of age politically a considerable body of young people who are purely Australians. To these the old country is not home. They seldom read an English newspaper, and English history forms a very small part of the State school's curriculum.

"What occupies the mind of the nation that is forming is the development of the country and the great social questions that are coming to the front everywhere.

"In Queensland the Second Chamber counts for very little. The letters M.L.C. after a man's name are looked upon as a sort of decoration. Politicians whose day seems to have returned resign their seats in the legislative council and seek election to the legislative assembly. That is the arena, and it would be impossible for a premier or other working minister to govern anywhere else. The theoretic powers of the council are probably greater than is generally supposed, but they could not be successfully asserted, and are likely to remain in abeyance. They are intended to act as a brake, but in case of a bolt down hill a political leader would trust to his driving and let the brake alone.—I remain, yours very sincerely,

"W. H. DREWETT."

The next witness is Mr Andrew Collins, the New Zealand delegate to the Trades Union Congress at Bristol, 1898. I met Mr Collins by appointment in London. He said :—

"I quite agree with Mr Drewett. A Second Chamber is like putting a fifth wheel to a coach. It is not only unnecessary, but it produces friction, consumes grease and retards progress. The people of New Zealand would not put their head under the yoke of any Parliament outside their own. But how are you going to get rid of the House of Lords? We once had a sort of House of Lords. I need not say, however, it was not hereditary. The members were life members. But John Ballance got a bill passed in 1890, which made the term seven years. The members are nominated by the Prime Minister, and as this term expires, one by one, this constantly gives us fresh blood. The great progress the working men in New Zealand have made is mainly due to their alliance with the Liberal party. We have accomplished wonders in New Zealand, and we shall accomplish more."

If the House of Lords were converted into an Imperial Chamber, what would be the House of Commons? Is the House of Commons to find the homely money while the Imperial House plays the imperial tune? Lord Salisbury is sometimes an angel of light. Nothing was more luminous than his statement, that any improvement of the Second Chamber would be at the expense of the House of Commons. The House of Commons has been built

with centuries of blood and sweat and brains. Its present ascendency is the result of prolonged struggle. No word in the constitutions of state or language is so significant and ideal as COMMONS. It proclaims at once the unity and equality of the people as the foundation of Parliament. Is there any other foundation? What improvements we want to make are improvements of the House of Commons and not of the House of Lords. To take stones from the building of the former to improve the latter would be like taking stones from Heaven to beautify "another place."

It is impossible to found a state on logic any more than a church. But we don't want to found either on quicksand. It must grow. It must not only bear fruit, but leaves and flowers. It must appeal to the imagination as well as the intellect.

But if you want hoary history, cross over the border drawn at William the Conqueror. Was not the *Witenagemot* one House? What more ancient or august assembly in English story than the Council of *Witan?* And on this side of the border was not the Parliament for generations one House? It seems to me that two Houses are comparatively a modern invention. Was not the assembly in the meadow at Runnymede one assembly? Was not the *Curia Regis* one Council?

Let this be as it may, there towers up the colossal fact that for many generations the people have been fundamentally one congregation. The lord is accustomed to several town and country seats, but the commoner never dreams of two houses.

The two Houses of Parliament are the effect, not the cause, of two orders of blood. They cannot fundamentally represent the nation, because the nation is of one order of blood. Two cannot represent one.

"Two orders? This is an old idea. We don't want to found two Houses on two blood orders, but to give better representation to the people by a Second Chamber."

First, you cannot give a better representation by a Second Chamber; and next, though you put aside the blood orders as vulgar and out of date, there still remain two orders in your mind. You have divided your mind, before ever you divided the State, into two chambers. Instead of blood you take property, imperiality, "second thought," as a second order. The Second Chamber is to be the Council of *Witan*, wise men, "experts," safe men, stake men—men who have "a stake in the country." [This has nothing to do with the martyr's stake, but means simply "vested interests."]

The First Chamber is, apparently, to be a House of Fools. And how are you to get all these wise men, experts, safe men, stake men?

The House of Commons, which is the result of a constant shifting of personnel and sifting of opinions and qualities by general elections and bye-elections, speeches on the platform and heck-lings, and contact with the electors, is far more likely to be a common-sense assembly than any select chamber.

Aristotle, comparing the multitude with a select

few, decided in favour of the former, as having a swarm of eyes, ears, and senses of observation and experience. It is futile in these days, with the evidence of general elections behind us, to make out that the people are revolutionists. They are very slow and conservative. The Tory should be the last to say that the masses are Radicals.

The principle of a Second Chamber representing Property, Labour, Capital is unsound. It was Drummond who made the phrase—Property has its duties as well as its rights. But property is not a person, it is a thing, without any ghost of a soul or means. It is man who has duties and rights. Parliament is not for the representation of property, but of persons. You cannot represent a million pounds by a millionaire. And if you could, Mr Arch, whose North-West Norfolk constituency is quite worth a million sterling, could as well represent £1,000,000 as any other man. The working people make and spend and possess more money than any Second Chamber or any upper classes.

Most Second Chamber schemes substitute for the vulgar and obsolete blood order, CLASS. Lord Rosebery proposed to create the member for North-West Norfolk, Lord Arch. At least his Liberal mind wished to see a few labourers introduced into the House of Lords. Of course Lord Rosebery's intention was good. But no scheme could begin and end with Lord Arch. It is necessary to draw up a plan of classes. In one scheme I find twenty classes! Yet, after all, "two

classes of persons have not been included whose claims for representation have been put forward in nearly every scheme for the reform of the House of Lords—namely, 'Dissenters' and literary men and artists."

As the Established Church of Scotland has never been Lord Bishoped in the House of Lords it is not likely that the Dissenters will be. Since the universities are represented in the House of Commons, it seems hard of Mr Spalding to exclude literature and art from the Second Chamber. Surely the architect and artist might be of some use on questions of public buildings and pictures! And the literary men might be of service in criticising the Queen's Speech.[1]

1. All elaborate schemes of a Second Chamber are doomed in the very nature of things. It is futile on paper to number your classes unless you number the nominated representatives for each class. Are you going to leave the business to the Queen? She can prick the sheriffs, but no sovereign could go through a hundred classes and prick the senators without losing her head. To have two Houses, the one founded on the masses and the other upon the classes, and to mix up the Crown with the selection of the latter House, would be to tumble the Crown into the furnace. It is true that the House of Lords and House of Commons are even now founded on classes and masses; but the classes are mere ranks of one order (except the

[1] "The House of Lords, the Method of Reconstruction," p. 251, by Thomas Alfred Spalding, LL.B., Barrister-at-Law.

bishops), and the Crown creates Peers only a few at a time and they last for ever.

2. Classes and States are two infinitely different things. [There is much to be said for the over-representation of Ireland under the circumstances, notwithstanding Professor Dicey.] Yet these schemes as to classes are identical in method with the United States Senate plan, which is this: each State elects two members to the Senate. The number is the same for all the States, big and little. The object—to prevent the smaller States being swamped. The object here—to prevent the smaller classes being swamped. The plan is a failure in the United States, and the scheme of classes will not be a failure here, because there are not fools enough in the country to vote for it.

3. If instead of CLASSES the scheme is to take OFFICIALS: Chairmen of county councils, mayors, members of the Privy Council, permanent Secretaries of State, we have still the masses excommunicated from the Second Chamber.

(*a*) This plan will take away these men from their present public functions and work; (*b*) it will make the election of chairmen and mayors a party question; (*c*) there will be no popular control; (*d*) if it be confined to retired officials it furnishes too many old men.

[Mr Spalding proposes Railway and Canal chairmen! He does not mention Water Companies!]

4. The previous question to the personnel of a new Second Chamber is—What is to be its function, sphere, and power? Is it to occupy the same

territory as the House of Commons? Is it to possess equal power? Will it be able to veto the legislation of the House of Commons?

It is futile to suppose that any sane people will deliberately set to work to constitute a new chamber, which shall repeat, on a larger scale, all the evils of the House of Lords.

5. Is the impeachment against the House of Commons? There is only one great failing in that House; and that condemns at once a Second Chamber. The House of Commons is not representative and effective enough. Therefore, it is proposed to construct a Second Chamber, less representative and effective, to make both more representative and effective.

6. Second Thought is the only sound ground on which it is possible to build a Second Chamber. One chamber, it is said, might, at times, make a fearful mess of it. Against popular passion and rampant fad we must erect a sea wall or we shall be submerged by——. That is the question, by what? By wars?

(*a*) Wars are declared by Cabinets in this country. Where Second Thought might be most useful, it is useless. And in this case it is the House of Commons which is the Second Chamber. The House of Commons votes the money and it is supreme as a Second Chamber—the House of Lords is ousted absolutely from any veto in case of war.

Perhaps the new Second Chamber, however, is to be made after the fashion of the United States

Senate and with a veto on a declaration of war. This may be well, but the House of Commons holds the keys of the Treasury. Its veto in the end must be supreme unless the new Chamber is to hold the money jointly with the House of Commons. Is anyone prepared to propose such a revolution?

(*b*) Have not the two Houses made a mess of it frequently? Out of one hundred second thoughts of the House of Lords not one has stood the test of permanent reflection. Its vetoes form a colossal pile of blunders. Nothing in the whole world is comparable in stupidity and mistake to this mountain of errors.

(*c*) The second thought is not always better than the first. There is not only judgment but impulse to be considered. Half the great achievements of the world could not have been, had they tarried for second thoughts.

Is genius so exhausted in this country that it cannot devise some plan other than a Second Chamber to give a second judgment on any question? Two chambers can only effect upon one another in the British constitution by vetoes on bills. Now, it is easy to postpone by statute the operation of any bill against which there is a large minority, whereby the particular Act shall not come into operation save by a special resolution carried in the next session of the House of Commons. There are Acts which are renewed and every Act could be subject to renewal. The Supreme Court of Judicature Act, 1873, was postponed and supplanted, and the former and

present *status quo* was at last finalised after three Acts of Parliament.

7. The country is not suffering from haste in reform but from creeping delay. The V. I. (vested interests) Party want delay, therefore they want a Second Chamber. They thank God for the House of Lords, or for any bulwark like it, because it stands between them and the people. The Water Company, the Land Company, the Beer Company, the Church Company, Limited, all want delay, therefore they cry for a Second Chamber which shall not be elected by the people but by themselves. (Read, again, the *Chicago Times*' impeachment of the Senate of the United States.)

8. There are, however, a few disinterested and patriotic men to be found on the side of a Second Chamber, both here and in the United States.

They can be divided into two sects, sometimes they belong to both sects. 1. Those who have a legitimate dread of the finality of popular judgments and general elections, swayed as these are not unfrequently by a number of bad influences and even, apparently, by accidents. 2. Those who have a legitimate fear of a certain policy such as Home Rule or State Schools.

In all sweet reasonableness let me ask them—Is it right to protect a legitimate idea by an illegitimate weapon? Even at war in defence of country there are weapons we must not use. Are you the gods, that final judgment should rest with

you? Or is the Second Chamber the Oracle of Delphi that it should rest with it? The latter practically stands for you, for if it were not packed by you, or if its judgment were not identical with yours, you would run after a third chamber, and if that failed you, you would construct a fourth.

And are the blunders which the democracy make irretrievable? There are very few acts except wars which cannot be rectified. Besides, the consequences of a great blunder fall upon the many more than upon the few, and the former are as likely to rectify it as the latter. Where it is a question of "vested interests," a mistake may fall more upon the few than the many, but this may not actually be so much so as it seems. And we have got to show in each case that it is a great blunder. This may only be shown by experience of it, and this experience may prove it to be a great blessing to many generations.

It will be said triumphantly that the House of Lords saved the country from the Home Rule Bill, and that this settles the case for a Second Chamber.

My reply is this: that if there had been only one House, and it the House of Commons, the Home Rule Bill could have been made an operative act only as subject to a resolution being carried after a general election to that effect. In truth, I proposed to Mr Gladstone (who partly adopted one of my suggestions as to Irish representation at Westminster) something of the sort.

The existence of the House of Lords, of course, put such a proposal in another situation than it would have occupied had there been only one House. It made it at once more and less important; more, because it might have disarmed some of the opposition in the House of Lords, and less, because, in the event of the House of Lords deciding against the Bill, this resolution would be a nullity. Had the House of Commons held the whole thing in its hands there might, under the resolution, have been secured the same result as that which now is triumphantly accorded to a Second Chamber. Mr Gladstone, I may add, was somewhat disposed towards my suggestion.

A man may as well take refuge in the sword or in absolute monarchy or anarchy as to take refuge in the House of Lords against the democracy. Lord Salisbury has confessed that the Upper Chamber is neither a moral nor intellectual refuge. And any and every Upper Chamber must be morally and intellectually lower than the people themselves, because it has more temptations to corrupt it on most questions.

9. Election, selection, succession, are the three well-known methods for filling Parliament with members. Those again are subject to fixed or elastic numbers of members. The House of Lords has an unlimited membership. The number of the Commons is limited by statute. But the Lords Spiritual and Representative Peers of Scotland and Ireland are fixed in number. When the chamber is in hereditary, or life, or term of years,

personnel succession, the new members, though not fixed, are somewhat checked by custom, and ultimately by convenience of room in the chamber.

Succession is divisible into hereditary (peers) and official (bishops, Lord Chancellor originally, and, say, law lords). In its first stage, we have seen that the House of Lords was founded on the official basis, and that the majority consisted of prelates, bishops and abbots (official) on the one side, and earls (official) on the other.

In hereditary or official succession in the House of Lords there is no election or selection except as to new Peers.

Selection may be called particular election, and differs from general election in two ways—first, in relation to the electorate, and, second, in relation to the elected. In selection the electorate is a single person (Queen, Prime Minister) or special electorate (Universities, in the case of the House of Commons, though subject to a general election, come under semi-selection); and the selected are specialities, drawn from superior classes. Hereditary succession is the enemy of selection. Lord Althorp said: "Nature intended me to be a grazier, but men will insist on making me a statesman."[1] Lord Rosebery said; "The hereditary principle makes legislators of men who do not wish to be legislators, and peers of men who do not wish to be peers."[2] Succession is compulsory, but

[1] Molesworth History of England, vol. iii., p. 301.

