RIGHTS OF CITIZENSHIP

A SURVEY OF SAFEGUARDS FOR THE PEOPLE

By

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WITH PREFACE BY
THE MARQUESS OF LANSDOWNE, K.G.

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PREFACE

By the MARQUESS OF LANSDOWNE, K.G.

The writers of the essays included in this volume seem to me to be rendering a great service to the public at a time when that service is urgently needed. It has been their aim to lay before their readers in broad outline, and with as little technicality as possible, some of the aspects of a question infinitely more important than any other, upon which the people of this country will have to decide for themselves within the next few years.

The Constitution is in abeyance. It cannot be allowed to remain in abeyance. Under what kind of a Constitution do we intend that we shall be governed when the present period of chaos has been brought to an end? This question is not merely one of a number of outstanding questions. It is the master-question, and upon the manner in which the country answers it will depend the whole future of our country and of the Empire.

Before such a question can be answered, it is necessary that those who will have to answer it should know something of the working of the old Constitution, something of the treatment which it has lately received, something of the possibilities indicated by the experience of other nations and of our own Dominions.

There are few of us who do not feel that our education has been neglected at this point. Constitutional history and constitutional law do not necessarily form part of what is vaguely spoken of as "a liberal education." They are certainly not taught in the schools frequented by the mass of those upon whose votes will depend the ultimate decision of this and all other political questions. Even upon the platform and in the Press it is only of late that constitutional issues have become as prominent as they have.

To many, the mere fact that a problem is a constitutional problem is enough to stamp it as something abstruse and remote, and a speaker addressing a popular audience upon such a subject will probably apologize for its dryness, while his hearers, even if they give him their attention, will at best be under the impression that they are discussing a question which stands on a par with a whole row of others representing the ordinary stock-in-trade of the party politician.

We have indeed been content until lately to look at the quality of our legislation without enquiring particularly into the efficiency of the machine by which our laws are turned out, and if we have thought about constitutional change at all it has probably been only in connection with occasional Reform Bills which, whatever their merits or demerits, have all of them been framed professedly for the purpose of bringing the Legislature into closer touch with the feelings and aspirations of the people. But we have yet, I am afraid, as a people, to grasp the great fact that there is a difference in kind between ordinary legislation and legislation which has

for its object, not to amend or repeal a particular law, but to alter fundamentally the organic machinery by which all laws are made.

The issue has been still further obscured owing to the fact that the subject is so closely connected with that of the composition of our own Second Chamber. Many of those who are aware that there *is* a constitutional problem, have most likely supposed that it was concerned merely with the conduct of the House of Lords in declining to pass several conspicuous measures, and finally the Finance Bill of 1909, without distinct authorization from the electorate. Such persons have probably been dissatisfied with the composition of that House, which, as we are often and properly reminded, has itself admitted that it stands in need of thorough reform. They resent the idea that a Chamber constituted on so undemocratic a basis should have been able to impede the breathless progress of Radical legislation; but they have not realized the danger of stopping short at the point which we have now reached, nor have they perhaps given a serious thought to the new safeguards which must be set up in place of the mis-called "Veto" of the House of Lords, unless the country is to be left at the absolute mercy of that which the Prime Minister, in historic phrase, described as "a scratch majority." They accordingly submit to being put off with the nebulous promise of a reformed Second Chamber, embodied in a Preamble which has become a by-word—a promise which has been described by its authors as an obligation of honour, to be, if possible, fulfilled within the lifetime of the present Parliament, but of which one may say, without any

imputation of bad faith to the minister responsible for this hasty pledge, that no one now believes for a moment that it will be redeemed.

Those who watch these events are still more puzzled when they observe that under the Home Rule Bill, as introduced in the House of Commons, they are asked to give their adhesion to brand-new principles of constitutional reform for the sister island—principles which include, *inter alia*, a Second Chamber based upon nomination, together with Joint Sittings of the two Irish Houses of Parliament. These startling innovations are to take place, apparently, without a thought of the lines upon which the new Constitution of the United Kingdom is to be constructed, and in spite of the admission that the grant of a new Constitution to Ireland may have the effect of "precipitating" analogous, though possibly quite dissimilar, changes in the government of Scotland, Wales, and presumably England also; while as if this were not enough there are not wanting hints that we are to look forward to an even vaster scheme of reconstruction which shall include not only the British islands, but the whole of the British Empire.

The country has only to realize the naked facts of the case in order to realize also the outrage which is being put upon it when, with such possibilities looming in the distance, it is asked to sit down for an indefinite time amidst the ruins of the old Constitution, without any security that the task of setting up a new one will be seriously attempted, and without any safeguards against the perils to which the nation is inevitably exposed in the interim.

The space at my command does not permit me

to elaborate a description of those perils. A well-known writer, the late Professor Henry Sidgwick, has laid it down that a Second Chamber "is useful in checking hasty legislation, impeding combinations of sinister interests, and supplementing the deficiencies of the primary representative Assembly." Looking at the question from Professor Sidgwick's point of view, will any one be found so courageous as to maintain that a Second Chamber, and a Second Chamber possessing substantial powers, is a superfluity in this country?

Are there no examples of hasty legislation to which we can point? Will any member of the House of Commons venture to say that a Chamber the members of which have lately voted themselves handsome salaries, which they can, if they please, themselves double at any moment by a mere vote, a Chamber in which the existence of the Government depends upon the support of a number of groups, each of which in turn has to be propitiated, may not at times find itself at the mercy of "sinister interests," or to contend that a House has no "deficiencies to supplement" when it so completely misrepresents the electorate that while three constituencies, with one member apiece, together have 137,000 electors, a smaller number of electors at the other end of the list are represented by no fewer than 38 members? Is not the very fact that a Franchise Bill is now before Parliament a recognition that such deficiencies exist?

Are our people aware that a revolution has taken place, and that there is no country in the world in which such a revolution could have taken place and have been brought about by such methods?

Are they aware that in the principal European

States the legislative powers of both Houses are practically equal, and that in the large majority of cases a distinction is made between ordinary legislation and changes in the Constitution, special safeguards being insisted upon in order to prevent what may be termed structural alterations of the constitutional fabric?

Do they know that in some cases, and particularly in that of the United States, these safeguards form a rampart so insurmountable as to render constitutional change almost impossible?

Have they considered that in the Constitutions of our own colonies analogous safeguards find a place, that in each of the three great Dominions the legislative powers of both Houses of Parliament are equal, and that, in two out of the three, special precautions are insisted upon in the case of constitutional changes?

Have they endeavoured to familiarize themselves with the nature of any of these precautionary measures? How much, for example, do they know of the conditions under which, by means of a Referendum, it is possible in some of our great colonies to make a supreme appeal from the representatives of the people to those whom they claim to represent—an appeal disentangled from other issues, and focussed upon the particular point in dispute?

Do they realize that the present Government has taken advantage of its opportunities in order to deprive this country of the only safeguard which, until last year, it possessed under the unwritten Constitution which has hitherto sufficed for our needs?

Do they perceive that, this safeguard having

disappeared, a minister, if he can obtain, no matter by what means, the necessary amount of support in the House of Commons, can impose upon the country still further alterations of the Constitution —changes perhaps forced upon him by a faction with whose support he cannot afford to dispense?

Meanwhile all who bestow attention on passing events, certainly all who look below the surface, are dismayed at the present working of the political machine. Knowing that their powers of effectual resistance have disappeared, and that, if ministerial intimations are to be credited, they are to be superseded by a new body, small in numbers and constituted upon a purely elective basis — one, therefore, in which few of the present members of the House of Lords are likely to find a place— the Peers exhibit the listlessness which might naturally be expected from a doomed Assembly, and devote the energy, ability and experience so conspicuously possessed by many of them to other work.

The House of Commons, knowing that the House of Lords will probably consider itself not only entitled, but bound, to exercise the suspensory powers expressly entrusted to it by the Act of last year, is described as taking a languid and perfunctory interest in its work.

The country, because it realizes imperfectly the tremendous gravity of the situation, is thinking of such matters as Home Rule, or the Insurance Act, rather than of the Constitution under which it is governed.

The pages which follow have been written in the hope that they may help those who read them to grasp the situation which we have to

face. But to recognize the gravity of the situation is also to recognize that a new Constitution must emerge from the ruins of the old, and it is beyond question that, even if the present Government palters with its task, their successors will realize the solemnity of the obligation which will rest upon them.

One word more. By whomsoever the new Constitution is constructed, it cannot be imposed upon a puzzled and reluctant country. Our people must be taught to feel that this is not only a live question, but one which, on account of its far-reaching scope, because of the fact that it is fundamental, should rank in the public mind far in front of all other questions.

The authors of these chapters desire to awaken interest in these problems, rather than to suggest the lines upon which they might be solved. They are no doubt ready to do this also; some of them have done it already. But their object on this occasion is not to press upon the public this or that remedy, but to give some idea of the gravity of the disease. When that is understood, the common-sense of our people will not be slow to discern the dangers to which a purely destructive policy has exposed us, and to determine the broad lines upon which adequate measures of precaution must be framed.

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RIGHTS OF CITIZENSHIP

CHAPTER I

THE GROWTH AND MODERN DEVELOPMENT OF THE BRITISH CONSTITUTION

By the Rt. Hon. Sir William R. Anson, Bt., M.P.

The essays to which this chapter forms an introduction are designed to set forth the securities which exist in other countries, and which, till lately, existed in the United Kingdom, that the institutions under which men live shall not be subjected to important change without the full knowledge and consent of those whom they concern. The stability of a constitution is of value not only to the community as a whole, but as a security for the rights of the individual citizen.

There is nothing in our constitution which cannot be altered by an Act of Parliament. Until 1911 an Act of Parliament required the assent of King, Lords, and Commons. For more than 200 years the assent of the King has been given as a matter of course to measures approved by both Houses. Under the conditions of the Parliament Act that assent may now be demanded for a measure of

which the House of Lords has not approved. Legislative sovereignty, therefore, with the power to change our institutions at will, is transferred to the Commons.

In view of this it may be well to understand the lines on which our institutions have developed, the nature of the constitutional conflicts of the past, the process by which our system of government came to be what it was at the beginning of the twentieth century. I will try to sketch this as shortly as I can.

Early Kingship.—We begin with a time when the King was the central and essential figure in our polity. He was the leader in war; the guardian of the peace of the community; he judged; he declared such changes or affirmations of custom as corresponded to legislation. It is true that he acted with the counsel and consent of a body styled in Saxon times the Witan, in Norman times the Council; but the limitations on his power depended on the comparative wealth, popularity, force of character, and political capacity of the King, and of the members of this Witan or Council.

The history of our constitution is the history of the passing of these powers into the hands of a body of ministers responsible, ultimately, to the electors of the country, and yet we retain the language—remote from, yet not wholly devoid of, reality—which reminds us of those beginnings of our constitutional history, and of the reserve of political power which exists in the Crown.

A Statute is the Act of the King in Parliament,

yet it is only presented to the King in its completed form for assent or rejection, and by custom he assents. Every executive act of Government is the act of the King or a servant of the King, but for no executive act is the King responsible, while in the choice of his ministers, and in their policy when chosen, he is guided in the first case by an indication of the wishes of the people, in the second by the advice of ministers whom he can only change if the people or their representatives in Parliament signify that they are no longer satisfied with the men or the policy.

Epochs of Change.—The history of these changes falls roughly into three periods. The first is the period before Parliament, ending in 1295. The second covers the long struggle between King and Parliament as to the control of legislation and taxation. This ends with the Act of Settlement (1701), which consummated the work of the Revolution of 1688. Then we come to the assertion of power by the Commons in determining the course of legislation and the choice of the King's ministers, and the comparatively recent acquisition of power by these same ministers which is reducing the House of Commons to a machine for carrying out the policy supposed by them to be acceptable to the country.

In the first of these periods two points of permanent interest stand out from the very beginning. The King has always acted with the counsel and consent of a body of advisers who were composed, we may say, of great territorial

lords, and great ecclesiastics also usually lords of lands. To that extent the royal power has always been restrained, and our monarchy always limited. But it is not to this advisory body that we must look for the beginnings of Parliament.

King's Council.—We find in this assembly the magnates who became the House of Lords, and the officers of State who have become the ministers of to-day. Under the administrative activity of the Norman and Angevin Kings, the officers of the Household begin to lose their political character; the administration of the King's justice, the collection of the King's revenue, the communication of the King's pleasure, pass into the hands of the Justiciar, the Treasurer, the Chancellor. We begin to distinguish, in a rudimentary form, the Courts of Justice, the Treasury, the Secretaries of State, and the Boards, who now do the executive work of government.

Local Institutions.—But it is to our local institutions that we must look for the beginnings of popular government. Under the loose organization of the Saxon monarchy, the township, the hundred, and the shire held together when the central authority was weak. The Norman Kings retained these, used them, and linked them up with their administration of justice and finance. To the restless ingenuity of Henry II we owe the connection of local with representative government. The inquest of the twelve men of the countryside for the ascertainment of disputed fact is the beginning of trial by jury; and the use of a similar

local jury for the assessment of local liabilities to taxation is the beginning of that representation of shire and town, to hear and to supply the King's needs, which grows into Parliament.

The Charter.—The terms of the Great Charter, which was the result of the pressure of all classes, Clergy, Baronage, and Commons, upon the King, had been discussed at an assembly which, within its limits, was as representative as a mediæval Parliament of later date. And the Charter itself, though often interpreted for political purposes to mean more than was present to the minds of its framers, is memorable as the work of the three estates of the realm, as indicating in outline the division of the two Houses of Parliament, as laying the foundations of security from arbitrary punishment and taxation.

Parliament. — Thenceforward we move not rapidly but steadily towards the Parliament of which our Parliament of to-day is the direct descendant. The process of change was the supersession of an assemblage consisting of the tenants-in-chief of the King, by an assemblage of the estates of the realm, in which the Baronage appeared in person, and the Clergy and Commons by their representatives. The model Parliament of 1295 conforms in outline and in mode of summons to the Parliaments of 1910. The Baronage were summoned, as the peers are now, by writ individually; the representation of the Clergy was indicated, as it is now, in the writs addressed to the bishops; the representation of shire and town

was obtained by writs addressed to the sheriffs of counties who were bidden to call on the shire to send two knights, and on each town to send two burgesses. Collectively, the Parliament was an assemblage of the three estates. The representation of the Commons was not a representation of numbers, or classes, or ideas, but of localities. The sheriff's duty was to secure the return of two knights for his shire, and to send precepts to the towns within the shire to return two burgesses. The returns were made to the sheriff, and sent by him, as returns are now, to the office of the Crown in Chancery.

From this Parliament of 1295 much of our constitutional history may be traced as from a common source. But before dealing with the collision and conflict of the various forces in the state, it may be well to describe the composition of the two Houses in the past and as they bear on the controversies of the present.

Of the three estates summoned to the Parliament of 1295, one, the estate of the clergy, shortly ceased to attend. The bishops attended, but as part of the estate of the baronage; the clergy met, and, until after the Restoration, taxed themselves, in their own House of Convocation.

House of Lords.—The assembly of the baronage consisted at the outset of archbishops and bishops, earls, and barons. We need not stop to ask whether the bishop sits as a baron or in virtue of his spiritual office, we may regard him as a Lord of Parliament in virtue of his office. The rank of

Earl dates from Saxon times, when the earl was a kind of viceroy in the ill-compacted Saxon monarchy; the Baron was a tenant-in-chief of high degree. Edward III was responsible for the military title of Duke; Richard II turned the marcher lord into a Marquis; and Henry VI took the sheriff's title of *vicecomes* and made the Viscount a rank in the peerage. Early in the history of Parliament the rule became settled that the man who received a writ of summons and thereupon took his seat acquired a right of summons for himself and his heirs.

The number of the hereditary peers has varied, but has steadily increased. Until the end of the fifteenth century they were a bare majority of the House, and rarely exceeded 50. The Reformation took away 28 mitred abbots, and thenceforward the lay peers increased in number; yet at the beginning of the eighteenth century they were less than 200, and the creation of twelve new peers secured a majority for the peace of Utrecht. The union with Scotland added 16 peers chosen by the peers of Scotland for each Parliament, and the Union with Ireland added 28 chosen for life by the peers of Ireland; the number of Lords Spiritual is limited to 26, and the Lords of Appeal, who hold their seats (since 1887) for life, are four in number.

The rest of the House, the hereditary peerage has come into existence by the exercise of the royal prerogative, and for 200 years one may say that this prerogative has been exercised on the advice of the Prime Minister. During this time

the numbers have nearly trebled, and the House now consists of about 600 members.

The number is obviously too large for a deliberate assembly; it contains many who take no continuous interest in the business of politics, and who are free from the compulsion to attend to public affairs which a constituency can exercise; it is constantly recruited from the leisured and well-to-do class, and hence its political complexion is predominantly and uniformly conservative. The Preamble to the Parliament Act acknowledges the need and avers the intention to reform the House, but the Act itself does no more than deprive the House of its power to secure an appeal to the people against the action of a House of Commons which, as we shall presently see, is admittedly an imperfect mirror of public opinion.

The two Houses have moved in different directions. At the beginning of the eighteenth century the House of Lords was mainly Whig, it is now mainly Conservative; at the earlier date the House of Commons was certainly not a democratic assembly; it now rests on a very democratic franchise.

House of Commons.—The steps may be briefly noted. The constituency in counties consisted, at first, of those who attended the shiremoot. To ensure that elections were orderly, and that only qualified persons took part in them, an Act of Henry VI limited the franchise to residents owning a freehold worth 40s. The requirement of residence fell into disuse, and was abolished in 1774. This

is the property qualification which now exists in counties, and in a very few towns. The borough franchise was almost infinitely various. Residence, assessment to local liabilities, ownership of certain lands within the borough, membership of guild or corporation, the holding of corporate office, were the main qualifications, varied in different towns, and dependent on custom, on charters of incorporation, and, later, on the decisions of election committees of the House of Commons, where a petition was lodged against a return.

Extension of Franchise.—The Reform Act of 1832 swept these away with few exceptions, retaining the property qualification in counties with the addition of leaseholds, and occupation franchises, and making the occupation of premises of a certain value the main qualification in towns. The Representation of the People Act, 1867, introduced the resident householder, and the ten-pound lodger as qualified voters for towns, and the Franchise Act, 1884, extended these qualifications to counties. The extension of the Franchise in the last 50 years has resulted in an increase of voters from little over a million in 1867 to close on eight millions in 1912.

The Constituencies.—But we have to consider not merely the number of voters but the value of their votes, and this depends on the distribution of political power among the constituencies. The design of the first Parliaments was to secure representation of the shires and of every borough therein, and at the end of the thirteenth century

166 boroughs were summoned to send members. But many boroughs did not care to send burgesses to whom they had to pay two shillings a day for wages, even though a member could not claim his wage unless he had attended throughout the Session. Nor was the temptation of a seat very great in times when travelling was difficult and sometimes dangerous, even though privilege of Parliament protected the member, *eundo morando et exinde redeundo*, and though the King sometimes entertained the Commons at dinner at the close of a Parliament. At the beginning of the sixteenth century not more than 100 boroughs sent members, but then a change began and a seat became an object of desire.

The Tudors added largely to the constituencies. Henry VIII gave representation by statute to the twelve Welsh counties and Monmouth, and their boroughs; his children created no less than 56 boroughs by charter, nearly all returning two members; by the beginning of the sixteenth century boroughs which had ceased to return members revived their claims and were re-admitted. Charles II added Newark by charter and Durham by statute, union with Scotland introduced thirty members into the House of Commons, union with Ireland 103.

Each Reform Act of the nineteenth century has been accompanied by a redistribution of seats, and the Redistribution Act of 1885, while retaining the local character of our representation introduced with few exceptions, the single member

constituency, cutting up large towns into wards, and counties into divisions.

It is plain that an increase in the number of voters does not of itself provide a good representative system, and that political power ought to be so distributed as to give something like an equal value to every man's vote. To make such a distribution, and to maintain it despite the growth and shifting of population is no easy task. The present anomalies of our representative system are matters of common knowledge, it is enough to point out that the Romford division of Essex with nearly 53,000 electors returns one member and so does Kilkenny with less than 1750.

Franchise Bill of 1912.—The Government propose to deal with the franchise as part of a measure for simplifying the process of registration, but they do not propose to correct the anomalies of distribution. The Bill now before Parliament will abolish the plural vote, and thus deprive about half a million owners of property of their votes in places where they have local and proprietary interests; it will also abolish the University constituencies. The sincerity of these reforms is somewhat discounted by the fact that these voters and constituencies are supposed not to share the political opinions of the present Government.

Thus much for the composition of Parliament and the mode in which its present deficiencies are treated by our present rulers. We must now go back to the first Parliaments if we want to trace the struggles for the control of the purse, the

power to make laws, the choice of ministers, and the direction of policy. We have to deal with four parties in these struggles, King, Ministers, Lords, and Commons, but until we reach the eighteenth century ministers may be left out of account. They become important when the predominance of the House of Commons becomes established.

Taxation and the King.—The existence of Parliament marks the definition of Prerogative, because there is thenceforth a force in the country capable of imposing a check on the royal will; but when Edward I summoned his Parliaments he had no intention of renouncing any portion of kingly power. He regarded a Parliament as convenient machinery for explaining to his people through their representatives the needs of government, and thus obtaining supplies with greater ease and certainty.

But mediæval Parliaments and the Commons in particular took a different view; they desired that taxes should not be imposed, nor laws made without their consent. The struggle over taxation began early, and took various forms. We need not dwell on the controversies over direct taxation and export and import duties which were thought to have been settled in the fourteenth century and which were revived by the Stuarts.

James, under claim of prerogative to regulate trade, levied import duties in excess of the tonnage and poundage granted by Parliament. Charles, under pretence of needs of State levied direct taxation by way of shipmoney. Both forms of

impost were contested in the Courts, both were decided in favour of the Crown with some show of reason and precedent in the first case, with little or none in the second. The Long Parliament in 1640, and the Bill of Rights in 1689 dealt with both, the latter in conclusive terms. Money is not to be levied for or to the use of the Crown without consent of Parliament for longer time or in other manner than the same is or shall be granted.

Money Bills and the Lords.—Ministers ask for money on behalf of the Crown, the Commons grant it, and until 1911 it was necessary that the Lords as well as the King should assent to the grant. The Parliament Act makes the assent of the Lords unnecessary to a Money Bill as defined in the Act. It is worth while to note the stages in this controversy.