[2] Hansard, vol. cccxxiii., c. 1557.

selection is not. The latter, however, has already been tried in the House of Lords and is found wanting. The new Peers are an example of selection. Is it a success? Since 1880 there have been some 140 Peers created, or nearly one-fourth of the present total number. Is this one-fourth any better than the three-fourths? So far as Liberal and Reform ideas are concerned, the House of Lords has rapidly deteriorated with every new batch of Peers. There are notable exceptions, and men among the Lords whom any constituency might be pleased to elect.

There has never yet been threshed out this question, What is to be the law of selection? Lord Rosebery has indicated a zoological line. It is to be drawn at "a mere zoological collection of abstract celebrities."[1] In other words, the House of Lords is not to compete with "the Zoo."

Wealth, weight and wisdom have seemed to be the three W's forming a sort of ideal trinity at whose altar Second Chamber men have worshipped in the past. In the peerage, wisdom is not justified of her children much less of her grandchildren. Wealth is no more certain than health: it is here to-day and gone to-morrow. And, thank God, neither in this country nor in the United States has the millionaire, as yet, become the most ideal senator. Weight appears to be obtained by the coronet and a heavy title. This is the only thing that the State can make sure of. One

[1] Hansard, vol. cccxxiii., c. 1567.

thing the State cannot do—add height. "Which of you, by taking thought, can add one cubit to his stature?"

10. Collective wealth, wisdom and weight are, after all, most represented by the people themselves, and any reflected personation of this trinity must be in the people's representatives chosen by general election. There are even reformers who think that representative government is played out, and want apparently to substitute "the Department" for Parliament. Yet the General Election or the Referendum is the most collective operation, if increased to its full orb, which it is possible to conceive. I believe myself in that despised institution—the Village Pump. I think, when all these grand imperial waterworks decline and fall, and when even Parliaments wane, the Village Commune will abide with the British idea.

It seems that from any new chamber must be left out the British Colonies. This reduces it to the present *status quo* of Parliament. If it be impossible to find any new territory for the Second Chamber, it must occupy old ground. Unless it have powers to make laws independently of the House of Commons, it must be reduced again to the present *status quo* of a second House. The House of Lords or a Second Chamber necessarily does not facilitate but retards legislation, even if it passed all bills sent up to it from the Commons.

Two Houses do not do double the work, but they duplicate the work, of one chamber. They

are not like the upper and lower jaws of one mouth, necessary to mastication. The one House is absolutely a repetition, more or less, of the other as a law-making machine. And the House of Commons could overtake twice the amount of legislation as a single chamber than as one of two Houses of Parliament.

Reformers who wish to improve the House of Commons and to expedite the national business, if they were to search ever so, will find no means to effect their end so radical and efficient as the conversion of Parliament into one Chamber, and that Chamber to be the House of Commons.

In a new bicamaral system one of the two Houses must be supreme, or, at least, there must be equal power residing in a third House (the Cabinet) to dissolve both. How can there be this power if the *personnel* of the Upper Chamber is fixed for a term of years? Therefore, if the Upper Chamber cannot be dissolved, or effectively changed in its *personnel*, the Lower Chamber must be made supreme, or otherwise there may be a dead-lock. At the present time this dead-lock can be only got over by intimidating the old Peers or creating new ones. So troublesome, however, are these methods that no new chamber could be constructed which had the power of veto, or could not be immediately submitted to the popular vote.

Now as to the REFERENDUM. It has been pointed at by Mr Asquith, but only by his little finger and not steadily. What is it? As I understand it, the Referendum is simply a general elec-

tion, which, instead of returning representatives, votes on measures. In a small State like Switzerland, or in a local State like a parish, this could be done. It is the ideal system. When, however, there is a large population, and the bills are numerous, unless the people are well read upon them and are quick with the pen, the operation would be tedious and tiresome, and liable to miscarriage.

If it be said that only one bill will be submitted at one time, and that only bills of first-rate order which have been thrown out by the House of Lords, will be thus submitted to the Referendum, it follows that the Referendum may have to be called out so often as to become a nuisance.

If it were a necessity to have something approaching to the nature of the Referendum, yet a ready body, this could be found in a great Voting Chamber, say of 10,000 members. They would have no "seats" and be silent members. When called in by the Cabinet, they would simply record their votes. Each member should have a number of votes proportioned to the number of votes he received. That is, say he polled 8000 votes, he should have eight votes, or one per thousand. One per cent. would be much better, as it better meets a case where a member received a mandate of, say, 5900 votes. Best of all is the plan where the member delivers his original vote exactly. Say he polled 6999 votes, his mandate of 6999 is his exact status. The tellers, instead of counting him as one, will count him as 6999. The telling could be done by machine. For example, if each member had a

stamped ball precisely weighted to his number of votes, by simply dropping it through a slot into a scale, the total votes would be indicated instantly and exactly.

The United Kingdom could, if it were desirable, be divided into thirty electoral territories, with about equal populations, from time to time, and each division return, say, ten members. This would produce a Second Chamber somewhat different from the House of Commons.

But to pursue new Second Chambers is to pursue butterflies. They are happy flying about, but if you catch one and pin the poor thing down, it may look beautiful, but it is dead.

The impressive conclusion is that in the United Kingdom there are not to be found the impulse and sinew to sustain an attempt which has for its object the establishment of a new Second Chamber. And that impulse and sinew will not be discovered in the Colonies. I am for the union of the British nations all over the world, but a Parliamentary Union is to-day impossible, and Time is not on its side.

Time is on the side of one chamber and the House of Commons.

A single House represents a single people.

Two Houses divide the people but one House unites them.

A single chamber concentrates the attention and responsibility of the representatives and the electors.

A double chamber divides attention and responsibility, it doubles the work and retards legislation.

The bulwark against the Commons is not the Lords or the Second Chamber, but the general election. The bulwark against the Lords is—abolition or devetoment.

II

WHAT WE WANT DONE

BEFORE we discuss the question—How to do it—we must naturally first decide what we want done.

Sometimes it is the case that what we want done is determined by our means to accomplish it. And the previous question, or at least a serious question, may be—What are our means? Are they limited?

If we have the power only to adopt one course, it is useless to inquire into the comparative merits of two or three courses of action. It is possible, however, that there are several courses, each of which is nearly on the balance in relation to our means. If a strong man can lift two hundredweight of coals it is probable that he can lift two hundredweight of corn in a sack.

In a great operation there are other considerations than a single man's strength. What is the weight of the total heap? How far has it to be carried? How many average men are there ready to carry it?

In regard to these three total heaps—No. 1, total abolition of House of Lords; No. 2, total abolition of Second Veto; No. 3, total

abolition of legislative functions—there does seem to be a great difference in dimensions and weight.

But there is this significant reflection that there may be most will power to carry No. 1 heap, and most men to carry it because the job is popular, though No. 1 looks at a distance twice as big as No. 2.

There is no more impressive force than Will. Here are two armies on the battle-field. You can *see* no difference between them in numbers, physique, and equipment. Yet there is the invisible something in one of them which sets victory on its side from the outset. IT IS SPIRIT. No war office can tabulate it. It does not appear in any list of military stores. Even science cannot X-ray it.

If it is so with soldiers who are, in part, machines, how much more so with electors, who are electors both of their battles and their arms, of their leaders and their causes. No man can order the elector. No man can say unto him—"go," and he goeth. Whatever he may be in the rolling-mill, in the polling booth he is his own master.

And the elector sometimes delights in a big job. When he is even conservative in his ideas, he is often liberal in his sensations. A great undertaking and excitement just pleases him.

No thoughtful person can draw from the last election what some have drawn from it, that the electors of the United Kingdom had turned Moderates. I think they were disgusted with the

premature death by suicide of the Government, on no principle or for no purpose whatever.

Of all governments, that is the most popular which has most courage with wisdom. The British people are a brave people themselves, and whilst they are not as a rule reckless, they hate timidity and impotency. Mr Gladstone's great popularity for many years, and up to the last, arose from his great valour and his inexhaustible spirit. Had he lived and been a few years younger, there is no doubt that he would have tackled the House of Lords, and led his party once more to victory.

Therefore let us not conclude that in politics there is always the most means to do that which is least. A moderate and timid policy, which of two courses chooses the one which ends in next to nothing, may arrive short of it. But a heroic leader who aims at a great thing—an object which seems to-day vastly out of all proportion to the feeling of the country—by that very act lifts its own aim and breeds heroes in swarms. And in the end he has means enough and to spare. This has been the experience of leaders and people in all great movements.

Would the abolition of slavery have ever been accomplished had the programme been the limitation of slavery? On such a platform the humanitarians would have stood so near the level of the slave owners that they would never have been elevated high enough for the people to see them or their cause.

It is possible that the limitation of the House of Lords may not call forth any popular effect like the abolition of the House of Lords. There is such a thing as moral power. The Lords Spiritual do not preach on spiritual things inside the House, but Lord Salisbury does. And he gave on one occasion an exhortation on the subject of moral power.

The conclusion to be drawn from Lord Salisbury's sermon is this: That if any party wants to put an end to the Lords, or any other great wrong, it must have moral power.

But you cannot summon moral power by writs. It will only come into a moral situation where there is a broad and clear and deep gulf fixed between right and wrong. It will come into *that* like the flow of a river. At first in a gentle stream, but at last in a flood.

Is there this moral situation? Does the mere limitation of the Lords' veto present a great natural frontier between right and wrong like that between liberty and slavery? It is a compromise. It does not lay the axe at the root of the tree. It is a legal more than a moral situation. The limitation of the Lords imposes a limitation upon our moral case against them. It will still sanction the constitutional and social distinction of Lords and Commons. It will still leave on the British island the House of Lords—a colossal monument to our serfdom and to caste. Looking at the foundation of the House of Lords and at its historical architecture—at its foundation of a chartered blood order—at

its superstructure of confiscation of land and law and the rights of man, it seems to me that the people may say: "I will sweep the whole abomination away, but I will not help you to dust it."

The result of that would be that the Liberal moderates would have neither moral power nor votes to carry out their dusting policy, trifling as it is. Indeed, there are some of them who would even advise that the House of Lords should be left alone. Are they afraid that if the electors abolish the Lords, the electors may abolish them also? In any case, the Lords will not let the Commons alone.

It is said that total abolition means revolution. It is also added—"and the people are not prepared for this." The question is—Are the Liberals prepared for it? If any democracy was ever prepared for the abolition of anything, it is the abolition of the House of Lords. The mischief is that they have been so ready for so many years, and have been so fooled by "the Lords giving way," and Liberal leaders giving way, that lately they have almost themselves given way in despair of this century. They know perfectly well that the end must come, and they are not excited about the hour or day. The working man is perhaps more troubled about masters than Lords in these days. Still he will arise when we nudge him, and say, "We are ready, come along."

There are glorious revolutions. The Lords Spiritual are praying and preaching revolution

every day. They yearn night and day for the conversion of the whole world. The only bad revolution is that which needs a second to remedy it. Is it likely that if you removed the House of Lords any succeeding generation would or could put it back again? Revolutions have taken many generations to grow. They are not sudden or violent events as a rule. And the abolition of the House of Lords has been ripe these fifty years.

Nothing would be of so much use just now to the Reform Party or to the people as a great cause. And is not that a great cause, which shall end this hoary disgrace in the British constitution of Lords and Commons?

III

HOW TO DO IT

THE New Zealander asked me, "How are you going to do it?" It was not the case with him, but it is with many, that they put this question to entrap and confuse. It is an old game. And here it is unfortunately a clever game. But there is always a clear answer for Truth. The people's will is the constitutional way. No house is lord of its owner. A tool says to its master, "I am going to do as I like. I have letters patent, I am a hereditary lord over you."

Here for once you ask a question or two in order

to entrap and confuse, not Truth, but somebody somewhat different.

"Who, pray, sir, gave you your letters patent?"

"The Crown."

"And who gave the Crown to the Queen? Did it grow on her head?"

"Well, it certainly did not grow on her head. I suppose it is there by the Act of Parliament."

"Is there any doubt whatever that Parliament has the right, and has exercised and retained the right, to alter the succession to the Crown? Or that it can limit and has limited the power of the Crown?"

"No doubt it has this right and power."

"And if it has the right to alter the succession and powers of the Crown, has it not the right to alter the succession and powers of the Coronet?"

"Well, Parliament has the power, but I don't say it has the moral right, to do anything. These two cases, however, of the Sovereign and the Peers, are somewhat different."

"How different?"

"The Peerage is permanently hereditary, and the Peers hold their patents from the Crown and not from Parliament."

"Very good. Then the House of Lords is elected by the Crown. And who elects the House of Commons?"

"The people."

"And who elects the people? Are they not permanently hereditary?"

"Yes, though I never thought of that."

"And your hereditary claim is derived from the Crown, but theirs from Nature?"[1]

"Fundamentally that is so, I suppose."

"And Parliament and the Crown are simply the instruments of the people."

"Yes."

"Good morning, Mr Peer, I thank you."

In the last resort, how to do it is to do it as it has been done before many a time. Our fathers knew how to do it, or otherwise we should have had no House of Commons at all. It might be said that in the main they did it by two methods—Revolution and Resolution. By the latter I mean not only that muscular will and courage of our ancestors which were the foundations of our liberties, but those unique literary superstructures which, under the name of Resolutions, they inscribed in the Journals of the House of Commons. I know of no more immortal monuments of the people than these Resolutions of the Commons. When the monuments to kings are no more, some of these will yet stand out in imperishable glory. Well was it said that "the Commons of England were no fools at

[1] "Lord Lyttleton says extremely well in his Persian Letters, 'If the privileges of the people of England be concessions from the Crown, is not the power of the Crown itself a concession from the people? It might be said with equal truth—If the privileges of the people be an encroachment on the power of kings, the power itself of kings was at first an encroachment (no matter whether effected by surprise) on the natural liberty of the people.'"—DE LOLME, p. 267.

that time." The Rump of the Long Parliament upon the site of the vacant throne, after the execution of Charles I., declared by vote on the 4th January 1649:—

[*Under the Commonwealth*]

THAT THE PEOPLE ARE, UNDER GOD, THE ORIGINAL OF ALL JUST POWER, AND THAT WHATEVER IS ENACTED OR DECLARED FOR LAW BY THE COMMONS HATH THE FORCE OF A LAW, AND ALL THE PEOPLE OF THIS NATION ARE CONCLUDED THEREBY, ALTHOUGH THE CONSENT OF THE KING OR HOUSE OF PEERS BE NOT HAD THERETO.