From the reign of Henry IV, and the year 1407 it had been admitted that grants of supplies should emanate from the Commons. In 1625 the grant was recited, for the first time, in the preamble of a Money Bill as the grant of the assembled Commons. In 1671 the King asked for a subsidy, the Commons made a grant and imposed a tax to meet the grant; the Lords altered the amount of the tax. A long wrangle ensued. The right of the Commons to initiate, and the right of the Lords to reject a Money Bill was admitted by both Houses, but the Commons insisted then, and again in 1678, that the Lords could not alter the amount, conditions or objects of the grant. The Lords neither admitted nor contested this claim, and so the matter stood until 1860.

In 1860 the Lords rejected a Bill which repealed a duty on paper, a part of the financial scheme of the year. The Commons while protesting against this interference with the arrangements of the Chancellor of the Exchequer did not dispute the right of the Lords to reject the Bill. Mr. Gladstone went so far as to say that the Lords were right in not giving up even their claim to amend a Money Bill, because "cases might arise in which from the illegitimate incorporation of elements not financial into financial measures it might be wise and just to fall back on the full extent of their privileges." Nevertheless, in 1861 and thenceforward, the Commons made rejection difficult by embodying the whole finance of the year in a single Bill.

The novel features of the Finance Bill of 1909, with the apparent "incorporation of elements not financial," impelled the Lords to use their right of rejection in order to obtain the opinion of the country on the new methods and principles of the Bill. The response of the country was doubtful, but a majority, certainly not actuated by any regard for the special features of the Finance Bill, secured its passage through the Commons, and the Lords at once accepted the decision as that of the country.

Control of Supply.—But the right to initiate and make grants of money constitutes of itself a very imperfect control over government, unless it is a control over all sources of supply, and unless it is accompanied by some security that the money

granted is issued and actually spent for the purposes for which the grant was made. While the King conducted the business of government on the proceeds of his hereditary revenues, of grants, of taxes, made to him for his life, and of occasional subsidies, systematic control of expenditure by Parliament was impossible. Appropriation of supply was first attempted when Charles II asked for a subsidy and the Commons specified in the Bill which made the provision the purposes for which the provision was made, and appointed a Committee to see to its application.

After the Revolution a further step was taken, the King was granted a revenue for life which was supposed to meet the needs of Civil Government, described as the Civil List, while the Commons undertook to provide annually for the needs of the Army and Navy. In successive reigns the Civil List has been relieved of all payments except such as concern the personal requirements of the Sovereign, Parliament has taken over the provision of all the needs of government, while the methods for controlling the issue of public money, of account and of audit, have been perfected.

Modern Practice.—A certain number of days are set apart in every Session for criticizing the expenditure of the various departments on the votes asked for to supply their needs, and other opportunities are afforded for discussing the financial policy of the Government; and yet it must be admitted that the actual control and supervision of finance by the House of Commons is somewhat

delusive. Criticism may affect public opinion outside the House; inside, it can only be effective if it take the form of an adverse vote, which is treated by the Government as a vote of censure, and resisted with all the force at a Government's disposal. Extravagance in a Government is only an offence if it touches the pocket of the voter, and it is possible to be liberal to the point of extravagance at the expense of a minority.

Legislative sovereignty, before the days of Parliaments, rested with the King and his council, though legislative change was rare and hesitating in those early days; but as early as 1322 the "assent of prelates, earls, barons, and the commonalty of the realm, was acknowledged to be necessary to matters established for the estate of the realm."

King and Commons.—Nevertheless, for some time the King made Ordinances of a temporary character with the assent of the magnates; and legislation to which the Commons were parties was obtained by petition, to which, if the King assented, he replied: "le roy le veult." But this did not always result in the law which the Commons wanted. The matter might be forgotten, or the law, as drafted, was something different to the purport of the petition, or contained saving clauses or dispensing powers. So, in the middle of the fifteenth century, the Commons sent up Bills which contained the laws they wanted, in the terms which expressed their meaning, and the King's control over legislation was thenceforth reduced to a veto,

freely used for more than 200 years, and now for more than 200 years disused.

In Tudor times, the Proclamation of the King in Council took the place of the Ordinance made by King and magnates as a rival to the Statute made by the King in Parliament.

In spite of the expressed opinion of the judges that these Proclamations were of no force except to declare existing law, they were used by Tudors and Stuarts and enforced by the jurisdiction of the Star Chamber. When that jurisdiction was taken away by the Long Parliament, the King had recourse to his power of appointing and dismissing judges at pleasure, in order to secure judicial decisions in favour of his claim to suspend or dispense with the operation of Statutes. The provisions of the Bill of Rights as to the suspending and dispensing powers, and of the Act of Settlement giving security of tenure to the judges, brought to an end the efforts of the Crown to legislate independently of Parliament.

Commons and Lords.—Laws are, or should be, made by the King in Parliament, by and with the advice of the Lords Spiritual and Temporal and the Commons in Parliament assembled. The contest then arises between Lords and Commons as to the use of their co-ordinate legislative powers by the Lords. Until 1832, the composition of the Houses was too similar in its character, and the influence of the Peers too potent in the constituencies to admit of any very wide divergence of opinion between them. When the Lords threw

out Fox's India Bill in 1783, the measure of a Coalition Government, a change of Government ensued, a General Election shortly followed, with a display of public excitement unusual in those days, but the country endorsed by a sweeping majority the action of the Lords.

Objects of Second Chamber.—The long struggle of the Peers against the Reform Bill of 1832 foreshadowed the differences which would arise when extensions of the franchise altered the social and political character of the House of Commons; but in the course of the nineteenth century a convention grew up which fairly defined the place of the Lords in our legislation. Apart from the use of a Second Chamber in legislation, as a place for amendment, reconsideration, and prudent delay, the House of Lords secured an appeal to the country by the rejection of measures as to which there was reasonable ground for supposing that the Government had mistaken or disregarded the opinion of the electors. It cannot be disputed that from 1832 onwards they invariably yielded to a definite expression of the will of the people. They did so in the case of the Irish Church in 1869, and of the Finance Act in 1910. Their action in rejecting the Home Rule Bill in 1893 was justified by the result of the General Election which took place shortly after. The Parliament Act deprived the people of this appeal.

Commons and Ministers.—Until the Commons had become beyond question the strongest force in our constitution, we do not hear much, though the

question arises from time to time, of their relations to the ministers of the Crown, and through them, to the executive policy of the State. The history of these relations is not to be found in Statutes nor in definite rules of law: it is to be traced in the changing balance of forces in the Constitution.

I mentioned earlier the beginnings of departmental government, but the men who worked the machine were for a long time the creatures of the royal pleasure, save in the case of an official too useful to be spared, or a magnate too popular or too powerful to be slighted. Parliaments of the fourteenth century asked to be told who the King's ministers were: and for awhile the Lancastrians nominated their chief officers in Parliament. Under the Tudors and Stuarts we find the King's ministers taking part in debate in the Commons. After the Restoration, the increasing hold of the Commons over legislation and supply made it necessary that close relations should be established between the Executive and that House, and the formation of parties made it necessary that ministers should be on good terms with the party which was in a majority.

The meetings of leading ministers, called Cabinets, brought together at first for the convenience of the Stuart kings, presided over by them and influenced by their wishes in policy and action, were concerned not only with affairs of State, but with the best means of securing the good will of the House of Commons. Parties took definite shape, and William III and Anne reluctantly

accepted the principle that ministers must belong to the party which possessed a majority, and must be changed if the balance of parties changed. With the adoption of this principle comes a closer cohesion of the group of ministers who for the time being work the departments of State government: they become the "King's confidential servants"—the Cabinet.

King and Policy.—But the King loses power in two directions. His choice of ministers is limited by the necessity of choosing those who are acceptable to the majority. His influence over policy is diminished when he ceased to preside at Cabinet Councils. In the reign of Anne it had become evident that policy was settled, and must be settled by the group of ministers who were in accord on the questions of the moment, and not by the miscellaneous body of political opinion represented in the Privy Council. But Anne presided at Cabinet meetings, and made her influence felt. George I did not attend Cabinets, and the presence of the King was henceforth disused. Henceforth the King acted through and not with his Cabinet. He sacrificed an influence which would vary with the capacity of the individual sovereign, but which was undoubtedly real.

King and Choice of Ministers.—But the strength of ministers, and the coherence of Cabinets must depend on the continuous support of a party, and during a great part of the eighteenth century, when no great political issues were before the country, and when, owing to the defects of our electoral

system, the constituencies knew little and cared little about the action of their members, the House of Commons broke up into groups, mainly connected by small matters of self-interest. A working majority had to be provided, and Walpole and his successors provided one by systematic corruption, by gifts of places, pensions, or hard cash. After the American war, party spirit woke up, and the grosser forms of corruption disappeared. Cabinets recognized a collective responsibility and political parties displayed a certain loyalty to their leaders. While the House was broken into groups a King, such as George III with a taste and capacity for party management, could enjoy a considerable independence in the choice of his ministers and the control of their policy, but this phase of royal power waned when parties were based on differences of principle and not on matters of personal interest.

Party Organization.—After 1832 the influence of the Commons increased in proportion as it became more representative of public opinion in the country. Ministers cannot hold office without the support of a majority in the House, but the relations of ministers to the House of Commons have undergone a change since 1885, for party leaders, once chosen and installed in office, can exercise a strong constraint upon their followers. The single member constituency in the hands of the party organizer limits the choice of the elector, unless a Labour candidate should intervene, to one of two men usually chosen from the most pronounced

upholders of the party programmes. The member when chosen is not left to the natural impulse of loyalty to a leader, or the convictions of a political thinker. Party discipline is enforced by the fear that if the orders of the Party Whip are disobeyed, the too independent member may not be the selected candidate at the next General Election, or that if selected his independence may result in defeat, or that, in any event, if he imperils the existence of the Government which he is elected to support he increases the probability of a general election with the expense which attends a contest, and with the risk that he may lose his seat, and therewith his newly acquired salary of £400 a year. The payment of members offers a fresh inducement to party fidelity.

Power of Ministers.—In the region of executive Government ministers have always enjoyed a certain independence, because they can act while a representative assembly is talking, and the criticism of Parliament may fail to focus public opinion upon their action, or in any case may come too late to be effective. But the control which a Government now exercises over legislation is modern; for ministers can apply party discipline not only to carry measures which are regarded as necessary to the fulfilment of promises made at an election, or as likely to promote the popularity or well being of the party, but they can use modern rules of procedure to curtail debate by the various methods of closure now in use.

And this control over legislation, and the

discussion which should precede legislation, formidable enough if it were only used on behalf of a party which for the time commands a majority in the country, is far more formidable under present conditions, with a House of Commons broken into groups. For these groups of Nationalist and Labour members are independent of either of the great political parties, and demand legislation for purposes of their own. The groups of the eighteenth century were purchasable by the simple processes of the time, involving, no doubt, some expense to the taxpayer. The support of a modern group is only to be obtained at the cost of legislation which may affect the community for generations. And this legislation may be carried through by the rigour of party discipline, with limited and imperfect discussion; and, since the powers of the House of Lords have been curtailed by the Parliament Act, without an appeal to the electors.

The duration of Parliament is now reduced to five years: and it cannot be too clearly understood that at a General Election the people now choose their Sovereign for that time. The King retains the power, long disused, of refusing his assent to a Bill, and of dismissing his ministers; and it is only through the action of the Crown, which, by the conventions of the Constitution, is guided by the advice of ministers, that an appeal can be made to the people from the legislative and executive sovereignty of the Government of the day.