Now that is the immortal proclamation of Nature, which rings out as clear and just and strong to-day as in 1649. It is the eternal foundation of the Democracy yesterday, to-day, and for ever. And the words should be to us in this constitutional crisis a great spiritual, if not material, support. Happily, in our case we have no beheaded Charles I. behind the scene.

On February 1st, 1649, only two days after the King's execution, the House of Lords, but six Lords being present, appointed a committee to confer with the Commons on "the settlement of the government of England and Ireland." The Commons refused to receive the Lords' messenger. Nevertheless the House of Lords continued to meet till February 6th, when they adjourned "till 10th

cras."[1] On that day the Commons without a division resolved :—

[*Under the Commonwealth*]

THAT THE HOUSE OF PEERS IN PARLIAMENT IS USELESS AND DANGEROUS, AND OUGHT TO BE ABOLISHED. AND THAT AN ACT BE BROUGHT IN TO THAT PURPOSE.[2]

During the session of 1621 the contest between James I. and the Commons reached its first crisis. Sir Edward Coke proposed a petition against the projected marriage of Prince Charles with the Spanish Infanta, and a stormy debate followed. The King threatened the leaders of the Opposition with the Tower. Thereupon the Commons on December 18th, 1621, recorded in the Journals of theirs the following memorable protest :—

[*Under James I.*]

THAT THE LIBERTIES, FRANCHISES, PRIVILEGES, AND JURISDICTIONS OF PARLIAMENT ARE THE ANCIENT AND UNDOUBTED BIRTHRIGHT AND INHERITANCE OF THE SUBJECTS OF ENGLAND.

In 1678 the Commons resolved :—

[*Under Charles II.*]

THAT ALL AIDS AND SUPPLIES AND AIDS TO HIS MAJESTY IN PARLIAMENT, ARE THE SOLE

[1] Lords' Journals, vol. x. p. 650.
[2] Commons' Journals, vol. vi. p. 132.

GIFT OF THE COMMONS; AND ALL BILLS FOR THE GRANTING OF ANY SUCH AIDS OR SUPPLIES OUGHT TO BEGIN WITH THE COMMONS, AND THAT IT IS THE UNDOUBTED AND SOLE RIGHT OF THE COMMONS TO DIRECT, LIMIT, AND APPOINT IN SUCH BILLS, THE ENDS, PURPOSES, CONSIDERATIONS, LIMITATIONS AND QUALIFICATIONS OF SUCH GRANTS WHICH OUGHT NOT TO BE CHANGED OR ALTERED BY THE HOUSE OF LORDS.

It is said that James I. was so angry that, with his own hand, he tore the third Resolution out of the Journals of the House of Commons and dissolved Parliament. And Lord Salisbury has already threatened that he will snap his finger at one Resolution or half a dozen Resolutions of the House of Commons. This may be, but Lord Salisbury will not be able to snap his finger at a Revolution.

Were these Resolutions mere sounding brass? There were three actors on the Parliamentary stage a century or two ago—the King, the Lords, and the Commons. The last alone remains upon the boards. The King has retired from the contest. The Lords have not retired from the contest, but they have retreated into a corner of the stage. The Commons have increased in strength century after century; the King and the Lords have gradually waned and waned in absolute function and power.

It only needs that the Commons should remove

one remaining obstruction, to full moon their destiny and round off their glory.

It is a mere formal obstruction. In essence the House of Commons is already the supreme Parliament of the United Kingdom.

It dissolves the Cabinet. It holds the Purse. The Cabinet ministerially governs the Crown. The Purse governs Court and camp, and every department of justice and service of State. Without Supply every State service must languish and perish, and the House of Commons alone votes Supply.

It is interesting to notice that though the Queen's Speech is still read in the House of Lords, and both Houses can address the Sovereign, yet supplies were to be reported to the King by the mouth of the Speaker.[1]

Government is twofold, (1) legislative and (2) administrative. In the latter important sphere the assent of the two Houses is not necessary. The constitutional form of legislation by Bills agreed to in Parliament began in the reign of Henry VI., when Bills in the form of Acts were introduced into Parliament as well as petitions. The plan of two Houses of Parliament giving their assent to one Bill to make it an Act of Parliament immediately succeeded the plan of enactment by single person or the King. In the reign of Richard II. there came to an end the exclusive legislative power once belonging to the King.

Where enactment is vested in a single person

[1] Rot. Parl., 9 Henry IV., No. 21 (printed, vol. iii. p. 611).

or in a single Chamber, it is plain that we get the simplest constitution. Where, however, enactment is equally vested in two Houses, it is evident that we must either provide a third House, which shall be supreme, or that both Houses must be effectively placed under the control of the Electorate, who must be supreme, or, otherwise, we run in danger of an unworkable Constitution.

This danger would not be serious where the two Houses are elected by the people, upon the same basis and conditions; but it becomes alarming where one House is hereditary, and is the chartered instrument of the order of vested interests.

We will now diseuss the various plans.

I.—THE CREATION OF NEW PEERS

THERE is a well-known and settled provision in the British Constitution against this danger. It is the creation of new Peers. There is no legal limit to the number, and the creation is vested in the Crown, whose functions are constitutionally in the keeping of the Cabinet. The Cabinet, in an operation which would look like a revolution, and where, of course, the object of the use of the Crown would be to abolish or limit the House of Lords, would not "advise" the Sovereign towards such a course without a Resolution of the House of Commons, carried by an effective majority. The Queen, apparently, has not been always as obedient to the

Constitution as she should have been, yet it is unlikely that she would seriously mix up her throne with the Peers' seats.

On this course all looks like plain sailing. With a good wind the ship CONSTITUTION will carry this peaceable revolution into safe harbour.

But if not formidable, there are some serious troubles on this course.

First, there is the large number of new Peers which it would be necessary to make. The present actual membership of the House of Lords is apparently 576. Vacher gives the total as 591, "of whom 13 are minors, and 2 representative Peers for Ireland are enumerated also as of the United Kingdom." From these 576 we must deduct the "six Peers of blood royal." This would bring the total Peers' vote at present to 570. But in the interim there may be a considerable increase. It is said that there are now 40 Liberal Peers. Are we sure? And are we sure that there are 20 Liberal Peers in the House at present, who could be counted on to vote for the abolition or limitation of the House of Lords? It might be necessary or desirable to create 600 new Peers. It might add a certain kind of weight to muster a large majority, consisting of an impressive group of representative men.

We can go about it with a light heart so far as our respect for the Peerage is concerned. It is our respect for the people which must trouble us. Will it be well to contact the democracy with such a transaction? Is it a wise step to launch into

society such a lot of Peers? Will not the act of creating them corrupt the party and people concerned in it? Does not even the proposal itself to-day make us feel rather morally uncomfortable? One important reflection, however, is that the new Peers are to be the instruments to overthrow the old ones. The Peerage has made tools of the democracy; now is the turn of the people to make a tool of the Peerage.

The best thing that could happen would be to swamp the Peerage with contempt and ridicule. That so many new Peers should have to be made is not a matter which should disturb anybody but the Peers themselves. A future generation can deal with the whole question of hereditary titles, and if it wish to sweep them away, it will as easily dispose of a thousand as five hundred titles. The question is not whether 500 or 1000 new Peers are necessary, but whether it is right, under the stated circumstances, to make one new Peer. It is the principle and not the number which is at stake.

Next, can we fix beforehand the exact part the new Peers will have to play? It will have a considerable bearing upon the moral question if it is determined that the new Peers (and old Peers) shall cease to be as legislative Lords the instant they have passed the Bill which they have been created to pass. And there is a practical question: Are we prepared to create a host of new Lords, with the power of amendment and rejection of Commons' Bills, even if both are limited? It should be remembered that they would necessarily

be hereditary Peers. The new Peers may remain steadfast, but the sons may be only a repetition of the present ones on the Unionist side.

What is to prevent a future Unionist Government practically repealing the Veto Act by using the Peers as a foundation for a reformed Second Chamber, with revived powers?

Before we take the serious step to create a host of new Peers, must we not insist that they shall not tarry or dally in the House of Lords, but shall do one thing—close the House for ever and depart? Even to remain as ornaments will be only to keep open the doors to other evils. At least, we must not create new Peers with any possibility of creating mischief. We fill up the House of Lords as men fill up the tankard—to empty it.

We may carefully define their work, but how are we to make sure that they will do it? Neither the Liberal nor the Nonconformist conscience is absolutely safe in the House of Lords. Whether it be the title, the hall or the seat which causes the change, or all three, it is notorious that no mortal man was ever raised to the Upper House but he became lowered or altered for the worse. This is another reason for doing quickly what has to be done. Our new Peers may go bad if we do not use them instantly while fresh. And another reason for leaving a wide margin of numbers is that, if half a dozen went over to the other side, we should need a dozen more to balance matters. Neither Jew, Unitarian, nor Quaker are safe. Again, under the excitement of Lords, a score

of them may die of heart disease. Their sons? But a few days ago we had a respected Quaker Member of Parliament die, and his eldest son has been elected in his place as a Conservative. There is a number of watches in a window near here, ticketed, "Warranted for two years." What man on earth would warrant a Liberal Peer for two weeks? No man but a Liberal Prime Minister, or surely he would never make so many Peers as he has done in the past. Mr Gladstone must have had an almost unquenchable faith in every fresh bunch of Liberal Peers, for he made them as thick as blackberries. There are great excuses, however, to be urged on behalf of Mr Gladstone in this matter. Lord Rosebery put his back to the wall, and to his great honour resisted the pressure to add to the Peerage. However, Lord Rosebery has slightly damaged himself as a partial or total abolitionist of the legislative functions of the House of Lords by his past attempts—probably by this time he has cut the connection—to restore it to an ideal Second Chamber.

There is nothing to be said against the *personnel* of many of Mr Gladstone's late additions to the Peerage. Some of the new, as well as the old, Liberal Peers are staunch reformers, who will render us great service in the coming struggle. It is the fact that these good men are among the Peers which has, from time to time, saved them all from destruction.

Among minor arguments against the House of Lords, there are few much more fruitful than

these two : First, that the Liberal Peers can never be depended upon to remain Liberals. And as Liberalism does not run in the blood, much less can we depend upon Liberal Peers to breed Liberal Peers. And, second, that the Peerage gives no end of trouble to Prime Ministers.

To return to the question : How are we to make sure of our men ? I think that we might, on the face and character of them, rely upon Lord Clifford, Lord Guinness Rogers, Lord Parker, Lord Hugh-Price-Hughes, Lord Wicksteed, and some hundred more Nonconformist ministers. Mr Carvell Williams will not object to this arrangement, I am sure, provided the Nonconformist conscience is quickly rescued from the atmosphere of the House of Lords. Both Lord Salisbury and Lord Rosebery have recommended the representation of Nonconformists in the Lords. With these two certificates in his pocket, the future Liberal Prime Minister can safely advise the Queen to add a hundred dissenting clergymen to the Peerage at one stroke. It will not be impossible to find among the working classes two hundred laymen of such sterling Radicalism as Mr O'Grady, the President of the Trades Union Congress. Two hundred more reliable persons could be discovered amongst the middle classes ; and a sixth hundred could be selected from the upper classes. This will do. Of course, to each case there must be put in black and white, and with lucid distinctness, what the proposed Peer is to be engaged to do, and by when he has to do it. And he must sign his

bond to this engagement. This can be effected by private communication between the Prime Minister (or some person on his behalf) and the proposed Peer.

Perhaps the last of the House of Lords will become as much a laughing-stock in history as Barebone's Parliament. Its members were somewhat refractory. Cromwell sent Colonel White to clear the House of such as ventured to remain there. They had placed one Moyer in the chair by the time that the colonel had arrived ; and, being asked by the colonel what they did there, Moyer replied very gravely that they were seeking the Lord. "Then may you go elsewhere," cried White, "for to my certain knowledge the Lord has not been here these many years."

At some future period an ex-Lord Chancellor may wander upon the woolsack, and, being asked by the policeman what he is doing there, and answering in the words of Speaker Moyer, he may be accosted : "Please, sir, there's the door, for to my certain knowledge no Lord has been allowed here for many years."

It is far better that the House of Lords should be extinguished amid roars of laughter, than amongst tears and blood.

We are told, however, that the threat to create a host of new Peers will be sufficient, and that it will never come to their actual creation, for

the Lords will surrender. But if it is to be only a threat on the one side, it may be considered only as a threat on the other side. The project is made impotent as soon as it is announced to our "friends the enemy" that it is not intended to carry it out. We have had so many of these threats before that nothing will be believed, either by the Lords or the people, but arms and the men. We must have our weapons ready, and we must let it be seen and known that we mean business.

Why should *we* be frightened? It is the Peers, and not ourselves, who are to be frightened by a deluge of new Peers. *We* can view the transaction with perfect serenity. Our new Lords will be our friends for once, predestinated to accomplish a great and beneficent work! What are we afraid of? We should rather clap our hands. And I believe that the people will clap their hands and cry "Hurrah! hurrah!" when they see the announcement: "The Prime Minister arrived at Windsor Castle yesterday. The Right Honourable gentleman has, we have the best authority for stating, the Resolution of the House of Commons in his pocket. We understand that the Prime Minister will advise Her Majesty to create six hundred Peers." Later on: "Her Majesty has consented, on the responsible advice of Her Ministers, supported as it is by a Resolution of the House of Commons and by the General Election, to create six hundred new Peers."

They will rejoice because after the creation will come the deluge, and no Noah's Ark will ever find room on board for such an extinct or obsolete species

as the Peer. Mr Pike may tell them that a Peer cannot be drowned, but they will not believe it.

Does not a threat, if serious, insistent and effective, come morally very near the carrying of it out? One asks this question, because it is well to know exactly what we morally gain if the threatening policy is adopted with no intention to carry it out, or in the belief that it will never need to be carried out. The threatening will have to be in public, while the intentioning must be marked "private." The Peers must not be admitted into the chamber of our mind, or otherwise the cat will be out of the bag and scouring the country. This double conduct will produce hesitation, confusion, duplicity, which is not a good start. Is the position this: We shall be frightened by positive action, but the Peers may be frightened by the threatening of positive action? It is possible that of the two, under these circumstances, we, alone, shall be the intimidated one. If Lord Salisbury can snap his finger at a resolution, it is quite certain that he will snap it at a bullying army of quakers. Private J. Carruthers, E Company, writes to "dear father and mother" about the battle of Omdurman—"their yells sent the fear of God through me!" Now, if our yells could send the fear of the Lord through the Lords, I should say—YELL. But I doubt whether either Dervish or Liberal yells will have any effect, if there is neither intention nor preparation to carry them out.

Let us bring the whole thing into the open air and straight road. Upon the Peers' coronets, and

not upon ours, for we wear none, must fall the mischief of a new swarm of Peers. Only God made man, and so long as every man does his duty, and men are the multitude with the vote, a few Lords, more or less, for a time, will not matter, so long as they are not hereditary legislators or landlords. We have no purpose of evil towards the persons of the Lords. We simply want to extinguish them as Peers in order to distinguish them as men.

The intimidatory example of 1832 does not exactly fit the present situation of the Lords or the people.

Riot and Panic were harnessed to the event of 1832. We have at present no wild horses of the kind for our chariot. Still we have in the stable some strong and sturdy steeds. But it was the King who was apparently more frightened than the Lords. He was hooted and pelted whenever he appeared in public. And it was by the intervention of the King that the Lords were at the last rescued from the invasion of new Peers. Whatever harm the invasion would have done them, it is somewhat difficult to see, looking at the fact of their surrender after all, and at the many inundations of new Peers which have taken place since.

Did Earl Grey play the bully to the Lords? When the new King, William IV., sent for him, Grey told the trembling monarch that he would not touch the seals of office unless he had in black and white the King's consent to the creation of a sufficient number of Peers to carry the Reform Bill.

And any Prime Minister or leader of party who has arrived at the stage at which Earl Grey had arrived—and it is plain that he made up his mind a long time before he was sent for by the King—has reached a stage where he and the people are quite secure, and where all threats are as idle as they are unnecessary.

Intimidation is not only legitimate, but it is in the constitution of nature when applied to Kings, Lords, or tyrants, by the people, or by their authorised agents, when no other means are available. But intimidation has been successful in proportion to the materials piled up behind.

During the period of years approaching the event of 1832, the materials had been piled up mountains high. And in front they were formidable.

No doubt in 1832 the King was frightened, and the Lords were frightened, but not without cause, for the country was on the verge of civil war.

In 1832 the resistance was not only from the Lords, but also from the King. On the other hand, the Reform Bill, 1832, did not touch the House of Lords as a Second Chamber, but had relation to the House of Commons alone. Unfortunately and disgracefully, the House of Commons had become, in part, a hereditary Chamber itself.

It was a dictum, quoted with approval by Sir Robert Inglis, the first Speaker, against the first reading of the first Reform Bill, 1831, that the posterity of Pitt, the purchaser of the borough of Old Sarum, "now have a hereditary right to sit in the House of Commons as owners of it, as the Earls

of Arundel have to sit in the House of Lords as Lords of Arundel Castle."[1] The House of Commons had fallen very much into the pocket Parliament of the aristocracy.

In the present situation, it is not to-day the question of the reform of the House of Commons, or the Electorate, but "the House of Lords' Question." It has been the case hitherto that the agitation against the House of Lords has been mixed up with some rejected Bill. It is to be hoped this time that "the House of Lords' Question" will be run on its own merits, or, at least, that no temporary giving way on another matter will in the slightest affect the deadly issues between Commons and Lords.

The siege will be laid against the Lords in their own House. But whilst in the thirties the resistance was only a fight over their preserves in the House of Commons, now the fight is one of life and death to the Peers in their own House.

Should we not be a little more cautious than to arrive at the cocksure conclusion that the mere threat to create 600 Peers will be enough? You may induce a Peer by a big threat to pass a Reform Bill, but it will take something more than a big threat to induce a Peer to abolish himself.

THOUGH the Queen's Prerogative to create Peers of Parliament is constitutionally unimpeachable,

[1] Hansard, vol ii. Third Series, c. 1102.

yet it would not only be taken away by the abolition of the House of Lords, but we have no exact precedent for its use in abolishing itself entirely in this direction, or in abolishing the House of Lords.

Can and must the Crown create whatever number of Peers the Ministers of the Crown, for the time being, advise the Crown to create?

These *A B C* facts are as substantial as the mountains.

A. There is not only no Closed Door, but the Constitution has provided, fixed, and guarded the OPEN DOOR *to the House of Lords* for the entrance of any number of Crown-made Peers of Parliament.

The fixed number of representative Peers for Scotland and Ireland do not affect the United Kingdom Peerage. And shutting the side door against life-Peers does not affect new hereditary Peers or total number.

Queen Anne, in order to secure a majority for the Court party, created twelve Peers all at once, a considerable number in proportion to the Peerage at that time. This stone, laid with a light heart, has become a corner-stone of the Constitution. The purpose in this large creation of Peers was to effect a majority of one party in the House of Lords by the Royal Prerogative. This operation, and subsequent and previous events, established the principle that the Peerage of the United Kingdom is unlimited in number, and that in the Crown are vested the virtue and power to increase this number at any time, or to any extent. The principle itself is

fundamental, for without it the House of Lords would be technically supreme over Crown, Commons and people.

"A little while after the accession of George I., an attempt was made by a party in the House of Lords to wrest from the Crown a prerogative, WHICH IS ONE OF ITS FINEST FLOWERS, AND IS BESIDES THE ONLY CHECK IT HAS ON THE DANGEROUS VIEWS WHICH THAT HOUSE (WHICH MAY STOP BOTH MONEY BILLS AND ALL OTHER BILLS) MIGHT BE BROUGHT TO ENTERTAIN; I MEAN THE RIGHT OF ADDING NEW MEMBERS TO IT, AND JUDGING OF THE TIME WHEN IT MAY BE NECESSARY TO DO SO. A Bill" (1719) "was accordingly presented, and carried, in the House of Lords for limiting the members of that House to a fixed number, beyond which it should not be increased; but after GREAT PAINS to ensure the success of this Bill, it was at last rejected by the Commons."[1]

[The design at the bottom of this can be imagined, if it was not open and palpable. In the reign of William III., Bishop Burnet's *History of his own Times*, anno 1693, describes a strong party in the House of Lords whose aim was to abridge the royal prerogative of calling Parliaments and judging of the proper times of doing so. And they proposed to have all money bills stopped in their House till they had procured the right of taxing themselves and their own estates. Their Bill, after it had passed their own House, was rejected by the Commons, Nov. 28, 1693.]

[1] De Lolme on "The Constitution of England," p. 299.

In the 1719 Bill it was proposed that the number of Peers of Great Britain on the part of England should never be enlarged by more than six. There was an exception in favour of Princes of the blood royal and upon the extinction of a peerage the Crown might fill up the vacancy. The third reading of the Bill in the House of Lords was prevented by the prorogation of Parliament. In November, however, another Bill of similar purport was passed by the House of Lords but rejected by the House of Commons. It cannot be said that these Bills were not well contested both inside and outside Parliament, and they were introduced by the Lords themselves. Had the second Bill become law "it would," says Mr Pike who is an impartial authority, "have forced the development of the Constitution in later times into a totally different channel." The Commons saved the Prerogative of the Crown, and it was remarked in a somewhat cynical manner by Blackstone that their leaders "were then desirous to keep the avenues to the other House as open and easy as possible."[1] Robert Walpole at any rate strongly opposed, in writing as well as speech, the Bill which was lost by a majority of 269 to 177.

B. Not only is the numerical membership of the House of Lords kept open by the Constitution, and all attempts to limit it have failed, but the recruiting ground of the Peerage is unlimited to the Crown so long as it is confined to British-born subjects.

[1] Pike's "Constitutional History of the House of Lords," p. 363.

The process known as the "redistribution of seats" does not take place in relation to the House of Lords. Though there is no Act of Parliament fixing the number of members of the House of Commons, there are Acts of Parliament fixing the number of electoral seats. And this, of course, produces periodically a permanent numerical membership, except in case of vacancy which must be filled up within a few weeks by election of a new member. The following table shows the law of numerical fixity and elasticity of the two Houses.

Number of Members

HOUSE OF COMMONS

	1898.	1836.	62 Years.
England and Wales,	495	500	
Scotland,	72	53	
Ireland,	103	105	
Total,	670	658	Increase 12

HOUSE OF LORDS

	1898.	1836.	62 Years.
Blood Royal Dukes,	6	4	
**English Archbishops*,	2	2	
Noble Blood Dukes,	22	21	
Marquesses,	22	19	
Earls,	123	110	
Viscounts,	29	18	
**English Bishops*,	24	24	
†*Irish Bishops*,	nil	4	
Barons,	319	180	
**Scotch Representative Peers*,	16	16	
**Irish Representative Peers*,	28	28	
Making in all,	591	426	Increase 165

* Fixtures. † Abolished.

No commoner is now disqualified for a Peerage who is a British-born subject. There has been no reason why Nonconformist Ministers or even agricultural labourers should not have been Peers long ago, except the reluctance to create hereditary Peers without substantial means, and to offend the present Peers by introducing persons of low degree into their order. There is possibly another reason, namely, that no wise man likes to be made a fool of, and Lord Parker and Lord Arch would probably be refused by Dr Parker and Mr Arch, at least a Peerage has been refused by several real nobles.

There can be no doubt that a Liberal Prime Minister could find our gallant six hundred, for the Queen's Peer forests, unlike Her Majesty's deer forests, are practically illimitable.

C. "The King can do no wrong," unless he acts on his own advice.

The advisers of the Crown are the Ministers of the Crown, and not the Sovereign or the Lords or the Opposition. The Crown of the United Kingdom has no more volition than the Altar of the Church of England. The Sovereign can only exercise his royal prerogatives through ministers who are responsible to the nation for every act emanating from royal authority.

"In fine, what seems to carry so many powers to the height, is, its being a fundamental maxim that THE KING CAN DO NO WRONG: which does not signify that the King has no power of doing ill, or as it was pretended by certain persons in former times, that everything he did was lawful, but only

that he is above the reach of all courts of law whatever, and that his person is held as sacred and inviolable."[1]

As we live in later times than the somewhat gushing De Lolme, we might add to his last sentence, *so long as the King does not act on his own advice or motion.*

The business of proposing laws of Parliament is lodged in the hands of the people and Parliament, but the business of proposing acts of the Crown is lodged in the Ministers of the Crown.

On the 2nd March 1718, Earl Stanhope announced to the Lords, "that His Majesty had commanded him to deliver a message to this House under the Royal sign manual." The message which was read by the Lord Chancellor was this—

"His Majesty being informed that the House of Peers have under consideration the state of the Peerage of Great Britain, is graciously pleased to acquaint this House that he has so much at heart the settling of the Peerage of the whole Kingdom and constitution of Parliament IN ALL FUTURE AGES that he is willing that his prerogative stand not in the way of so great and necessary a work."[2]

In the name of Country we would that George I. and the Lords had settled the state of the Peerage of the United Kingdom in all future ages—had settled it out of existence. That is the only

[1] De Lolme on the "Constitution of England," p. 172.

[2] Lords' Journals, vol. xxi. p. 84.

way it can be settled in all future ages. Alas, the state of the Peerage is as unsettled as ever!

The clothes of this royal message look honest and upright, but unfortunately they conceal a dangerous conspiracy of King and Lords in the eighteenth century against the Constitution. It is said in excuse of George I. that he was a mere puppet in the hands of the Whig Lords. It is curious that Lord Oxford, a recent Prime Minister, had only just come out of the Tower. He had no more constitutional conscience, when impeached, than to defend the Prime Minister under the petticoats of the dead Queen Anne. "For his own part, he always acted by the immediate directions and command of the Queen, his mistress." And this George I. is the one who said on his arrival in England, "My maxim is, never to abandon my friends, to do justice to all the world and to fear no man." Moreover, it was only six years since Queen Anne had created the twelve Peers and established the great principle of the Open Door.

"WHEN the Bill was in agitation for limiting the House of Lords to a certain number," says De Lolme, "its great constitutional consequences were scarcely attended to by anybody. The King himself certainly saw no harm in it, since he sent an open message to promote the passing of it, A MEASURE WHICH WAS NOT PERHAPS STRICTLY REGULAR. The Bill was, it appears, generally

approved out of doors. Its fate was for a long time doubtful in the House of Commons; nor did they acquire any favour with the bulk of the people by finally rejecting it: and Judge Blackstone, as I find in his Commentaries, does not seem to have thought much of the Bill and its being rejected, as he only observes that the Commons "wished to keep the door of the House of Lords open." YET NO BILL OF GREATER CONSTITUTIONAL IMPORTANCE WAS EVER AGITATED IN PARLIAMENT, SINCE THE CONSEQUENCES OF ITS BEING PASSED WOULD HAVE BEEN THE FREEING OF THE HOUSE OF LORDS BOTH IN THEIR JUDICIAL AND LEGISLATIVE CAPACITIES, FROM ALL CONSTITUTIONAL CHECK whatever, either from the Crown or nation. Nay, it is not to be doubted that they would have acquired in time the right of electing their own members, though it would be useless to point out here by what series of intermediate events the measure might have been brought about. Whether there existed any actual project of this kind does not appear, but a certain number of the members of the House we mention would have thought of it soon enough, if the Bill in question had been enacted into a law; and they certainly would have met with success had they been contented to wait, and had they taken time. Other equally important changes in the substance, and perhaps the outward form of the government, would have followed."[1]

One conclusion is simple, lucid, impressive.

[1] De Lolme was born about 1741 at Geneva. He arrived here in 1768. He was, therefore, not far removed from the event of 1718.

The open passage to the House of Lords for the Royal Prerogative and the people might just as well have been in 1818 closed up and bricked up and a century's ivy grown over it, if now that it is wide open and clear and free, it cannot be used.

In vain is the rust on the hinges of the open door ; in vain is the door jammed back and fastened back by the Constitution ; in vain have our fathers struggled and kept the entrance clear for our sake as well as their own ; in vain do we expatiate upon the wonders of the mechanism of the British Constitution, if the Royal Prerogative is impotent, and the Ministers are impotent, and the people are impotent, when the great occasion has come, to use it for the very set purpose and constitutional object for which the passage has been made by our fathers and eternally guarded by the sleepless angels of Democracy.