A sketch of the growth of our Constitution

would be incomplete without some notice of the formation of the United Kingdom and the Empire.

The United Kingdom.—The union of the Scottish and English crowns on the accession of James I did not secure legislative or permanent union; and when, in the reign of Anne, the risks of foreign war and of a disputed succession made a union of the two countries a paramount necessity, it was by commercial pressure and the prospect of commercial advantages that the Scotch were induced to consent to the treaty which united the Parliaments and Kingdoms of England and Scotland. The results of the complete legislative independence accorded in 1782, to what is known as Grattan's Parliament, made a union with Ireland inevitable. It is significant that both Acts of Union were passed when the country was engaged in a great European war. Such times do not admit of divided counsels in these islands. Enough has been said elsewhere of the features of Home Rule for Ireland, or that more speculative adventure in constitution-making which is described as Home Rule all round. We have before us in the Dominions the examples of Colonial self-government, and, in Canada and Australia, of Federal Government. We can judge for ourselves how far either system is applicable to the component parts of the United Kingdom.

The Empire.—The experience of our colonies tends to show that where the Dominions of the Crown are too remote to form an integral part of the kingdom, there is practically no half-way

house between Crown Colony government, that is, government responsible only to the Imperial Parliament, and responsible government, that is, government responsible to a colonial legislature. The colonies, which possess popularly elected assemblies, and a nominative executive irresponsible to the Assembly, are survivals of a type of constitution which elsewhere has either moved forward to self-government, or back to the *status* of a Crown colony.

It would be impossible to sketch even in outline here the process by which our Empire has grown up almost at haphazard; but in dealing with the constitution under which we are now living, it is necessary to think of it in relation to the responsibilities of Empire. Where we govern directly, as we do govern millions in the East, we need some security that our rule ensures, not only good intentions, but stability of purpose, and of institutions. Where we have given responsible government, as we have given it to the great Dominions in Canada, in Africa, in Australasia, we must yet be prepared to defend them in the last resort, and give them the benefit of our help and experience towards the solution of the great and various problems which lie before our children in those lands, and our own constitution should be adapted to these ends.

CHAPTER II

THE PARLIAMENT ACT CONSIDERED IN RELATION TO THE RIGHTS OF THE PEOPLE

By the Right Hon. F. E. Smith, K.C., M.P.

At the time of the General Election the Parliament Act was everywhere recommended as the restoration to the constituencies of the right to govern England. The House of Lords, such was the suggestion, had usurped powers which they had never legally possessed, and the time had come, once for all, to render them helpless. This point of view was rhetorically expressed in the familiar question, illustrated by a disgusting cartoon, "Shall six hundred peers rule six million Englishmen?" The measure has now been in operation for a period sufficiently long to make it possible to examine, in a perspective somewhat calmer than that of a General Election, the justice of the claim underlying these representations.

We are, all of us, agreed that for good or for evil we are governed by democracy. The apparent tendency is to extend rather than to restrict the popular character of our Government. It is, indeed, perhaps a safe prediction that the

government of this country will remain democratic unless the tendency above adverted to should be arrested by civil convulsions. This speculation, though full of interest, would carry us too far from the immediate subject of inquiry. Democratic government has many merits, and it suffers from some not inconsiderable defects. Some critics will lay stress on the merits, others would be more impressed by the defects, but all alike will agree that it is supremely important, as long as we purport to be governed by democracy, that the reality of our constitution should correspond with its labels.

There is much to be said for a democratic system of government, as there is much to be urged on behalf of an autocratic system. There is nothing whatever that can be urged in favour of a constitution which, under the name of democracy, has in effect concentrated every faculty of government in the hands of a small clique which has cheated the people of every vestige of effective control over the national policy. It is the object of this article to show that the present Cabinet is such a clique; that the Parliament Act is the instrument by which they have speciously effected their purpose; and that, so far from having restored power to the electorate, they have by a fraud persuaded democracy to sanction a more supreme abdication of power than any democracy has ever voluntarily made in the history of the world.

Many illustrations might be given to support this view. The Insurance Bill is as instructive as

any. The Prime Minister assured the country that adequate powers to delay unconsidered, or imperfectly understood, legislation would still remain to the House of Lords. The Insurance Act was sent to the Second Chamber for consideration at the very end of a Session already protracted beyond precedent, and under circumstances making it evidently impossible for that House to give the time necessary for its consideration. The House of Commons had bestowed many months upon the measure without a single obstructive discussion; and yet many of its most vital provisions were hardly discussed at all. Three or four months would have been required for the purposes of a serious or useful consideration in the Second Chamber, and indeed the Parliament Act expressly gives the countenance of a statute to the most extreme claims ever made by the House of Commons in respect of financial privilege, and any amendments of importance made by the House of Lords to the National Insurance Bill must have had a financial aspect, and would have been denounced as a breach of the privileges of the House of Commons. The Government, under the stress of their Irish obligations, sent the Bill to the Lords at a date and under circumstances which ensured that the Bill should become law with as little reference to the Second Chamber as if the forms of that assembly had been destroyed as completely as its substance. The Act, in fact, was passed under a uni-cameral system of government, and it is very material to notice that not even Mr. Lloyd George

has claimed that his proposals were ever submitted to or sanctioned by the constituencies.

It is, under these circumstances, illuminating to analyse some of the Prime Minister's recent references to the supposed electioneering consequences of the Act. He has told us that the Government never expected it would be an asset, and that they introduced it, not because they thought it would be popular, but because they were satisfied that it would at least be beneficial. Similarly, Mr. Lloyd George has informed an admiring interviewer that every statesman worthy the name must be prepared to carry measures which are unpopular. These expressions of opinion suggest much material for thought.

If a grateful country had unanimously requested the Prime Minister to be good enough for the next few years to discharge in his own person the functions heretofore vaguely distributed between the Lords, the Commons and the Constituencies, his position would be perfectly intelligible. He would, under those circumstances, be entitled to pass this Act or any other Act which he himself thought, or Mr. Lloyd George persuaded him, was likely to benefit the community. Nor would it be necessary in such a case to consult the people. But in the actual circumstances the claim put forward is astounding in its naïve assurance. Mr. Asquith says in effect, "I have restored to the people by the Parliament Act the right to govern themselves; I have given a new charter to democracy, and, having enfranchised them, I pass a complex

measure, affecting every household in the country, which is not 'an electioneering asset'"; or, in other words, which the people do not want and against which they would vote if they were afforded an opportunity.

Nor can the answer be made that the Insurance Act is likely to prove an exceptional case. There is no reason whatever for supposing that it will be so, and there is every reason for supposing that it will not. The Parliament Act depended upon one principle only, that there is an irresistible presumption that every new House of Commons so completely represents the constituencies on every conceivable subject which may assume legislative form that it is unnecessary under any circumstances to consult the people upon any proposals which any House of Commons may sanction during the first two years of its existence. The strength of this chain is the strength, neither more nor less, of its weakest link. If it can be shown that a House of Commons in the first two years of its existence has passed or will pass a Bill which the constituencies, if they retain the power, would veto, it is apparent that by whatever other arguments the measure may be supported it cannot appeal to those which draw their strength from the principles of democracy.

Accident, or the weakness of the Government, or both, have provided us with a method of testing the working of the Parliament Act which is even more striking than that furnished by the Insurance Act. The Franchise Bill is drafted in such a

manner as to allow an amendment which will enfranchise a certain number of women. Whether such an amendment will receive the support of a Parliamentary majority no man living can confidently predict. Suppose, for the sake of argument, that it is carried. We shall be face to face then with a measure passed by the House of Commons in that halcyon and sacro-sanct period in which every supporter of the Parliament Act is bound to admit that the First Chamber necessarily reflects the real wishes of the electors. If the Parliament Act was well-conceived it is evident that the Government have the same right, neither more nor less, to carry into law Female Suffrage without consulting the constituences as they have to carry Home Rule and Welsh Disestablishment. But recent occurrences have made it abundantly clear that some of the strongest supporters of the Parliament Act are of opinion that the biennial period may be freely used to carry into law every change, however novel and far-reaching, which they desire, but that it cannot without the gravest impropriety be used for the purpose of carrying novel proposals of which they disapprove.

A great demonstration was recently held at the Albert Hall to protest against the concession of votes to women. The meeting was addressed by Lord Loreburn, the late Lord Chancellor, and he was supported upon the platform by, I think, no fewer than fifteen of his colleagues. He stated, and evidently with their consent and approval, that it would be "a constitutional outrage" to pass Female

Suffrage by an amendment of the Franchise Bill and without an appeal to the constituencies. Why? Such an amendment will, on the hypothesis, have received the assent of a House of Commons at the very moment when the Parliament Act teaches that the House of Commons for all purposes represents the people. Why is one subject, and one subject only, to be withdrawn from the legislative field upon which this inspired assembly is otherwise permitted to browse in uncontrolled enjoyment? It is no answer to say, as I have myself said in another connection, that however little Home Rule was before the country, Female Suffrage was never before it at all. An opponent of the Parliament Act may draw these distinctions; they are not open to a supporter. No person can hold the view that the House of Commons is constitutionally incapable, except by outrage, of carrying Female Suffrage unless he shares our view that the expediency of committing supreme powers to a Single Chamber during the period permitted by the Parliament Act is inexpedient and ought to be abolished.

It is, therefore, necessary to admit, firstly, that the short period which has elapsed since the Parliament Act became law has made an irreparable inroad upon the principle upon which it was confessedly based; and, secondly, that it admits the risk that measures may become law under its protection which are, in Lord Loreburn's phrase, outrageous. The events which are taking place before the eyes of the country to-day show in a

variety of other ways how deeply injurious the measure in operation is proving to those popular rights which it promised to found upon a permanent and unassailable rock. When a new House of Commons meets it will henceforth become necessary for ministers to draw a sharp line distinguishing such of their legislative proposals as they really wish to become law from those towards which they feel a vague benevolence, or in respect of which they are bound by unattractive historical commitment. All those measures which fall in the first class will be, and indeed must be, brought forward and carried through their stages either in the first or second Session of the new House of Commons in order that it may become law without consideration by the constituencies.

The result is that the extent of our Parliamentary labours is, and always will be henceforth, determined, not by reference to the amount of work which the House of Commons can reasonably and usefully perform, but by reference to the number of measures which the Government, either to maintain or to prolong their existence, must introduce. The menace to popular liberty of such a system is profound. Suppose, for the sake of example, that the Cabinet of a newly-elected Government decides that six measures at least shall become law before they go out of office. It may well be that every one of those measures would require, unless the Insurance muddle is to be repeated, a whole Session of Parliamentary consideration. The measure may require it, but

it will certainly not receive it. Time-tables will be automatically formulated depending not in the least upon the importance of the measure, but upon the available period, having regard to the claims of other measures, which must also become law in the preferential period.

Such a state of affairs makes it clear that deep and vital as was the injury done by the Government to the House of Lords, they have inflicted on the House of Commons a blow far more serious. The House of Commons, indeed, under its present masters, has become as weary of itself as the country is weary of it. The people do not read our debates, the popular Press does not report them, and our legislators do not listen to them. Vast, complex and often unintelligible proposals succeed in alternation to the Parliamentary stage with a rapidity which not only bewilders the intelligent politician in the constituencies, but leaves many quite reasonably intelligent Members of Parliament wholly ignorant of the measures which they daily support by their votes in the lobby.