Let us, however, collect, and even invent, objections against this extraordinary increase of the Peerage. At the present time we have only reached the stage of vague and immature objections, and I have anticipated opposition by inventing one or two of its arguments. There are two classes of objectors —the one which is against all proposals for effective dealing with the House of Lords, and the other, which takes for granted that something must be done, and is anxious to learn what is the best way to do it. It is useless to discuss a comparison of methods with the former class, that wish to make any method as impotent and foolish as itself. But it may be useful to fortify our minds against the

mob of lying spirits which infest all vested interests, and most of all the House of Lords, their head quarters.

And first of all let me say in introducing those red-faced and pale-faced objectors to you, that Necessity is not only the mother of invention, but she is also the mother of desperate courage. Let these gentlemen splutter and stutter their proofs by the hour that there is no remedy nor escape from the Lords ; that it is impossible ; that the people are eternally damned to the present *status quo ;* let these gentlemen night and day lash and scourge the Democracy with its own shame and serfdom and imbecility, and as sure as God reigneth in the heavens so sure shall Necessity groan and travail in pain in the womb of the people and bring forth Salvation. Pray, gentlemen, go on with your proofs that the House of Lords is eternal.

1. That there is no precedent for creating 600 new Peers all of a lump.

2. That there is absolutely no precedent for creating a majority of Peers predestinated to abolish the House of Lords.

3. That there is a physical limit to the Peerage, for the House could not seat Peers *ad infinitum.*

4. That it is a contradiction to get rid of the Lords by swarming the country with them.

5. That the Queen will never consent to use the Royal Prerogative for such a revolutionary purpose.

These five points are quite sufficient, I think, for our space and time.

First of all, in regard to precedents.

There was a time when the House of Lords even did not exist. Not only was there no precedent for the creation of Peers, but I am not sure that there was a precedent for the creation of the world. And yet they are both here. However, in these days science excludes creation where it can and resorts to evolution. It is a common phrase—"the growth of the British Constitution."

Now, what would be a greater contradiction of this principle of growth than the finality of the Constitution? If the British Constitution has climbed from gentle precedent to gentle precedent, but can climb no longer, it is plain that we have reached the stage when gentle precedents are no more, and when decay, stagnation and death have set in. This may be the case with the House of Lords, but we refuse to believe that it is the case with the British Constitution. We do not believe that the genius and resources of the British Constitution are exhausted ; for, in truth, the British Constitution is the British people. The British people always can find a precedent for their own preservation and good government.

I will now hold up to the light these gentlemen's "fiver."

1. Though 600 new Peers have not been created in a lump, there have been 591 Lords made or created. And they are in a lump to us, whatever time it took to make them. 591 will answer our purpose very well. If the occasion requires a thousand Peers surely we may have them. There was no precedent for Pitt's enormous increments,

yet no one contested them. The Constitution has fixed no numerical limit to the Peers. For once, it will be the people who call for the new Peers, and they are accustomed to give a large order.

2. The schoolboy shall answer No. 2. In the "Royal Code History, adapted to Standard VI.," on page 77, Part III., are these words: "The peace project was denounced by the majority of the House of Lords, led by Marlborough. To neutralise this opposition the Ministry created twelve new Peers, and thus obtained a majority. This step marks an era in the history of parliamentary government, as it was a perfectly constitutional plan, whereby the Ministry for the time being, which had the confidence of the majority in the House of Commons, could at once alter the relation of parties in the House of Lords. Thus the ascendancy of the Commons was established." The date of my edition of this school history is 1876, so that the schoolboys who learnt out of my edition will now be teachers and electors.

The constitutional object is to obtain for the Ministry and the people a majority in the next House of Lords. To such a majority in the Lords, if the Ministry happen to submit a Bill for the abolition of the House of Lords, and the Lords pass it, very well and good. This is no more than the Lords do in regard to the Bills of the present Cabinet.

3. There is, no doubt, a limit to the architectural House of Lords. And if it be necessary for a Lord to "take his seat" in order to finish his legal con-

stitution as a Peer (and this is the view of the lawyers), it is plain that No. 3 becomes an important question. What is a seat may be soon as much a legal puzzle as what is a place. In fact the original word was very likely "place," not "seat." In the primitive open-air Parliaments it was probably a *locus standi*. Taking his seat or place in the House of Commons is not necessary to complete the legal constitution of a member of Parliament.

It is plain that an addition of a swarm of new Peers to the House of Lords will seriously limit the seatable Peerage of the future, if not of the present.

And one of the great arguments for abolishing the House of Lords is found in these successive increments to the Peerage. For if each Ministry were to compete with its predecessor in these increments, we should at last get the Open Door blocked up with Peers from the inside.

Suppose that the Reform Ministry does not abolish the House of Lords after creating its (say) 600 new Peers, and a Conservative Ministry come into office and make a batch of 700 to re-establish their old ascendancy, this, with present number, will produce a total of 1891 Lords. Then the succeeding Reform Ministry would have to retaliate or surrender.

Whilst it is true that the creation of new Peers is the constitutional provision to secure a majority in the House of Lords for each Ministry, yet it is plain that if it had been adopted effectively by both parties in the past, the Lords would have been unseatable by this time.

There has been no reason whatever why the Liberals all these years should not have swamped the Peerage with Radical yeomen—no reason, but their own impotency under the Lords. But once you commence this swamping policy you cannot stop until you have abolished the House of Lords. And unless to-day you make up your mind to abolish the House of Lords, or at least to deveto it, your first swamp of Peers will only lead your opponents to retaliate with another swamp. And where will you be next time? Where will you at last accommodate your Peerage with seats?

Speculations as to what is a place or seat may be brushed aside, however. What constitutes the place of assembly is the Writ of Summons to Parliament which names the place of assembly. The two Houses could even now be summoned to meet in the open air on any spot the Queen may choose. Sometimes the Commons met at one town and the Peers at another. Sometimes the former met in a barn, while the latter sat in a castle. The most solemn Parliaments of all—the election and coronation of the King—were in the open air. The idea being that to them the people themselves were admitted. For example, we read of the future Charles II.: "On the 8th he was solemnly proclaimed King at Westminster Hall gate, the Lords and Commons standing bare."[1]

The most that can be said against No. 3 is, therefore, that it might lead to an inconvenient crowding of the present architectural House of

[1] Whitelock's "Memorials," p. 702.

Lords, or to an inconvenient moving of the Lords into another place than the present place of assembly. It is not for us to study their convenience. If our object is to abolish the legislative functions of the House of Lords, and if we mean to succeed in this purpose, there is no need for us to consider the *ad infinitum* argument further.

4. All such contradictions may safely be trusted to the common conscience, which is quite as good as the conscience of peerdom. No revolution has ever been exactly squared to Euclid. No great movement has ever been led by wranglers. A future generation will deal with our contradictions, as we have dealt with the contradictions of our ancestors. If we get rid of the legislative Lord, our successors, if they wish, can soon get rid of the nominal Lord.

5. "That the Queen will never consent to use the Royal Prerogative for such a revolutionary purpose."

The last of the five, in conjunction with No. 2, is of some significance.

As to the nature and property of the Royal Prerogative I must refer the reader to Mr Swift MacNeill's and to Mr Theodore Dodd's articles, and to what I have already stated. I must refer him also to all our great constitutional historians.

We speak of the growth of our constitution. Whilst the House of Lords has decayed, the union of the Crown and the people has grown and is growing more and more. And how is this?

Because the Crown has grown more and more representative of the people, who are the source of all power. In itself and for itself the Crown has ceased to be. There are still grave objections against Royal Courts, but there remains little or nothing to object to in the throne of the United Kingdom. If it was not for the House of Lords the constitution of our country would be Crown Republic.

We trust that the Queen's reign will not end under a cloud. It is hardly conceivable that she would intrude her own private personality into a contest between Commons and Lords. It is not for her, as a Queen, to raise the curtain and see what is behind the scenes. The constitutional duty of the Crown is to act according to the advice of the Ministers of the Crown.

Before we turn to other proposals, let us calmly repose in this refuge against the House of Lords —the Royal Prerogative and the creation of a ministerial majority of Peers in the House of Lords. Other proposals may be as good, but it will quiet our minds to feel that there is this refuge, wonderfully and carefully made by our fathers on purpose for us in this crisis.

All the constitutional "Hows" may be divided into four classes:—

1. The plans which depend upon the Royal Prerogative only.
2. Those which depend upon the Royal Prerogative and New Peers.

3. Those whose resource is in the Supremacy of the House of Commons.
4. The plans which resort to the People.

Where a scheme necessitates a Bill it is no good, as a Bill must pass the House of Lords. It is no good, that is, unless there is attached to it the swamp of Peers or coercion.

But there is one Bill which the House of Lords *must* pass. This is called the Money Bill. And there is a process called "tacking," by which a second Bill, or clauses embodying an entirely separate soul, may be hung on to the Money Bill.

II.—THE MONEY BILL

WE will take THE MONEY BILL as next in order of examination after No. I.—the creation of the swamp of new Peers.

It need not trouble us how foreign the subject matter is to the Money Bill (and the abolition of the legislative powers of the House of Lords would seem to be an outrageously foreign subject matter) if it can be shown that this plan is dictated by necessity and by the will of the people.

With more than one method available, it is difficult to prove this necessity, or to focus the will of the people upon it alone. On the other hand, there is something which approaches necessity—supreme advantage. The people may instinctively seize hold of the Money Bill as their

most effective weapon, since in supply they are upon their own native heath.

On the 7th June 1628, the preamble of the Supply Bill was altered into its modern form—"Most Gracious Sovereign, we, your Majesty's most faithful *Commons*, have given and granted to your Majesty."

There is, however, a third plan which does without a Bill, and which is in effect much of a muchness with No. II.

III.—REFUSAL OF SUPPLY

It differs from the Money Bill in this way. The Anti-Lords Bill tacked on to the Money Bill in No. II. will, here, have to stand on its own legs. Will you stop the Supplies before the Anti-Lords Bill has been rejected or after it has been rejected? A second Anti-Lords Bill could not be introduced till the next session of Parliament and Refusal of Supply would, I presume, be timed to the introduction of the Second Bill into the House of Lords.

However, though No. II. and No. III. have almost incomparable constitutional advantages, since they test the strength of the House of Commons in the very spot of its supremacy, yet the postponement of Supply might bring more trouble upon the Commons than the Lords. In any case, the country will share the trouble with the Lords.

Of the two Supply methods, the Money Bill is

the better in this respect—it throws more directly on the Lords the responsibility. If they reject the Money Bill, it is they who stop the Supply. Whereas, if the Commons stop Supplies, it has to be shown that the Lords by rejecting something else are responsible. On the other hand, with a Money Bill the Lords can raise the constitutional objection that the Commons are exceeding their powers and functions by incorporating with it so extraordinary and foreign a matter as a Lords Veto Bill.

IV.—THE SWIFT MACNEILL PLAN

THIS proposal is, that the Crown shall withhold from the Peers the Writs of Summons to Parliament. It is so lucidly described by Mr Swift MacNeill in this book, and he is such an eminent legal authority on the matter, that I must refer the reader to him.

The Crown can summon either some lords or no lords. If the former, there would be the temptation for the succeeding Ministry to summon more, and to summon what would make a party majority for them. This would not be so bad as it is now, if the Ministry following them could in turn summon a party majority of Peers. If the latter (the withholdment of the summons from *all* Peers), we reach the stage of total abolition of the House of Lords, provided the country has so unmistakably declared for abolition as to make it democratically impossible

for any Ministry to advise the Queen at any future time to revive the summons to the Peers.

Here we arrive at splendid simplicity.

We are, no longer, confused by the comparative merits of total abolition or partial abolition of the House of Lords.

The Lords would be completely done for. The Commons would refuse to vote any further moneys to keep up the official establishment of the House of Lords. It would proceed to pension off all its Sergeants-at-arms, Ushers, Clerks, Doorkeepers and other officers, and lock up the doors of the House of Lords.

But what of the judicial functions of the House of Lords? Since the Supreme Judicature Act of 1873 positively annihilated the House of Lords as a Supreme Court of Appeal, and the present judicial functions of the House of Lords have only been saved by the accident of a subsequent Act in substitution of the Act of 1873, it is plain that the judicial functions of the Peers can again readily be transferred to a new Court of Supreme Appeal as in 1873.

V.—THE REFERENDUM

It is unnecessary to go to Switzerland or to Canada for a description of this institution. We have it here under the Public Libraries Act, and it was here long before Houses of Parliament existed. It is the Parliament of Nature, and the most primitive and august institution of Democracy.

But it has its mental limits. It cannot very well go into details, or even decide at one time or with one vote, or a distribution of votes, a number of questions. It cannot very well accept or reject a Bill. A Bill, however, would be much better than a series of questions. It could be "the Bill, the whole Bill, and nothing but the Bill," and there would be no confusion. With the Referendum the issue should be single and simple; when the people are political experts, the issues can be complex.

It is, perhaps, desirable that the vote be compulsory, and that every adult inhabitant (not a certified lunatic or prisoner) be a qualified voter.

The votes should be all added together in two United Kingdom totals, "for" and "against."

By what and by whom is the Referendum to be constituted? By Bill? By Resolution of the House of Commons? Or by Royal Prerogative?

It might be a good plan to constitute it by Bill, as this would submit the proposal to the Lords and involve them in the consequences of its rejection.

The question here arises whether the Bill would enact the Referendum as a permanent estate of the realm, or only for a verdict upon the House of Lords question. It might be best to let us see how it worked before we gave the Referendum permanency. On the other hand, it might be wise to get the Referendum considered by both Houses on its own merits, without contact with any other question.

Practically, however, this last plan would not be

worth much, as the Lords would know that the next step would be to submit their House to this said Referendum.

Still there are other questions besides the House of Lords which might well be submitted to the Referendum, if it were established.

Should the House of Lords reject the Referendum Bill, or should it be preferred not to adopt the Bill plan, there is still open to us other methods. Possibly a Resolution carried by the House of Commons would not, under present circumstances, be sufficient to constitute the Referendum.