The state of affairs, thus produced, would be ludicrous if its consequences were not so tragic. The actual results of the Parliament Act up to date may be exhibited in the following way. (1) The constituencies have lost all control over the legislation of the House of Commons during the period in question; by-elections are sneered at as the fruit of misrepresentation. (2) The House of Lords has no control over legislation during this

period: it can only postpone measures, sharing the hope of Mr. Micawber that something will turn up in the course of the following two years. (3) The House of Commons has no control over the legislation of the first two years.

The third of these propositions may, at first sight, appear somewhat paradoxical; it is, in fact, less obvious than the first two, but I believe that on analysis it will appear equally well-founded. Every supporter of the Government in the House of Commons knows that if the Government are defeated during that period on an occasion of importance they will resign and an election will follow, but every supporter of the Government is determined under no circumstances to contest a premature election, and he is more particularly determined when the political barometer happens to be low. It is notorious, and no honest man who knows the House of Commons would deny, that many members habitually vote for measures of which they disapprove, supporting themselves by the reflection that it is better to maintain in office a Liberal Government of whose policy they disapprove in one particular, than to give a vote which would place in office the Conservative Party of whose policy they disapprove in every particular. Not only is this view natural, but it can be defended by very respectable authority. Burke said something very like it in his famous vindication of government by party, but if it be true—and that alone is the relevant inquiry in the context—it is evident that the third proposition is as true as the

other two, that the House of Commons exercises no control during the period when control is most necessary.

But if the Parliament Act has excluded from a real influence over legislation the Constituencies, the House of Lords, and the House of Commons, by what man or body of men are these enormous powers in fact exercised? Who is it, in other words, who governs England with unrestricted power, controlled by no checks or balances, and able to write his or their will on all subjects upon the pages of the Statute Book? The legatees of the people, the Lords and the Commons, are the Cabinet of the day. They operate with no restraint except such as may be furnished by remote electioneering apprehensions, and they always have at hand for a rainy day Mr. Lloyd George with a new Limehouse speech or new land propaganda. Whether the people like their new Constitution remains to be seen, but if they do, and are prepared to stereotype it, they may have many other merits but they will have ceased to be democrats.

An answer is frequently attempted to these objections, as stupid as it is superficial. It is contended that all these mischiefs existed whenever a Conservative Government held office, but that the present critics of the Parliament Act were quite unconscious of their evil consequences to the Commonwealth. The statement is grossly exaggerated. I have before me as I write the volumes of the Statutes which were passed during the ten years before 1906, and side by side with

them the volumes containing our legislation from 1906 to 1911. A comparison of the size of the volumes during the respective periods is the most effective distinction between the two cases, but I will not elaborate either this or other obvious grounds of differentiation. Let me, for the sake of argument, accept the contention at its face value, and attempt to appraise its controversial value.

The Liberal Party during the last thirty years has almost invariably, when in office, come into collision with the House of Lords. In the discussions which have followed, Liberals have always contrasted the state of affairs which exists under a Unionist Government with that of which they complained when themselves in power. They have pointed out that Liberal Governments were constantly harassed by a partizan Second Chamber, whereas during every period of Conservative Government the country was altogether deprived of the control of a Second Chamber. I do not make here the obvious point that it is the very boast of the Liberal Party that they stand for progress and change, that they commonly reproach the Unionist Party with stagnation and reaction, and that therefore any Second Chamber, however impartial, will certainly be more active when the party which continually proposes great changes is in power, than when the other party is in power. I do not develop this point because, although the statement which I am examining is grossly exaggerated, it does none the less contain a certain element of truth. It is, and has been the case for

many years that under Conservative Governments there was too close a correspondence between the Government of the day and the House of Lords. No House of Commons, however little disposed to rash and hazardous experiment, can be trusted with both the initial and the final control over legislation.

It is a commonplace that no great country in the world is governed to-day by a Single Chamber. The Conservative Party, of all parties, ought clearly to recognize that of all great issues which concern the party of order and stability, none is more vital than the existence of an effective Second Chamber. If such a Chamber be honest, strong, and independent, it matters little what the party labels of its members may be. Therefore every period during which the Conservative Party has carried on the Government of the country without any real interference by the House of Lords has supplied our opponents with a most dangerous object-lesson of Single Chamber government in operation. These considerations led me in the crisis a year ago to contemplate with great composure the creation of even a considerable number of Liberal Peers. The persons so promoted, if carefully chosen, would have afforded a useful panel, the existence of which would have made it possible to appoint 150 Liberals, and as many Conservatives out of the total number of Peers as Lords of Parliament. This opportunity was lost, and greatly as I myself dislike the idea of an elective Second Chamber, the existence of which

will, in my judgment, destroy what remains of the prestige of the House of Commons, I see many signs that one or the other party will be driven to propose the solution of an elective Second Chamber as the most defensible and logical method of escape from our constitutional difficulties.

And it may be further observed that although the Conservative Party is, on the whole, the cautious party, there have been many occasions, normally recurrent in its history, in which it has made itself the instrument for effecting the most far-reaching changes. Peel, Disraeli, Lord Randolph Churchill, and even Lord Salisbury himself, introduced many momentous changes in the consideration of which no one could contend that the help of a Second Chamber would be superfluous. Recent history affords us an illustration both convenient and forcible. Mr. Balfour, after the Khaki Election, introduced two measures, the Education Act and the Licensing Act, which had certainly, to put it mildly, not played a particularly prominent part amongst the subjects discussed at the General Election, and each of these Bills introduced very important changes in the subject-matter to which they respectively related. The Liberal Party complained most persistently and bitterly of the conditions under which these Bills became law, without, as they alleged, a mandate from the people, and under the conditions of Single Chamber Government. Many persons who were in entire agreement with the policy of Mr. Balfour's great Education Act felt that there was some force

in the complaints so loudly put forward. The adoption, however, of the policy which has been incorporated in the Parliament Act has left Mr. Balfour's Liberal critics without a rag of consistency. They complained that a Unionist House of Commons passed two great measures without an appeal to the people, and the principle of which had never been sanctioned by the people. When their time comes to formulate a constitutional remedy, instead of strengthening the Second Chamber and rendering the repetition of an undesirable state of things impossible, they stereotype it in the Constitution, and enable every Parliament, Conservative and Liberal alike, to do exactly the thing which they found so unconstitutional and so dangerous.

It is, I think, clear that they were right in their earlier view, and that they are wrong in their present view. I have stated reasons for the conclusion that even a Conservative Government would be stronger, and its legislation better, if an effective Second Chamber revised their measures; but the arguments become overwhelming in their strength when we consider the position of a Coalition Government. The present Ministry is kept in office by Liberals, Nationalists, and Labour members. They all want a few of the same things, but each of the sections wants, in addition, a number of things which the other sections do not want at all. The objects which they commonly desire are neither sufficiently numerous nor sufficiently popular to constitute the whole Parliamentary stock-in-

trade of their supporters. Each group, in other words, does not get enough of the things which it most particularly desires, hence the necessity for an elaborate system of bargaining. The Irish Party, for instance, wants Home Rule. The Welsh Party wants Welsh Disestablishment. The Irish Party is notoriously indifferent about Welsh Disestablishment, but very anxious to procure Welsh support for Home Rule. Hence the Union is bargained for the Church in Wales. Instances could be multiplied, but they will occur to every one, and the statement of phenomena so evident need not be prolonged; but it must most carefully be observed that this state of things makes it absolutely certain that measures will be introduced which are positively disliked by a majority in the constituencies. The Labour Party, for instance, whose strength in the constituencies is at present negligible, but whose votes in the House are at the moment vital, are able to stipulate for a Bill repealing the Osborne Judgment, to which I am certain the working classes are resolutely opposed.

These inconveniences and dangers were serious before the Parliament Bill became law: they have become, under its operation, a grave menace to the stability of our whole political system. There is no mode by which the constituencies can make their desires effectively felt at the critical period in which alone an unpopular measure may be defeated. Public meetings are useless for the purpose. Any party can fill the Albert Hall with cheering crowds in support of any cause, from

Female Suffrage to Anti-vaccination; and even by-elections are scarcely more helpful. No one knows whether vacancies are likely to occur when they are most required, or in seats where there is ever, under any circumstances, a defection from the party in power. It may, however, be stated that an ultimate check is always present, like Black Care behind the ministerial horseman, namely, the fear of an election Nemesis when the inevitable appeal to the country comes at last.

But to this reassurance there are at least two important qualifications. In the first place, however paradoxical it may appear, ministers occasionally become exhausted, and consequently willing to see the responsibility of government in other hands; and if their work has been effectively and unalterably done, they may contemplate with indifference the certainty that the result of an election will change the Government of the country. The second qualification is even more important. If ministers do desire re-election, they will be irresistibly tempted to change the whole character of the issues on which they will be tried by the constituencies. For instance, suppose, to take an extreme illustration, that the present Government were to carry into law all their programme amid growing signs of popular resentment. Suppose, further, that when their work was done twelve months remained in which to conciliate the constituencies, ministers are left face to face with an overwhelming temptation to devise a great policy of debauchery or class-hatred, in the

hope that the popular attention may be diverted for the moment from the legislation by which they ought to be judged. Does any one, for instance, suppose that Mr. Lloyd George ever intended to allow an appeal to the country in which the principal issues would have been Welsh Disestablishment and Home Rule?

These considerations are, I hope, sufficient to show clearly the great danger to the whole cause of democratic government, and to the vital interests of the people, which exist, and will exist, so long as the Parliament Act, in its present shape, is on the Statute Book. Under its provisions the constituencies enjoy neither protection nor security, and it is certain that measures will continually become law which are opposed to the wishes of a majority of the electors. Under these circumstances, it is of vital importance that the Unionist Party should clear its mind and decide how great a price it is worth its while to pay for the abolition of conditions so disastrous. I am persuaded that the only solution will be found in the creation of a Second Chamber commanding the confidence of the country, and therefore reasonably claiming the restoration of the powers of which the Parliament Act robbed the House of Lords. It is extremely unlikely that any Chamber will receive so large a measure of public support unless it can be recommended to the constituencies as independent and impartial.

CHAPTER III

THE CONSTITUTION AND THE INDIVIDUAL

By Lord Willoughby de Broke

The British Constitution and all that it means both in letter and spirit is of vital importance to every man, woman and child in the United Kingdom. There never was a time in the whole history of the nation when it was more necessary than now for each one of us to remember the benefits that have been gained in the past by living under this Constitution, and to realize the damage that we are now suffering through its being destroyed by the abuse of Party Government of which the last stroke was the passage of the Parliament Act through the House of Lords.

From within a few hours of the passing of that Act we have been plunged into a series of strikes which have brought hunger, cold, and unemployment to those who are least able to help themselves. Moreover, the very security of the nation has been seriously threatened. We are told that all this is due to "the spirit of the age." Bishop Welldon tells us that the spirit of the age is the most intoxicating of all spirits, and that it springs from education and the political power of the working-

classes. If these things be true, the spirit of the age will one morning give us all a very bad headache unless we correct it by a strong dose of the national commonsense that has built up through the ages the wonderful fabric of rights and duties which we call the Constitution.

For the present struggle is not only a struggle about wages. Those who are really underfed and grossly underpaid are taking no part in it. The war is not being fought on behalf of those who are working inhumanly long hours for a starvation wage. The strife is being engineered by those who have been rich enough to combine to frighten Parliament into placing them above the law, and who propose to follow up their advantage by holding up supplies of food and coal. They have proclaimed that they themselves are the Government. It is not for a moment suggested that the last word has been said with regard to well-paid labour. But the general public cannot ignore the fact that one of the most serious aspects of the question is the undisguised attempt of a particular section of society to overthrow Constitutional government. Everyone who is interested in the security of contracts, in equality before the law, in the maintenance of personal liberty, justice, and fairplay will have to look to it that in the end the Caucus shall not be allowed to defeat the Constitution.

Before considering how the Constitution affects "the man in the street," it may be well to state what it means. We have lived so long under a

form of government that has worked so smoothly on the whole, that most of us have taken many things for granted which we shall now be obliged to examine for ourselves. Some people have a vague idea that the Constitution is a matter for scholars and dons, or the concern of politicians who want to distract attention from what is called Social Reform. Ask the first twenty people you meet how they are governed, and you will get a variety of answers, ranging from the sanitary inspector to the King of England. These answers may not be complete, but they will convey a good deal of truth, in that both the King and the inspector owe their position to the law of the land, the spirit of which ought to form in the last resort the control and the refuge of every citizen.

Our Constitution in its first and best sense intends that the law shall be made by the national will acting through Parliament, and that all disputes about the law shall be dealt with in the Law Courts. These are the two chief features of the political institutions of the country, and it will be seen that everyone may be liable, sooner or later, to be brought into contact with them. Particularly is this so at the present moment, when it is rightly or wrongly becoming the fashion for the State to meddle more and more with our most intimate affairs. The Insurance Act is a case in point. No Act has ever been passed in this country of so universal a character. No one can escape from it. This is not the place to discuss its details; it is

enough to remark that the nation is restive and annoyed not only at the burdens it imposes, but at the manner in which it became law. It was hurried on to the Statute Book in a thoroughly unconstitutional manner. Anyone who is aggrieved by the Insurance Act in the future will be aggrieved because the spirit of the Constitution has been violated.

For the term "Constitution" in its broader sense means something more than the actual powers of Parliament and the Law Courts. You constantly hear of something being "constitutional" or "unconstitutional." These two terms are not capable of exact definition; but in the main an "unconstitutional" action is one that overrides either in or out of Parliament the cardinal ideas of equity that have been evolved by commonsense, and are the property of every native of Britain. They are not embodied in any catalogue, and have not always got a legal sanction; but on this very account these ideas should be most zealously guarded. The fact that we have no written Constitution renders them liable to insidious and veiled attacks not always easy to recognize, and tending to whittle them away without anyone being able exactly to say how the deed has been done.

It will be necessary to deal later on with the very dangerous powers of Parliament in this respect. For the present it is vital to bear in mind the general ideas that until recently have more or less animated the action of legislative and executive

authority in this country. The chief of them is that every man shall enjoy the fullest personal freedom, in which is included, with many other rights, the right freely to offer and exercise his labour; that contracts shall be adhered to; that all classes shall be equal before the law; that no one shall lawfully suffer except for a distinct breach of the law; and that no one shall be imprisoned without being brought to trial. To these must be added freedom of worship, and the right of everyone to the free ministrations of an established Church, wherever its endowments permit. These principles are dotted about all over the pages of English history. It seems almost childish to have to state them again at this time of day. But they have had to be affirmed and reaffirmed at times of national crisis in historical documents like Magna Charta, the Habeas Corpus Act, and the Petition of Right; and since the Parliament Act of 1911 has mutilated the Constitution, it is necessary that they should now be asserted once more. Their importance to each citizen cannot be stated too strongly. They form the very bedrock of the universal right of opportunity to civil and religious liberty that was enjoyed in this country long before it prevailed in many other western states, and has been the distinguishing feature of our national life. But great crimes have been committed, and seem likely to be committed again, in the name of civil and religious liberty; and the individual must, therefore, take stock of the powers that be, and the way in which they are working.

The most important of these is the Parliament of the United Kingdom of Great Britain and Ireland. Some would have us believe that forms of government do not matter very much, and hope that in some mysterious way "it will be all right on the night." They take refuge in the half-truth of Pope's lighthearted couplet—

> "For forms of government let fools contest
> That which is best administered is best."

Our form of government is supposed to be representative. It took definite shape in the reign of Edward I, who came to the throne in the year 1272, and has been handed down to us practically intact. Parliamentary government, as we know it, means government by King, Lords and Commons, and has been admitted by all great thinkers both at home and abroad to be the finest balance between authority and freedom that the world has ever seen. Whatever Pope may say, they were no fools who fought for it and preserved it through the centuries. But the second line of his couplet contains the real truth. The balance between authority and freedom, which is the great safeguard of each individual, falls to the ground as soon as Parliament ceases to be administered in the national or constitutional spirit. Whenever the King has tried to encroach upon his subjects, or whenever ministers, greedy of place and power, have exceeded the moral trust reposed in them, the cause of personal freedom has always suffered, and the lovers of liberty have been forced to assert themselves to restore the balance. The extreme

point was reached when the Constitution was abolished altogether by Oliver Cromwell, who set up in its place an Instrument of Government that was speedily rejected by the commonsense of the English people, who found that the excesses of an unbridled House of Commons were far worse than the worst caprices of Charles I. The hereditary King and the hereditary House of Lords were accordingly recalled, and on May 29th, 1660, government by King, Lords and Commons was restored.

This form of government continued until August 10th, 1911, when the Radical Caucus succeeded in coercing King, Lords and Commons into destroying the balance which, on the whole, had worked with success, inasmuch as both political parties had in a greater or less degree "played the game." But it would not be fair to leave out of the account the fact that Liberal or Radical Governments have for years past found it difficult to manage their various groups within the limits of a free Constitution that was expressly designed to give effect to the national will, and not to class prejudices. Lord Beaconsfield warned the nation as far back as 1872 that the tone and tendency of Liberalism could not long be concealed; that it was to attack the institutions of the country under the name of Reform, and to make war on the manners and customs of the people under the pretext of progress. The Radical campaign against the Constitution has culminated in the Parliament Act. Before saying anything about the form of government that now prevails under that Act, let

us consider the position of a private individual in relation to the Parliament under the late Constitution.

Parliament, which strictly speaking, means the King in Parliament, was in the legal sense absolutely supreme. Everything in the daily life of each citizen might be affected by any law which was passed by the Houses of Parliament and assented to by the King. Parliament had the power of making what new laws it pleased or of altering or repealing any existing laws. It could alter the succession to the throne and abolish any institution you like to name. In fact it has wittily been said that Parliament could do anything except make a man a woman and a woman a man.

It must be remembered that Parliament does not mean the government of the day. The government of the day, or the political party that had a majority in the House of Commons was subjected to legal checks; for instance, any of their Bills might be rejected by the House of Lords, or in the last resort by the King, and so fail to become the law of the land unless passed by a subsequent Parliament. But the Parliament as a whole was all powerful from the legal point of view. From the moral point of view it was only answerable to its own conscience, a commodity which public bodies do not as a rule possess.

At the beginning of the reign of George I the Parliament then sitting dared not face a general election for fear it might turn out to be unfavourable to the Hanoverian succession. A general

election was due, as Parliaments were then elected only for three years. The Ministry persuaded Parliament to pass an Act prolonging their existence for seven years.

Many people may think that Parliament would never do anything so high-handed at this time of day. The answer to that is that a Parliament whose conscience will allow it to pass the Parliament Act without the electors having seen the Act in its printed form at a general election, and then vote the members of the House of Commons a salary of £400 a year without consulting the electors, is capable of anything. The ordinary elector, therefore, to say nothing of those who have got no votes at all, had even under the late Constitution, no legal check whatever over the supreme governing body of King, Lords, and Commons—no legal check, and very little moral check. It is certainly true that all despots whether they be Sultans, or Caucuses, or Parliaments, are sometimes restrained by the thought that they may not be able to enforce their laws owing to public opinion deciding that they shall not be obeyed, but it should be remarked that this force would probably act with greater restraint upon a single despot than upon a popularly elected body. The rule of a despot is absolute, both in name and in appearance. The rule of a Parliament is absolute, but has the appearance of being free, in so much as one of its bodies is elected by the popular vote. But if the potential or actual absolutism of Parliament is dangerous, and particularly dangerous

if it can carry out its despotism with the plausible appearance of being a free government, still more intolerable is the absolutism of the majority in the House of Commons. It is this very absolutism that our system of checks and balances was designed to prevent; yet, even these checks and balances are relative and not absolute, as they can be got over by a cunning and unscrupulous ministry.

As a matter of fact, the whole theory of our representative government rests upon a series of fictions. People have believed in these fictions in the past, because the tenour and intention of the Constitution was obeyed by those who worked it. The House of Commons used to be respected so long as the Cabinet did not strain the uses and procedure of the House for party purposes. Party government is only morally defensible so long as the majority does not unduly coerce the minority; so long as legislation is temperate, cautious, national, and open to full and fair discussion. As soon as the majority tramples ruthlessly on the minority; as soon as legislation becomes organic, hazardous, sectional, and passed without free debate, the essentially fictitious character of the authority of Parliament at once becomes apparent.

The fiction that the Cabinet represents the House of Commons, that the House of Commons represents the electors, and that the electors represent the nation, can no longer receive the acquiescence of thinking people. The Cabinet certainly

does not represent the Opposition; even on those occasions when both Front Benches agree, there are many searchings of heart on the part of private members on both sides. The Cabinet may be said to rule rather than to represent the Government side of the House. The policy and legislation is, in fact, selected and dictated, not even by the Cabinet as a whole, but by whatever group of Cabinet Ministers obtains the mastery in the Cabinet Councils for the time being. These will be the most adventurous and extreme spirits, who in their turn will be influenced by the party wire-pullers outside the House, who will be themselves the very flower of extreme opinion in the country.

The masterful section of the Cabinet, having obtained the acquiescence of their own colleagues, contrive to control the Members of Parliament on their own side by rewarding the obedience of those who can talk, as well as vote, by the grant of government appointments and titles. The inarticulate members who can vote and either cannot or do not talk, have been recently paid £400 a year each from the taxpayers' money to stave off a dissolution till the last possible moment. A more drastic treatment awaits those rare but valuable Members of Parliament whom neither fear nor favour can induce to hold their tongues. They are, first of all, driven out of their party, which, to their constituents, may not matter so much. But they are finally driven out of Parliament itself, for the party machine will use its whole force against them at the next election. The constituencies who are sufficiently

independent of either the local or the central machine to choose and return their own man in opposition to an official candidate are few and far between.

If, then, the Cabinet does not represent, but in reality dominates not only the House of Commons, but also its own side, still less can the House of Commons, as a whole, be said to represent the electors. In a rough-and-ready sense, the idea that the House of Commons represents the electors is partly correct. But this theory must be viewed in the light of the reflection that some constituencies have about 50,000 electors, and other constituencies only have about 2000 electors. This being so, it is not at all surprising that a large majority of seats in the House of Commons can be gained by a comparatively small transfer of votes in the constituencies. There are between seven and eight million electors in the United Kingdom. An examination of the figures of a General Election will show that a very large Parliamentary majority can be secured by a turnover of less than a quarter of a million of votes. These figures only constitute a slender claim on the part of the House of Commons to ride roughshod over the whole electorate.