There can be no doubt of the authority and capacity of the Crown to institute the Referendum. And we can ignore the consent of the House of Lords altogether. The Royal Prerogative can constitute the Referendum "to decide by the direct vote of the electors of the United Kingdom such questions or matters as, from time to time, shall be submitted to them by the Crown or by Her Majesty's Government or Commons."

The next step will be for the Government or Commons to draw up the question, and for the Crown to call out the Referendum to vote upon it.

Again, it is possible, as a sequence to the verdict of the Referendum, to avoid any Bill. The question could be put as one from the Crown to the people.

"WHEREAS it is represented to Us by Our constitutional Advisers and by Our faithful Commons in Parliament, that the House of Lords is harmful and injurious to Our Realm, We, therefore, refer it to You—

"SHALL THE CROWN CEASE TO SUMMON THE
"PEERS TO PARLIAMENT?"

Here we have the what and how both determined at once—the suspension, if not abolition, of the Lords, and the method by which it is to be effected.

If the Referendum answered "Yes" to this: "Shall the Lords' veto be abolished?" there still remains the vexed question—How is it to be done? It is impossible to put that question to the vote. And it would have to be divided into three or four schemes, which would be most difficult for a multitude to vote upon. And it would be unbecoming to the dignity of the Crown or Her Majesty's Ministers to put a series of schemes to the national vote.

Speedily following the affirmative verdict of the Referendum on the question, "Shall the Crown cease to summon the Peers to Parliament?" would be the dissolution of Parliament, and in the summoning of the new Parliament the Lords would be left out in the cold. They would have no remedy against the Crown.

How could the Lords reject a Bill to establish the Referendum if the method of a Bill were adopted? How could they resist the verdict of the Referendum, if clearly declared against their House? It would, perhaps, be the best policy to put them in the fix, to accept or reject the Referendum, and it certainly would greatly add to the weight of the Referendum in relation to them if they had previously accepted it as the Supreme Court.

There is much to be said for the Referendum as a means to educate and interest the people on political questions, and to give them more direct responsibility in making the laws.

VI.—THE YOXALL PLAN

Mr Yoxall proposes the elimination of the hereditary legislator at each death of a present Peer. In his place Mr Yoxall would put "the created Peer," and, eventually, in *his* place would possibly be put the elected Peer.

Would not this be a very prolonged process? Suppose we estimate the average Peerage mortality at twenty annually. This would take some thirty years to wipe out all the hereditarians. Mr Yoxall has not told us whether his created Peers are to be life Peers or for a short term of years. It is essential that we should not displace one Peer with another as like as two peas.

Mr Yoxall also claims that his Bill must be initiated in the House of Lords.

Blackstone, whom Mr Yoxall quotes, is not a modern authority. The privileges of the House of Lords were entirely ignored by the House of Commons in the last Parliament of King Charles I., in which Bills were introduced into the latter House, not only "for taking away the Bishops' votes in Parliament," but also "for the abolition of the House of Peers."

"This was no doubt," says Mr Pike, "an excep-

tional period, but later events have not all been quite in accordance with the alleged custom or privilege. Notice was given in the year 1832 of an intention to move for leave to bring a Bill into the House of Commons to prevent the other members of the House of Parliament from voting by proxies. It was withdrawn upon a suggestion that it was an interference with the privileges of the House of Lords. A Bill, however, to alter the mode of electing representative Peers in Scotland and Ireland, and to enable the Crown to summon Scotch and Irish Peers, who were not representatives, to sit in Parliament for life was read a first time in the House of Commons in 1869. Bills for restitution of blood, after corruption and for restitution of honours, Bills of attainder and Bills of pains and penalties have usually been first introduced into the House of Lords, BUT IT IS NOT CLEAR THAT THERE IS ANY ABSOLUTE RIGHT OR WELL DEFINED PRIVILEGE IN THESE MATTERS."[1]

VII.—ONE QUESTION

THE reason why all demonstrations and movements against the House of Lords have utterly failed in the past is because two questions are always raised—one is carried and the other left. The Lords at last give way upon No. 1, and No. 2 is heard of no more till another No. 1 takes the field. The people again shout—"Down with the

[1] "Pike's Constitutional History of the House of Lords," p. 336.

Lords!" There are monster processions to Hyde Park and flaming resolutions at Leeds. But they all come to nothing except this—No. 1 is again carried and No. 2 is left.

The plain remedy is to make No. 2 No. 1. Lord Rosebery made a desperate and gallant attempt at this transfiguration on the eve of the last General Election. He failed. Had Lord Rosebery only shouted—"Down with the Lords" and flung his coronet on the floor of the Albert Hall, he would have roused the country.

After a General Election it is always open for a Salisbury to get up and prove to the Lords that possibly the country did declare against the Poor's House, but, *most certainly*, not against the Peers' House.

It is true that it may be well to introduce another flaming illustration of the Lords' Rejected Bills, but it is a dangerous game. The Government and Party may get exhausted and unpopular before they come to their great business. Only while the Ministry and the Party are fresh and unstained will they be equal to a tremendous contest with the Lords. Not one session should be allowed to pass, but in the dawn of their strength they should strike home.

VIII.—"RESOLUTION"

THIS instrument of our constitution played once a great part in the Evolution of the two Houses, and was the main means by which the Commons

established against the Crown and Lords their present position. Some of these Resolutions of the Commons were of the essence of natural laws. They took the place of Bills, and indeed they were sometimes too powerful and too sweeping to be confined in such legal cages, even if both Houses had been willing to pass them in the form of Bills. However, whilst a Resolution may, under certain circumstances, enact a House law, and whilst it has been able to lay the foundations of our constitution, it cannot in these days enact what would be equal to a law of the two Houses unless it were supported by the Referendum (or the people) or by a Revolution. It is possible to pass a Commons Resolution "that the House of Lords ought to be abolished, and is abolished," but it would be ineffective unless there followed on it the means, power, and action to carry it out.

IX.—A CABINET STRIKE

THE leaders of the majority of Commons could refuse to take office, and if, after a second General Election, the same majority is returned and the Ministerial strike is continued, there would be no Government or supplies.

It might be a wise move, temporarily, to accept office, in order to tack on to the next Money Bill a provision for the State payment of the public cost of Parliamentary Elections, and to submit to the

Lords a Veto Bill, in order fairly to challenge them.

X.—REVOLUTION

THIS is generally understood to be unconstitutional, but it is not. It is the natural and universal implement in reserve belonging of absolute right to every people for their last defence.

"If we peruse the English history," says De Lolme, "we shall be particularly struck with one circumstance to be observed in it, and which distinguishes most advantageously the English Government from all other free Governments; I mean the manner in which revolutions and public commotions have always been terminated in England.

"If we read with some attention the history of other free States, we shall see that the public dissensions that have taken place in them have constantly terminated by settlements in which the interests only of the *few* were really provided for, while the grievances of the *many* were hardly, if at all, attended to. In England the very reverse has happened; and we find revolutions always to have been terminated by extensive and accurate provisions for securing the general liberty."

This probably is essentially true, though we must believe that in other countries as well as our own there have been revolutions beneficial to the people.

We are at no fundamental issues with the Crown

any longer. Our case is against those semi-kings and demi-gods who have usurped a prerogative which never belonged to any king on this island. Because they attempted to rule by hereditary and divine right which God has given to the people alone, Charles I. was beheaded and James II. dethroned.

A revolution was necessary to overthrow these kings; and if a revolution be needed to overthrow these Peers, who will say that the people who were equal to the first are no longer equal to the other?

APPENDIX

I

15 Brunton Gardens,
4th July 1898.

Dear Mr Reid,—You very much overrate my power to help any cause at any time. But be it much or little, I am at present wholly absorbed in work for Privy Council and House of Lords, and shall be so for some weeks: to the entire exclusion of all other subjects. As regards the House of Lords, I wrote a paper which was published in the *Contemporary Review* for December 1894; and you can easily find it if you care to see it. There has been no substantial alteration in the situation except this, that the election of 1895 more than justified my estimate of the forces behind the House of Lords, and showed that the force latent in the mass of electors was not to be relied on by reformers. I have no reason to think that the force latent in 1895 is more intelligent or active now; by-elections notwithstanding.

It is no good referring to writers of fifty years ago, excellent as their words may be. The money power had not then been frightened by Socialist noise and threats, nor found the House of Lords

to be its bulwark and shield. Now it has, and it is not going to give up such a potent weapon. And for the mass of electors, they are utterly contemptuous of the deeper principles which underlie the working of all institutions. They care only for things they can see and handle; more money, more amusements, less work, protection against direct and visible competition, relief from the mishaps of life at somebody else's expense, and so forth.

The taxation that takes away more than increased wages; the military adventures that destroy what industry creates; the education that fits them and their children for effective action and self-help, and for mental interests, apart from exciting amusements; the broad social effects of free and fair play for all, even Germans and Jews; these and like things they care not for, and they think the man who insists on them is a fool, or perhaps a traitor to the cause of the poor. Probably some day they will be wise; but not till taught by suffering, and till after I, and younger men than I, have passed away from the world. That in my view is the problem of the day. The House of Lords is a comparatively superficial affair. The mass of the community have got a government as good as they deserve, or will deserve till they again perceive that sound political and social ideals are of more value than additional "*Panem et Circenses.*"

My strength is spent, and my political work, little enough, is done. I hope you may live to

see life breathed into the mass of, as it seems to me, dry bones.—Yours faithfully, HOBHOUSE.

GREAT ARDGAY, N.B.,
7th September 1898.

DEAR SIR,—I regret to say that I have not the time to meet your wishes.

I am in favour of putting an end to the veto power of the House of Lords; and not of any fundamental change in its constitution which would involve difficulties as grave as those which would attend the proposal for its total abolition as a legislative chamber.—Yours faithfully,

HERBERT J. GLADSTONE.

I have no knowledge of the words you quote as having been attributed to my father.

ST BARNABAS'S CATHEDRAL,
NOTTINGHAM, *8th September* 1898.

DEAR MR REID,—I am glad you like my conference address about the land.

I fear I must ask you to excuse me from contributing to your book for several reasons.

1. Because, though strongly against many conservative opinions, I am by no means one of the Liberal Party, and at present shall fight my best against them. Though progressive death duties are, I think, just, the present law is harsh and

cruel in some points, and Sir W. Harcourt's doctrine that the right of testating is only a concession of the State is abominable. But the determination of the whole party, since it has been sold to the Nonconformists, to abolish denominational schools, and drive all children into unbelieving, unchristian Board Schools would outweigh all other considerations, I THEREFORE MUST LOOK TO THE HOUSE OF LORDS while *this* battle for life goes on.

2. I have no formed view as to how the Second Chamber should be formed, though I THINK THE EXISTING ONE FULL OF ABUSES.

3. Though I suppose the ancient custom by which the Bishops of the Catholic Church formed a part of the great National Council is right and reasonable, as representing religion and its principles in the Government, I am not prepared to say what would be advisable and expedient under present circumstances. The question has never come up as a practical or possible one, and I have not given it consideration. If it had to be considered, the bench of Catholic Bishops would have to consider and discuss it.

Though we have no secular rank *in England*, most people are so good as to give us the title already. Thanking you for your kind opinion,—
I am, yours very truly, F. EDWARD,
Bishop of Nottingham.

I might add that I have little or no time for literary work not urgently pressed upon me.

II

PITT THE YOUNGER.

In 1783, in reply to the question, "In what part the British constitution might be first expected to decay?" he replied:—

"THE PART OF OUR CONSTITUTION WHICH WILL FIRST PERISH IS THE PREROGATIVE OF THE KING AND THE AUTHORITY OF THE HOUSE OF PEERS."

EDMUND BURKE.

"IT IS DONE WITH THAT PART OF OUR CONSTITUTION. THEY HAVE BEEN." [1796.]

BROUGHAM.

"THE PEOPLE NEVER CAN BE SAFE WITHOUT A CONSTANT DETERMINATION TO RESIST UNTO THE DEATH AS OFTEN AS THEIR RIGHTS ARE INVADED."[1]

O'CONNELL.

To the Commons in 1839.

"Though a majority in this House may be disposed to do us something like justice, all your efforts will be frustrated by the other House of the Legislature."

ROEBUCK.

Addressing the ministerial majority which represented the English people in 1837, he said:

"You have tried on your knees to obtain justice for Ireland . . . and what has been your reward? CONTEMPT AND SCORN. Your enemies have trampled upon your measures; they have contemptuously delayed, changed or rejected them as the humour of their insolence suggested. . . . What ought you to have done? What you did not dare to do. YOU SHOULD HAVE BOLDLY TOLD THE PEOPLE OF BOTH COUNTRIES THAT

[1] "The British Constitution," c. 17.

JUSTICE WOULD NOT BE GAINED BY EITHER WHILE AN IRRESPONSIBLE BODY OF HEREDITARY LEGISLATORS COULD AT WILL DISPOSE OF THE FORTUNES AND HAPPINESS OF THE PEOPLE. . . . Every year sees our labours rendered abortive by the headstrong proceedings of the House of Lords."

SIR WILLIAM MOLESWORTH.

"OF WHAT USE WAS THE HOUSE OF LORDS? Their conduct afforded the nation an easy and simple reply to that question. Their conduct was politically evil. On that subject every second person with whom he conversed held opinions not very dissimilar from his own. Let them pursue their course a little further, and the period would quickly arrive (which he for one would be glad to see) when an end would be put to the privileges of an hereditary aristocracy—of that body which IN HIS SOLEMN BELIEF COULD NEVER BE REFORMED SAVE BY BEING DISSOLVED."

W. E. GLADSTONE.

"I certainly cannot deny that there is a case sufficient to justify important change. Those who hold with Mr Burke, as I do, that KNOWLEDGE AND VIRTUE ALONE HAVE AN INTRINSIC RIGHT TO GOVERN, might desire to constitute a Second Chamber, strictly on this basis." [1]

"I have said, with regard to the legislative action of the House of Lords, that I cannot defend it. I cannot deny that there is a case for large and important change—change very difficult to effect, but change for which there is sufficient and ample reason." [2]

LORD ROSEBERY.

"I believe one reason of our relative weakness, when compared with the House of Commons, is that we have no representation of the labouring classes. . . .

"There are voices both from within and from without calling

[1] Manifesto. Sept. 1885.