And does the electorate represent the nation? The population of the United Kingdom is over 45 millions. The number of Parliamentary electors is under eight millions. Many adults, both male and female, have no direct representation by means of a vote. Whether the power of election really secures representation in its best sense is another

matter. Adult suffrage would very likely only open up a more promising field for the wire-puller. But, as the power of the House of Commons is based on the assumption that it is representative because it is elected, and as this representative character has been proved to be very largely unreal, it follows that the House of Commons ought to exercise its power with great moderation. That is exactly what the House of Commons does not do. Bills of the most profound importance to the life of every citizen have been hustled through the House with several pages not submitted to debate. The system of log-rolling has been carried to such a point that the Ministry of the day is actually engaged on passing a Bill for the government of Ireland which a large section of the Irish nation have declared they will not obey under any circumstances whatever.

Instances could easily be multiplied to show the travesty of Constitutional government that prevails to-day at Westminster. In the mean time, the individual suffers. Under the late Constitution he had none too much power. Since the passing of the Parliament Act, he is handed over, body and soul, to the Ministry of the day.

Under the late Constitution the individual could sometimes protect himself from the excesses of the House of Commons by appealing to the House of Lords to give him a chance of electing a new Member of Parliament at a General Election. The theory of the relation of the "man in the street" towards the governing body of King, Lords and

Commons at its best contemplated a system of safeguards. The majority of electors were, theoretically at any rate, represented by the majority in the House of Commons. The minority were supposed to be protected by full debate in the House of Commons and by the power of the House of Lords to amend or reject measures, and in the last resort by the power of the King to withhold his assent. Those who had no votes had no representation in Parliament at all except through the House of Lords and the King.

Now all this was very well on the whole so long as the Cabinet Ministers "played cricket." This is not the place to re-open a discussion as to the rights and wrongs of the production of the celebrated Budget of 1909 and its rejection by the Peers. It may be claimed that to use the Budget as a means of inflaming class prejudice and of coining party capital was unconstitutional on the ground that the ethics of the Constitution only contemplate a Chancellor of the Exchequer making an equitable distribution of taxation for the expenses of the current financial year. On the other hand it may be claimed that there was no precedent for the Peers rejecting a Budget, and that the absence of of this precedent rendered their action in a certain sense unconstitutional. But one thing is certain, there was no legal means of preventing a Chancellor of the Exchequer producing a revolutionary Budget, and no legal means of preventing the Peers rejecting it. Both were within their strict legal rights. The real damage to the Constitution

came afterwards. Both parties might have co-operated to strengthen the Constitution so as to deal with the question of the House of Lords, particularly with regard to finance, in a way that all reasonable people of both parties would have accepted. This is the best chance of securing permanence for any alteration in the Constitution, if it has to be altered at all. But instead of that, the Radicals set to work to make a party settlement and not a national one, by abolishing all the effective power of the House of Lords in the face of the protests of a powerful Opposition.

Pages could be written about the morality of the means employed to achieve this end. But to the individual the fact that the Radicals obtained from the King a free hand to create as many peers as they might require to vote down the House of Lords has had a most important result. It means to every inhabitant of Great Britain and Ireland that he is no longer governed by King, Lords and Commons. He must remember from henceforth that since the Constitution under which he was brought up has been destroyed by the Parliament Act, the House of Lords is no longer able to give him an opportunity of saying "aye" or "no" to any legislation affecting his welfare that has passed the House of Commons. Someone will say that the Act still gives the Lords power to delay the Bills for two years. Do not make any mistake. This is a trap for the unwary or, as Lord Selborne said on a famous occasion, "a cunning device conceived for the deceit of the moderate Liberal." The

whole object of the House of Lords in rejecting a Bill is that it may be submitted to a vote at a General Election. This might never happen under the Parliament Act. Lord Selborne's damaging analysis of "the two years' fraud" is so complete that it may be quoted at length :—

"Under the cloak and pretence of the issue of 'the rights of the people versus the peers,' the people are being robbed by the House of Commons of their Constitutional power to say the last word in great national issues, and the Prime Minister of the day is being lifted into the position of a dictator. There are those who do not appreciate the full extent of this revolution, and the reason why they do not do so is because of what I may call 'the two years' fraud.' That was a most cunning device conceived for the deceit of the moderate Liberal. But the Nationalists, the Socialists and the Radicals entirely understood its value. If that two years' power of delay had been worth anything at all, do you suppose that the Nationalists, the Socalists and the Radicals would have agreed to it? No, this two years' delay is worth absolutely nothing at all.

"In the first place let me point out that it is not a two years' delay, but an eighteen months' delay. Take the case of a Home Rule Bill for Ireland. Suppose it to have been read a second time in the House of Commons in March. It could not possibly have emerged from its treatment in both Houses until six months after that period, and, therefore, the additional time allowed for what is called

counsel and reflection is not two years but eighteen months. Now, consider what the value of those eighteen months would be. What would be their value in the House of Commons? Suppose the Home Rule Bill for Ireland to have once passed the House of Commons. On the second or third occasion, how much consideration and how much time do you suppose would be given to it? Its passage the second and third time through the House of Commons would be purely perfunctory. The letter of the Parliament Act would be observed, but great care would be taken by the use of the kangaroo closure and the gag that no critical questions should again jeopardise the fate of that measure in the House of Commons. And what would happen in the House of Lords—the House of Lords as it would be when the Parliament Bill had passed? They might reject the Home Rule Bill on the second or third occasion. But so might any debating society in the country. And what of the country? In the country we are told that these eighteen months are of real value, because the searchlights of criticism would be brought to bear on the measure at issue. Yes, we could make speeches, and so could our opponents. Our Press would write articles and so would theirs. Is there any centre of population in this country where, if we held meetings of protest against this measure, equally good meetings—possibly filled exclusively by Irish Nationalists—might not be held by the other side? And what would be the attitude of the Irish Nationalists in the House of Commons?

Their great aspiration, the one measure for the accomplishment of which they exist, would be launched on its two years' course. Do you suppose anything would induce them to vote against the Government until these two years had elapsed? So it would be, if you come to think of it, in regard to each one of those measures that occupy the forefront in the programme of the Government. The Welsh Members, the Irish Members, the Socialist Members, each would have seen launched on its two years' career the one measure for which they care, and no power on earth would induce them to give a vote that might jeopardise the fate of the Government during those two years. You would have a solid phalanx in the House of Commons whose sole interest in politics would be fixed on the retention of office by the Government for those two years. And what would they care for the voice of the electors as pronounced at by-elections? The very worst thing that could possibly happen to us is this, that each of these measures should become law at the end of the two years, and become law irrevocably, just before a General Election, when not one evil effect of those of which they all would be pregnant had manifested itself, and when there would have been no opportunity for the action of the House of Lords to have justified itself."

Lord Lansdowne's statement of the effect of the Bill is equally telling; after commenting on the possible smallness of a majority, he said:

"There is literally nothing whatever which is safe. The most fundamental issues are at its mercy.

It may insist upon passing a measure inflicting irreparable injury upon our most cherished institutions. The Crown is not safe. The Constitution is not safe. The Church is not safe. Our political liberties are not safe. Literally no institution, however much revered and respected in this country, is beyond the reach of a majority of the kind I have described just now."

This gives us all something to think about, no matter what our station in life may be. One more quotation with regard to the vital necessity of a strong Second Chamber to control the House of Commons must be given. It is from Oliver Cromwell. In 1652, when the House of Commons had uncontrolled power, Oliver Cromwell said:

"The Members of Parliament chiefly occupied themselves in getting profits for themselves and their friends, and in delaying business in order to continue in power, and they could not be kept within the bounds of justice, law or reason, because they themselves were the supreme power of the nation, liable to nobody, and could not be controlled or regulated by any other power, there being none superior or co-ordinate with them. That unless there was some authority and power to restrain them and keep things in order, it would be impossible to prevent the ruin of the country."

It is of no avail for any one to say that he is not interested in constitutional government. The first-fruits of the Parliament Act are already law, and concern each citizen very nearly. The chief

of them are the Insurance Act, and the Payment of Members of Parliament.

The payment of Members of Parliament is in its very nature unconstitutional, in the sense that it is opposed to the whole spirit of our traditions. One of the finest traditions of English public life, and one of the greatest guarantees for its purity, is the vast amount of public service that is offered without any hope of reward except the honourable reward of duty. If for the sake of argument it is granted that this thesis is open to doubt, there is at least no doubt that this very grave change in the character of the House of Commons should not have been carried behind the backs of the electors. It is dead against the spirit of the Constitution that this deed should have been done without the nation being consulted. Is there any one who will say that it is a matter of no moment to him whether or no he has to pay his Member of Parliament?

Now let us look at the Insurance Act. This is a colossal affair. There is hardly any one who will escape inquisition. It marks off good lives from bad lives in a manner about which there can be no mistake. A Deposit Contributor is a marked man for life. It creates an army of officials, and an autocratic body of commissioners. The fact that it has caused so much restiveness and apprehension in the country is a healthy symptom of the national character. There is nothing English people dislike so much as interference with their private affairs. The Constitution has hitherto proceeded on the

idea of imposing as few restrictions as possible on liberty. Foreigners have been surprised at the absence of notice boards and "Dont's" in our system that pervade countries who enjoy the luxury of a written Constitution. The Insurance Act has altered all that, and most English men and women are profoundly alarmed.

They are also indignant at the manner in which the Bill was hustled through the House of Commons to make way for Bills to give Home Rule for Ireland and to disestablish the Church. Both these measures had to be promoted by the Government as the result of pressure from sections of their followers, and are themselves designed to make further inroads on the Constitution. But some one may say that if all this be true, why did not the House of Lords amend or suspend the Insurance Act?

In this connection it is interesting to observe that almost before the ink was dry on the Parliament Act the Trades Unions besought the House of Lords to protect them from the excesses of a Radical Government. The Trades Unions were reinforced in this prayer by chambers of commerce, merchants, friendly societies, agricultural organizations, doctors, shipbuilders, and clerks from all over the country. These appeals form a clear national demand for a strong Second Chamber.

This is not the place to discuss the passing of the Insurance Act by the Lords. But it may be pointed out that the principle of the Bill was accepted by all parties in the House of

Commons, and that the Parliament Act campaign has deprived the House of Lords of—at any rate, for the time being—its moral as well as its legal authority. You cannot threaten and degrade one House of Parliament one minute, and the next minute expect that House to undertake the gigantic responsibility of handling a huge and complex national measure on the main principle of which the other House of Parliament was almost unanimously agreed.

The case of the Home Rule Bill is different. It is being fought both in principle and detail by a very strong minority in the House of Commons. A part of the nation that cannot be ignored has declared that it will not obey the measure if it passes. Public opinion may expect the House of Lords to use even the shadowy powers of delay given by the Parliament Act in the hopes that the threatened catastrophe, which many think will amount to Civil War, may be averted.

This amount of speculation has been necessary in order to bring home to the individual the position in which he is placed by the loss of the old Constitution. Supposing the House of Lords suspend the Home Rule Bill, and supposing that nothing happens to bring on a General Election before the Bill becomes law, the individual who is determined that he will not have Home Rule at any price has only got one card left to play before he resists by force. That card is the fact that a Bill will not have the force of law until the Sovereign has given his consent to it.