[2] 5th March 1886. 3 Hans. [303], 48.

for some such inquiry as that which I have advocated. The voices from without demand both revision and improvement....

"Bodies that begin to reform themselves when the hand of the destroyer is upon them do not live to complete the task....

"It will be too late to move for any Select Committee when the voice which calls for radical reform or abolition becomes loud and universal."[1]

"In 1832 you proposed the first great Reform Bill, and the House of Lords resisted it to the death. If it had resisted it a little more you would have no question of the House of Lords to deal with now."

"The Reform Bill of 1832 was a nail, and a deep nail, struck into—I will not say the coffin—but the future arrangements of the House of Lords. . . ."

"From 1886 until the present time the House of Lords has represented no balance of parties whatever, but an overwhelming mass of Tories and so-called Unionists, with a handful of Liberals among them."

"A House almost entirely composed of hereditary peers opposed to popular aspirations, and that House so composed claims the right to control and veto in all respects except finance the proceedings of the House of Commons."

At Bradford, 27 *Oct.* 1894. [The *Times.*]

LORD SALISBURY.

"We belong too much to one class, and the consequence is that with respect to a large number of questions we are all too much of one mind. Now that is a fact which appears to me to be injurious to the character of the House as a political assembly."[2]

"Every sane man knows you must have a Second Chamber. . . . Therefore, you are in the face of this position—that you must have a Second Chamber, and you have not anywhere an example of a better one than that of the House of Lords."[3]

"They (the Committee) are to consider the constitution of

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[1] 20th June 1884. 3 Hans. [289], 937 *et seq.*

[2] 9th Ap. 1869. 3 Hans. [195], 463.

[3] 20th June 1884. 3 Hans. [289], 966.

this House much as a doctor might be asked to examine the body of a diseased patient carried to the hospital." . . .

"We have a body that brings to the consideration of political matters a feeling which might be described by enemies as one of languor, but which I would describe as one of good-nature and easy-going tolerance, which enables them to accommodate themselves to the difficult part of playing second to the House of Commons."[1]

"THE RESOLUTION."

"Of course, if such a resolution (dealing with the constitution of the House of Lords) were passed, the House of Lords would pass another resolution, and these two would be put before the English people. A dissolution would follow, but the electors would vote on the particular matters nearest their hearts without thinking anything about the resolution."

At Edinburgh, 1894.

LORD CAIRNS.

"If you desire to make this House a representative Assembly, you desire to make it different from that which by the Constitution it is and always has been."[2]

SIR MICHAEL HICKS-BEACH, BART., M.P.

"Can we, as Conservatives, say that it is quite consistent with the safety of the Constitution that Parliamentary reforms should be confined to one branch of the Legislature alone? I would do nothing to impair the independence of the House of Lords; but something surely it would not be impossible for the House of Lords itself to do—something to purify itself from those black sheep who can now disgrace it with impunity."[3]

MR CHAMBERLAIN, 1884.

"ARE THE LORDS TO DICTATE TO US, THE PEOPLE OF ENGLAND? WILL YOU SUBMIT TO AN OLIGARCHY WHICH IS A MERE ACCIDENT OF BIRTH? YOUR ANCESTORS RE-

[1] 19th March 1888. 3 Hans. [323], 1590.
[2] 9th April 1869. 3 Hans. [195], 468.
[3] Feb. 1888. 3 Hans. [323], 1553.

SISTED KINGS AND ABATED THE HORDE OF MONARCHS, AND IT IS INCONCEIVABLE THAT YOU SHOULD BE SO CARELESS OF YOUR GREAT HERITAGE AS TO SUBMIT YOUR LIBERTIES TO THIS MISERABLE MINORITY OF INDIVIDUALS WHO REST THEIR CLAIMS UPON PRIVILEGE AND UPON ACCIDENT."

MR LABOUCHERE.

"How was the House of Lords composed? Members of the House of Lords were neither elected nor selected for their merits. They sat by the merits of their ancestors who were rotting in their graves; and if we looked into the merits of some of those ancestors, we should agree that the less said about them the better. The House of Lords consisted of a class most dangerous to the community—the class of rich men. . . . They were mostly partisans of one party. They were the servile and submissive instruments of the Tory Leaders." [1]

MR G. N. CURZON

(now LORD CURZON, Viceroy of India).

"In its constitutional aspect the House of Lords acted as a counterpoise to the unbalanced weight of a Democratic and Representative Chamber. . . . The House of Lords was not sufficiently representative, and might be made more representative than it was. . . . The eldest son of a hereditary peer succeeded to his title, and was bound to take it whether he was willing or not. There might be a man more fit, *but the man less fit could not be relieved of his duties.*" [2]

W. H. SMITH.

"No Second Chamber can long remain deaf to the public opinion of this country, but must advance towards it if that public opinion is consistent with the interests of the country."

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[1] 9th March 1888. 3 Hans. [323], 764.
[2] 9th March 1888. 3 Hans. [323], 788.
[3] 9th March 1888. 3 Hans. [323], 797.

LORD WEMYSS.

"He did not believe that any Assembly in the world bestowed more careful consideration upon Bills, but they did not waste time in needless talk. . . . When they spoke they did not speak for their local newspapers or to constituents. It was their inner and not their outer man that spoke."[1]

LORD KIMBERLEY.

"I have come to the conclusion that the time has come for re-constructing the House on a new and different basis. . . . I feel strongly that we cannot any longer rest on the old hereditary principle on which this House is based."[2]

SIR W. LAWSON.

"If a check were wanted the House of Lords did not supply it, for it was a grotesque body, wholly unsuited to the purpose. . . . They had either made much money, or bribed many voters, or brewed a great deal of beer, or killed large numbers of people. That was their House of Lords! . . . What he objected to was that those peers should have a veto over the legislation brought forward by the people's Representatives."[3]

JOHN BRIGHT.

"Some people tell us that the House of Lords has in its time done great things for freedom. It may be so, though I have not been so successful in finding out how or when as some people have been."[4]

"We know, everybody knows, nobody knows it better than the Peers, that a house of hereditary legislation cannot be a permanent institution in a free country. For we believe that such an institution must in the course of time require essential

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[1] 19th March 1888. 3 Hans. [323], 1580.
[2] 19th March 1888. 3 Hans. [323], 1588, 1589.
[3] 21st Nov. 1884. 3 Hans. [294], 151-2, 154.
[4] Birmingham. 27th Oct. 1858.

modification. . . . But the Constitution does not confine itself to care for the monarch on the throne, or for the peer in his gilded chamber. The Constitution regards the House of Commons as well."[1]

"I find almost every night from the beginning of the Session that the only words that have appeared on the side which is devoted to a record of the proceedings of the House of Lords are these—'Lords adjourned.'—They do absolutely nothing."[2]

SIR WILLIAM HARCOURT.

"My right hon. friend (Mr John Morley) expressed clearly the view of those who sit on these benches. The declaration which is to be given by this vote is, whether members are or are not in favour of a reform in the House of Lords, WHICH REFORM IS TO BE BASED UPON DEALING WITH THE HEREDITARY PRINCIPLE. IT IS THAT PRINCIPLE WHICH IS CHALLENGED, AND IT IS UPON THAT THAT WE VOTE."[3]

"A Chamber which represents nothing but the interests of a class—a very limited and very selfish class. . . . Let the handwriting on the wall be clear so that those who run may read; let it burn into the minds and consciences of the people that it is not upon one question, or upon two questions, that the House of Lords is the champion of all abuses, and the enemy of all reform. Let the object-lessons be many, let the moral be flagrant, let us send them up Bill after Bill. Let them maul, and mangle, and mutilate and defeat them, and then when the cup is full and the time is ripe, the verdict of the people shall be taken on the general issue, and they shall determine once for all whether the whisper of faction is to prevail over the will of the people."[4]

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[1] 10th Dec. 1858. Manchester.

[2] 13th March 1865. 3 Hans. [177], 1619.

[3] 9th March 1888. 3 Hans. [323] 811-812.

[4] Before the National Liberal Federation at Portsmouth, 14th Feb. 1894.

LORD RIPON.

"THE House of Lords IS ALTOGETHER AN ANOMALY IN DEMOCRATIC TIMES LIKE THE PRESENT. THE SYSTEM IS UTTERLY ILLOGICAL, I HAD ALMOST SAID ABSURD."

At Birkenhead, 3rd Nov. 1898.

GOLDWIN SMITH.

"The House of Lords has been everywhere taken for a SECOND CHAMBER OR SENATE. IT IS NOTHING OF THE KIND. It is one of the estates of the feudal realm, reduced by the decay of feudalism to comparative impotence, such influence as it retains being that, not of legislative authority, but of hereditary wealth. IT HAS NEVER ACTED AS (what it is imagined by political architects of Europe to be) AN UPPER CHAMBER, revising with mature wisdom, and in an impartial spirit, the hasty or ultra-democratic legislation of the more popular House. It has always acted AS WHAT IT IS, A PRIVILEGED ORDER in a state of decay and jeopardy, resisting as far as it dare each measure of change, not political only, but legal, social, and of every kind—Habeas Corpus, reform of the Criminal Law, abolition of the slave trade, and a cheap newspaper press, as well as the extension of the franchise, BECAUSE CHANGE in whatever line THREATENED, directly or indirectly, ITS OWN EXISTENCE."

MR J. MORLEY.

"In its present position, the House of Lords performs none of those functions which a Second Chamber ought to discharge. It is not a Senate; it is a privileged interest. . . . Its Divisions excite no curiosity, because they are a foregone conclusion. . . . We are moving away in every direction and in every quarter from privilege and from the hereditary principle. That weakens the whole foundation on which the power of the House of Lords rests. It is cracking and crumbling in

every direction. . . . In dealing either with the position or the composition of the House of Lords, the first step that we have to take in that direction is to affirm that the accident of birth no longer confers the right to make laws for a free and self-governing people."[1]

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[1] 9th March 1888. 3 Hans. [323], 803, 805, 806-7.

III

Chief Divisions of the House of Lords 1867-1898

Date.	Bill.	No. of Votes.	
		For.	Against.
1867-8	Tests Abolition (Oxford and Cambridge) Bill	46	74
	Church Rates Abolition Bill .	24	82
	Established Church (Ireland) Bill— Motion for Commission of Inquiry	38	90
	Established Church (Ireland) Bill	97	192
1868-9	Life Peerages Bill . . .	76	106
	University Tests Abolition Bill .	54	91
1870	Marriage with Deceased Wife's Sister Bill	73	77
	University Tests Abolition Bill .	83	97
	Refused Compensation in Irish Land Act	—	—
	Elementary Education Bill— Motion for employing Ballot as a means of Election .	53	72
1871	Army Regulation Bill— [Abolition of Purchase] .	82	162
	Elections (Parliamentary and Municipal) Bill . . .	48	97
1872	Ecclesiastical Procedure Bill— [Reform]	14	24
1873	Marriage with Deceased Wife's Sister Bill	49	74
	Register of Parliamentary and Municipal Electors Bill . .	26	62
1876	Law of Burial— Motion to facilitate Interment *without* use of Church of England Service, and for allowing optional Christian observance (such as used by Dissenters) . .	92	148

Date.	Bill.	No. of Votes.	
		For.	Against.
1878-9	Marriage with Deceased Wife's Sister Bill	81	101
	Cruelty to Animals Bill	16	97
	Sunday Opening Museums	59	67
1880	Compensation for Disturbance (Ireland) Bill	51	282
	Registration of Voters (Ireland) Bill	30	42
	Marriage with Deceased Wife's Sister Bill	90	101
1881	Motion for Sunday Opening of Museums, &c.	34	41
1882	Marriage with a Deceased Wife's Sister Bill	128	131
1883	Cruelty to Animals Acts Amendment Bill	17	30
	Marriage with a Deceased Wife's Sister Bill	165 140	158 145
	Parliamentary Registration (Ireland) Bill	32	52
	Prohibition of Sale of Intoxicating Liquors on Sunday (Cornwall) Bill * *This is equivalent to rejection.*	38*	38*
	Motion for Opening Museums on Sunday	67	91
1884	The Cruelty to Animals Acts Amendment Bill	48	78
	Motion for Select Committee to consider best means of promoting efficiency of House of Lords	38	77
	Representation of the People Bill	146 132	205 182
	Prohibiting Sale of Intoxicating Liquors on Sunday (Cornwall) Bill	39	57
	Sunday Opening of Museums objected to without division	—	—
1884-5	Parliamentary Elections (Redistribution) Bill	56	124
	Sunday Opening of Museums, &c.	64*	64*
	Women's Suffrage Bill	8	36

Date.	Bill.	No. of Votes.	
		For.	Against.
1885	Roman Catholic Disabilities (Advowsons, &c.) Bill. *Withdrawn*	—	—
1886	Marriage with a Deceased Wife's Sister Bill	127	149
	Prohibition of Sunday Sale of Intoxicants (Durham) Bill .	47 70	41 97
	Sunday Opening of Museums .	78	62
1887 and 1888	Women's Suffrage Bill.—Agreed to be withdrawn without division	—	—
1887	Irish Land Law Bill mutilated by amendments	—	—
1888	Motion for Committee to inquire into Constitution of House of Lords	50	97
	Marriage with Deceased Wife's Sister Bill	120	147
1889-90	County Councillors (Qualification of Women) Bill . . .	49	119
1891	Factories and Workshops Bill—On motion extending operation to Laundries . . .	33	82
1893	Government of Ireland Bill—["Home Rule Bill"] . .	41	419
1895	Law of Inheritance Amendment Bill	52	107
1896	Marriage with Deceased Wife's Sister Bill . . . . . On Motion for Third Reading	142	113
1897	Voluntary Schools Bill . .	109	15
	Sunday Bill	33	50

Record of the Votes of the Lords Spiritual 1863-97

Date.	Bill.	No. of Bishops' Votes. For.	No. of Bishops' Votes. Against.
1863	Acts of Uniformity Amendment .	4	13
1865	Roman Catholic Oath	—	6
1867	Representation of the People—		
	Motion that scheme inadequate	1	1
	Motion to alter qualification .	2	1
	Motion to raise lodger franchise from £10 to £15	2	1
	Other motions	3	—
		—	1
		—	1
		2	2
		2	—
1867-8	Established Church [Ireland] Bill—		
	Motion for second reading .	—	21
1867	Tests Abolition (Oxford and Cambridge) Bill	2	4
	Church Rates Abolition Bill .	—	7
1868-9	Irish Church Bill—		
	Motion for second reading .	1	16
	On other motions . .	1	13
		5	9
		—	8
	That private endowments should date from 2 Eliz. .	12	—
	Life Peerages Bill . . .	2	1
	University Tests Bill . . .	—	3
1870	Marriage with a Deceased Wife's Sister Bill	1	14
	University Tests Bill . . .	5	10
	Elementary Education Bill—		
	Motion for employing Ballot as means of Election .	5	4
1871	Elections (Parliamentary and Municipal) Bill . . .	1	—
1872	Ecclesiastical Procedure [Reform] Bill	1	6

Date.	Bill.	No. of Bishops' Votes.	
		For.	Against.
1872	Parliamentary and Municipal Elections Bill—		
	On Motions . . .	1	—
	Motion to omit "secretly" as to ballot system of voting	2	5
1873	Marriage with a Deceased Wife's Sister Bill	2	10
	Public Worship Facilities Bill .	12	—
	Register for Parliamentary and Municipal Electors Bill . .	1	—
1876	On Motion to amend the law of burial and give facilities for interment without use of Church of England Service, and for enabling an optional Christian religious observance (*e.g.* such as Dissenters use) . . .	1	16
1877	On Motion to abolish religious tests, &c., in Universities of Oxford and Cambridge . .	1	8
1878-9	Marriage with a Deceased Wife's Sister Bill	1	14
1878-9	Public Health Act (1875) Amendment [Interments] Bill . .	14	—
	Cruelty to Animals Bill . .	1	2
	Parliamentary Elections and Corrupt Practises Bill	1	—
	Sunday Opening of Museums .	—	4
1880	Marriage with Deceased Wife's Sister Bill	1	11
	Compensation for Disturbance (Ireland) Bill	1	4
	Registration of Voters (Ireland) Bill	1	—
1881	Motion to Open Museums and Galleries on Sundays . .	—	4
1882	Marriage with Deceased Wife's Sister Bill	—	17
1883	Payment of Wages in Public Houses Prohibition Bill .	2	—
	Motion for Opening Museums, &c., on Sundays . . .	—	14

Date.	Bill.	No. of Bishops' Votes.	
		For.	Against.
1883	Marriage with Deceased Wife's Sister Bill (11th June) .	—	22
	Do. (28th June) .	—	18
	Cruelty to Animals Acts Amendment Bill	—	—
	Parliamentary Registration (Ireland) Bill	—	—
1884	Motion for Opening Museums, &c.	—	10
	Cruelty to Animals Acts Amendment Bill	7	—
	Prohibiting Sale of Intoxicating Liquors on Sunday (Cornwall) Bill	5	—
	Representation of the People Bill	12	1
	On subsequent Motion .	7	1
	Poor Law Guardians (Ireland) Bill	—	—
1884-5	Sunday Opening of Museums .	—	9
	Women's Suffrage Bill . .	—	—
	Parliamentary Elections (Redistribution) Bill . . .	—	2
1886	Sunday Opening of Museums, &c.	—	7
	Prohibiting Sale of Intoxicating Liquors on Sunday (Durham) Bill	10	—
	On Motion for 3rd reading .	14	—
	Marriage with Deceased Wife's Sister Bill	—	20
1889	Do. do. do. . .	—	15
	County Councillors (Qualification of Women) Bill . . .	1	1
1890	Do. do. do. . .	3	—
1890-1	Factories and Workshops Bill [motion extending operation to laundry]	2	—
1893-4	Elementary Education (Religious Instruction) Bill . . .	5	—
1893	Government of Ireland Bill ["Home Rule"] . . .	—	22
1894	Law of Inheritance Amendment Bill	—	—

Date.	Bill.	No. of Bishops' Votes.	
		For.	Against.
1894	Marriage with a Deceased Wife's Sister Bill	—	21
1895	Law of Inheritance Amendment Bill	1	—
1896	Marriage with Deceased Wife's Sister Bill	—	19
1897	Voluntary Schools Bill . .	7	—
	Sunday Bill	—	7

Attendance of Lords of Parliament

Date.		Reign.	Lords Temporal.	Prelates.	Total.
21 January	1307.	Edward I.	87	68	155
Michaelmas,	1353.	Edward III.	64	About 60	About 124
,,	1377.	Richard II.	61	,, 60	,, 121
6 October	1399.	Henry IV.	49	,, 60	,, 109
19 Nov.	1414.	Henry V.	44	,, 58	,, 102
9 July	1453.	Henry VI.	48	,, 58	,, 106
6 October	1472.	Edward IV.	36	,, 50	,, 86
23 January	1484.	Richard III.	37	,, 55	,, 92
7 November	1486.	Henry VII.	29	,, 55	,, 84
21 January	1510.	Henry VIII.	36	,, 55	,, 91
28 April	1540.	,,	51	41	92
4 November	1547.	Edward VI.	48	27	75
5 October	1553.	Mary.	49	26	75
16 January	1580.	Elizabeth.	63	23	86
19 March	1603.	James I.	68	25	93
28 ,,	1625.	Charles I.	96	26	122
13 April	1640.	,,	111	25	136
1 May	1660.	Charles II.	42	—	42
31 January	1664.	,,	50	15	65
23 February	1688.	Will. and Mary.	68	4	72
9 March	1702.	Anne.	76	11	87
5 May	1712.	,,	74	9	83
4 ,,	1737.	George II.	79	11	90
25 ,,	1756.	,,	21	4	25

Date.	Reign.	Lords Temporal.	Prelates.	Total.
11 February 1761.	George III.	29	8	37
9 ,, 1781.	,,	60	11	71
3 March 1783.	,,	41	7	48
12 Dec. 1800.	,,	8	1	9
13 ,, ,,	,,	3	1	4
8 April 1802.	,,	25	1	26
1 May 1834.	William IV.	103	12	115
20 July 1835.	,,	98	10	108
3 August 1838.	Victoria.	130	7	137
18 February 1858.	,,	51	2	53
31 May 1858.	,,	186	11	197
2 August 1858.	,,	19	2	21
8 April 1878.	,,	228	4	232
9 ,, ,,	,,	80	2	82
5 March 1888.	,,	99	3	102
5 June 1888.	,,	96	2	98
4 December 1888.	,,	90	1	91
18 February 1892.	,,	38	4	42
19 ,, ,,	,,	31	1	32
23 ,, ,,	,,	43	2	45
25 ,, ,,	,,	55	1	56
23 May 1892.	,,	77	2	79
8 February 1895.	,,	23	1	24
14 ,, ,,	,,	49	2	51
1 April 1895.	,,	31	1	32
2 May 1895.	,,	35	1	36
3 ,, ,,	,,	60	2	62
6 ,, ,,	,,	87	1	88

IV

I.—TEXT OF THE HOUSE OF LORDS (DISCONTINUANCE OF WRITS) BILL

Introduced by the Marquess of Salisbury (see p. 280)

"Be it enacted, etc.:—

"1. This Act may be cited as the House of Lords (Discontinuance of Writs) Act, 1888.

" 2. If the House of Lords present an address to Her Majesty the Queen praying that the Writ of Summons issued to any Peer named in that behalf in the address may be cancelled it shall be lawful for Her Majesty by warrant under Her Royal sign manual to direct the said Writ to be cancelled, and thereupon the Writ shall be cancelled as from the date of the warrant, and the Peer to whom such Writ was addressed shall cease to be entitled to sit in the House of Lords during the Parliament in which such Writ is cancelled.

" 3. Where a Writ of Summons to any Peer has been cancelled in pursuance of this Act it shall be lawful for Her Majesty the Queen, by warrant under Her Royal sign manual, to direct that a Writ of Summons shall be issued to such Peer in a subsequent Parliament, or at a subsequent period during the same Parliament; but until such direction is given, a Writ of Summons shall not issue to such Peer requiring his attendance at any future Parliament.

" 4. Where in any proceeding before any superior Court in any part of the United Kingdom, a Peer of Parliament is proved to the satisfaction of the Court to have been guilty of any disgraceful conduct which appears to the Court to be inconsistent with his character as a member of the House of Lords, the Court shall report the fact, with a statement of the evidence on which the proof was founded, to the Lord High Chancellor of Great Britain, and the Lord High Chancellor shall lay such report before the House of Lords."

The Bill introduced by Lord Carnarvon in 1889 was somewhat stronger, as it provided for a report from a Superior Court of Law in case of "discreditable" instead of "disgraceful" conduct, and also in case of commission of a felony or misdemeanour.

II.—EXTRACTS FROM "CORRESPONDENCE OF KING WILLIAM IV. AND EARL GREY"[1] (see p. 295)

Enclosure in No. 442

Sir H. Taylor to the Duke of Wellington[2]

"ST JAMES'S PALACE, *May* 17, 1832.

"MY DEAR LORD DUKE,—I have received the King's commands to acquaint your Grace, that all difficulties and obstacles to the arrangement in progress will be removed by a declaration in the House of Lords this day, from a sufficient number of Peers, that, in consequence of the present state of things, they have come to the resolution of dropping their further opposition to the Reform Bill, so that it may pass, as nearly as possible, in its present form.

"Should your Grace agree to this, as he hopes you will, His Majesty requests you will communicate on the subject with Lord Lyndhurst, Lord Ellenborough, and any other Peers who may be disposed to concur with you.—I have, &c.,

"H. TAYLOR."

[1] Sir H. Taylor conducted the correspondence on behalf of the King.

[2] Vol. ii. p. 420. A copy of this letter was sent by the King to Earl Grey with a covering letter (No. 442).

N.B.—In the letters to other Peers the introduction is "with reference to what has passed between His Majesty and Y.R.H. or Y.L.," and the last paragraph is omitted, the letter ending with the words "present form."

The following letter is also worthy of notice, and especially the concluding words, which would appear to express exactly the position which the House of Lords is likely to occupy in case the House of Commons and Country insist on an Anti-Veto Bill :—

No. 458

(*Extract*)

Sir H. Taylor to Earl Grey[1]

(Private)

"ST JAMES'S PALACE, *May* 20, 1832.

"MY DEAR LORD,—I think it necessary, upon this occasion, to state to your Lordship, that, finding the progress of the endeavours I had been ordered to promote, checked by some uncertainty, or assumed uncertainty, as to the position in which the question stood, I stated to those with whom I communicated, and without any restriction as to their use of the authority, that in case any obstacle should arise in the progress of the Bill, your Lordship had His Majesty's authority to submit to him such a creation

[1] Vol. ii. p. 444.

of Peers as should be sufficient to carry the Bill, and I added that they, therefore, had before them the alternative of the Reform Bill with an addition to the Peerage, or the Reform Bill without it.—I have, &c., H. TAYLOR."

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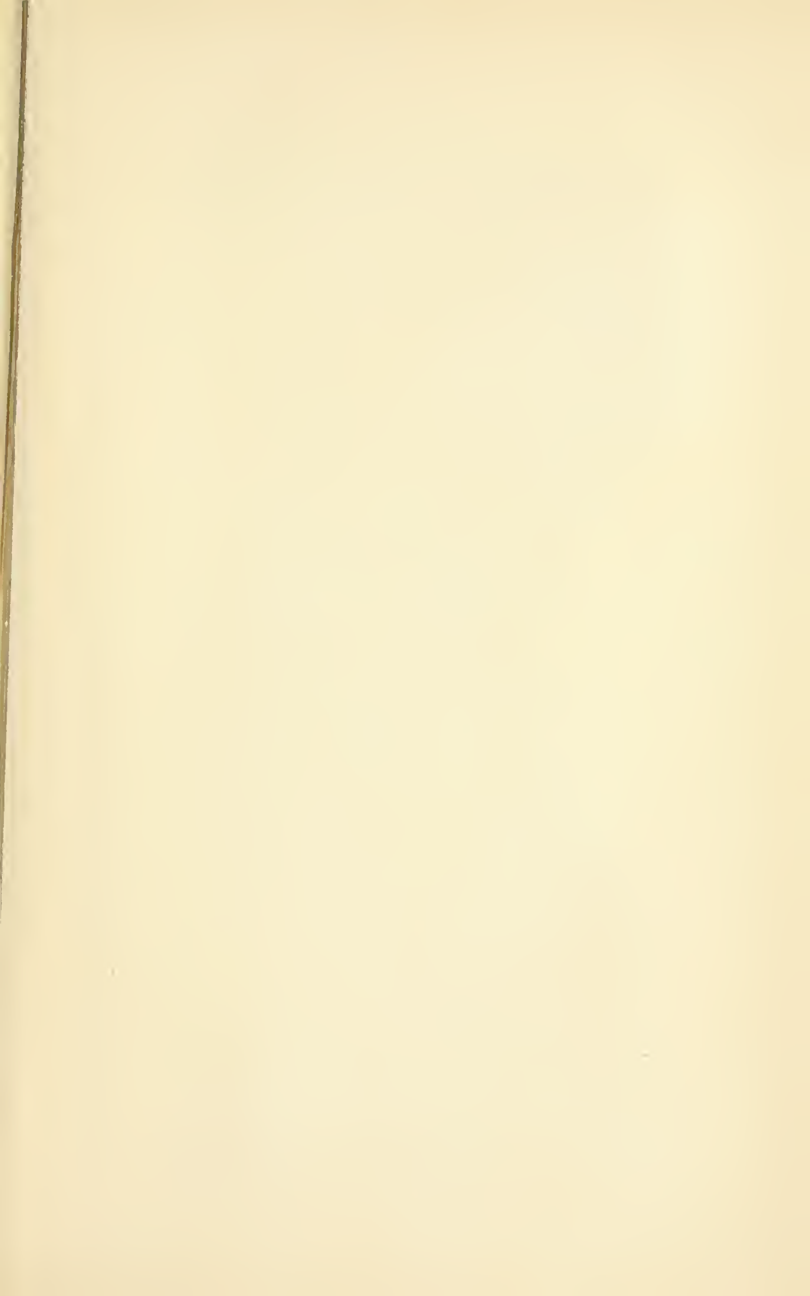

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Author Reid, Andrew (ed.)

Title The House of Lords question.

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