The most important effect of the working of the Constitution that may be brought about by the destruction of the House of Lords is the revival of the power of the monarchy. For some centuries after the Constitution received definite shape, the King was the most important part of the governing body. He could even govern for a time, and did govern after a fashion, without any Parliament. It was not until the reign of William III that the King became obliged to call a Parliament every year for the purpose of granting supply. Since that time the theory has prevailed that "the King's government must be carried on." Even this theory might be over-strained. A situation might be imagined in which the King could carry on his government in times of great stress with the moral support of the army, the navy, the police, and public opinion in the absence of the legal warrants afforded by annual Acts of Parliament.

Be this as it may, the King still has the legal right to refuse assent to any Act of Parliament; and one tendency of the natural desire to restore the balance of the Constitution may well be that those over whom the House of Commons rides roughshod will bring their grievance to the King himself. Those who may be shocked at this idea should remember that the intention of government by a King and two Houses of Parliament was to guard against despotism on the part of any one portion of the Constitution; that if the House of Commons went beyond what was morally right a nation accustomed to freedom would be sure to

seek redress; that the monarch was saved from the invidious task of settling disputes between the nation and the Commons by the intervention of the House of Lords; and that as the effective power of the House of Lords has now gone, the likelihood of the King being brought into play has to be faced. The Constitution exists for the nation; the nation does not exist for the purpose of illustrating the working of the Parliament Act.

If the supremacy of Parliament, or whatever combination of forces contrives to control Parliament for the time being, is of vital concern to the individual, the supremacy of the law is no less important. After an Act has left Parliament, and become a Statute, the Constitution intends that each citizen, or body of citizens shall be amenable to that law, and that if any dispute arises, that dispute shall be settled in the Law Courts. The governing idea is that no one shall be subjected to tyranny on the part of the executive, and that the liberties of each subject shall be capable of being brought before an impartial tribunal with no taint of party politics. The case for the protection of liberty was so admirably stated by Lord Alverstone, the Lord Chief Justice of England, who holds the highest non-political office in the country, that it may be quoted. Speaking on June 18th, 1909, in the City of London, he said:

"Time had been when the judges had stood between the Crown and the liberties of the people. That was a duty which was not likely ever again to fall upon His Majesty's judges in any part of the

empire, because His Most Gracious Majesty was among the first to recognize what were the proper relations between the Crown and the Judiciary. If, however, certain things were true which they saw in the Press, it might be that the judges might be called upon in the future to protect the interests of the people against the executive; but he hoped that the time would never come when it would be considered that the executive government was to be its own interpreter of Acts of Parliament. He trusted that His Majesty's judges would always be regarded as the impartial tribunal to whom was to be given the duty of interpreting Acts of Parliament."

There is no country where the judges deserve and enjoy a higher reputation than in the United Kingdom. The independence and fairness of our Courts of Justice, and the vindication of the two principles that no one can be lawfully made to suffer except for a distinct breach of the law, and that all shall be equal before the law, are among the greatest treasures of this country. Yet we see them all three being encroached upon, and are forced to the conclusion that these encroachments are due to modern party government, or in plain terms, to the desire to catch votes.

All the world over you will, of course, find people to whom constitutional or settled government is irksome and disagreeable, but these enemies of law and order have usually not been found in high places. But lately we have had an attack upon the judges publicly delivered by no

less a person than Mr. Winston Churchill when he was Home Secretary. In the House of Commons on May 30th, 1911, he said that "the Courts held a position of unequalled eminence in the eyes of the world, and in cases between man and man no doubt they deserved respect and admiration; but where class issues and party issues were involved it was impossible to contend that the Courts commanded the same degree of general confidence. On the contrary, they did not; and a very large number of people had been led to the opinion that they were, unconsciously no doubt, biased . . . It was unfortunate that collisions occurred between the Courts and the great Trade Union bodies."

This is a deliberate attack by a Cabinet Minister on our judges, although the wording of it is a little difficult to understand. It is dangerous, as it conveys the idea that justice should no longer be impartially administered if it is inconvenient to "the great Trade Union bodies." The speech did not command the assent of the vast mass of public opinion, but it should not be forgotten, as it marks a serious menace to the liberty of the individual. And for this reason. Everybody is human. It is therefore necessary for judges, of all people, to be removed as far as possible from anything that may influence their decisions. This has already been done. For instance, a judge cannot be removed except by a formal resolution of Parliament. But what assists the cause of justice more than anything else is the absence of carping criticism from outside. As Lord Halsbury said:

'No judge could be just if he was continually thinking what would be said of him next day in the newspapers, and what might be said of him at the next General Election . . . respect for the law as law was not likely to be increased if men in high places joined in a cry attributing base and unworthy motives to the judges who had to administer the law."

But there is another tendency also very destructive of liberty that must be noted. This tendency is to remit either to a Government Department, or to special bodies of commissioners, jurisdiction over matters which in this country it has hitherto been customary to reserve either to Parliament or the Courts of Justice, and in this way to hand over the liberty and property of the subject to fresh authorities from whose decision there is in many cases to be no appeal to the Courts of Law. This has either been intended, or else actually done, in the Education Bill of 1906, the Old Age Pensions Act of 1908, the Irish Universities Act, 1908, the Small Holdings and Allotments Act, 1908, the Housing, Town Planning, etc., 1909, the Finance Act, 1909–10, and the National Insurance Act, 1911. All these Acts are instances of what are called bureaucratic legislation.

Bureaucracy is in itself a word of foreign derivation, and conveys a notion distasteful to and out of accord with English manners and customs. It means government by officials, and its introduction into this country means the establishment of that system of "red-tape" that prevails in other

countries, but with which the British Constitution has in the main contrived to dispense. As a nation we have no great love for officials, especially when they are appointed by the whim of the Government of the day. The recent extension of the system of patronage is formidable. Many people will be surprised to learn that between January, 1906, and August, 1910, 873 Government appointments at salaries of over £100 a year were given away without being thrown open to public competition by passing the Civil Service examination.

The disposal of liberty and property by officials has been most marked with regard to the compulsory acquisition of land, though under the Insurance Act practically the whole nation will be handed over to a body of commissioners. Now it is not denied that there are cases where land should be compulsorily taken if the public interest obviously requires it; but in considering the position of landowners of all sorts and degrees, it should be remarked that this liability to compulsory acquisition does not attach to owners of movable property. But the general rule under our Constitution has always been that powers of compulsory purchase should only be given by the special authority of Parliament with liberty to the owner affected to appear by Counsel before the Committees of both Houses of Parliament, to show reason why compulsory powers should not be granted against him. If compulsory purchase was determined upon, the general practice was to give compensation to the disturbed owner.

Recent legislation has altered this in a very arbitrary manner. By the Small Holdings and Allotments Act, 1907 (now repealed and re-enacted in the Consolidation Act of 1908), powers are given to County Councils of

(*a*) Compulsory Purchase
(*b*) Compulsory Hiring

of land for small holdings. The Board of Agriculture, whose reputation it should be noticed is involved in the extension of small holdings, can make an order for Compulsory Purchase, and if the order is objected to, the Board must appoint a person to hold an inquiry. The Board must consider the report of the person who held the inquiry, but is under no legal obligation to act upon it, and an order confirmed by the Board is "final and conclusive, and has effect as if enacted in the Act." In a case where the Board had confirmed an order for taking a farm, the occupying owner, who felt himself aggrieved, endeavoured to bring the matter before the Courts of Justice for revision. It was held that the Court had no jurisdiction. Mr. Justice Jelf said (*Times Law Report*, Vol. XXV., p. 719):

"This case presented an illustration of the length to which Parliament had the right to go in ousting the powers and jurisdiction of Courts of Law. If a majority in Parliament were successful in passing an Act of Parliament which had that effect, then the jurisdiction of the Courts of Law in matters in which some people might think it was desirable that even Government Departments

should be under the control of the Courts was nevertheless ousted, and the Courts had no power to interfere with the decision of the Department."

This very high-handed procedure is defended by the Government on the ground of expense of proceedings before Parliamentary Committees. But it should be remarked that if the rights of private property contemplated by the Constitution are to survive, then what is called expropriation, even if desirable, is a very delicate process, which may, in the interests of justice, require lengthy, and therefore expensive, handling. It should also be remarked that, under the Small Holdings Act and the Housing and Town Planning Act, the Arbitrator is prohibited from hearing counsel or expert witnesses, except in such cases as the Government Department otherwise directs. It would be easy to give more instances of official autocracy in the matter of land legislation, but we will now look at something else of more general application.

Under the Insurance Act, 1911, separate bodies of Commissioners are set up for the whole country. Vast powers are placed in their hands. They can settle matters of vital importance to the everyday life of each citizen without any appeal. The Insurance Commissioners are appointed by the Government, and, in fact, they are the Government Department administering the Act, and ousting the Law Courts.

Doctors, druggists, employers, employed, friendly societies, are all to be handed over to the absolute control of these gentlemen, who may

make their own arrangements for settling disputes, and whose decision is final. They may remove a doctor from the panel of those entitled to treat insured persons, and destroy his livelihood and reputation at one blow. The doctor will have absolutely no appeal to any one, even if the decision is erroneous. The same thing applies to any firm or company entitled to supply drugs and medicines to insured persons. The Insurance Commissioners may withdraw their approval from any society if, in their opinion, the society has failed to comply with any of the provisions of the Act. The question of the rate of payment by both master and man is to be finally awarded by the Commissioners, in accordance with regulations made by themselves. In fact, it is difficult to imagine a more serious inroad into the liberty of the subject, as contemplated by the Constitution, than has been made by this Act.

Having now seen something of the danger that threatens each individual by the establishment of separate authorities to oust people from their constitutional right of access to the Courts of Justice, with, in many cases, a power of appeal to a higher court, let us look at one or two of the rights of citizenship which are even more elementary, and which have been actually destroyed by an Act of Parliament designed for the purpose. The Constitution is a body of rules and conventions determining the balance between the authority of the State and the liberty of the subject. Some aspects of the making and carrying out of

Statute Law have already been presented, and attention has been called to the increasing tendency to bring the liberty of the subject under the control of the Government of the day, by removing it from the field of constitutional right. If the right of access to the Law Courts is of profound importance to the individual, even more important is his right to have his personal freedom protected by those who are responsible for using the armed forces of the Crown.

This need has been so clearly brought before the public by the action or inaction of the Cabinet in connection with free labour, that it is unnecessary to state the case at any great length. Two vital constitutional principles are, however, involved. First, that constituted, or recognized, authority shall be supreme. Second, that constituted authority shall be exerted to protect all law-abiding men and women in their lawful occupations without any regard to the favour or caprice of the Ministry of the day.

Parliament, by passing the Trades Disputes Act, has already seriously handicapped itself in carrying out these principles. The recent issue turned upon the question of whether Great Britain is to be governed by the Strike Committee of the Transport Workers' Association, or by the ordinary forces of law and order. The Trades Disputes Act has deliberately and of set purpose placed Trades Unions above the Constitution.

They have quite naturally taken advantage of their new position of legal superiority over their

fellow-countrymen. They have tried to hold up, and in some measure have succeeded in holding up, the trade of the country. They have actually sat in a room issuing "permits" as to what class of goods shall or shall not be allowed to enter London, and issuing passes to their fellow-citizens allowing them the use of the King's highway.

They have coerced and intimidated free men until the protection of free labour had to be sought from the Home Secretary. Now, the doctrine laid down by the Government with regard to the protection of free labour is vital to everybody, and particularly to the working-classes. It is not only a question of disturbance, or a question of trade, or even a question of the starvation of the country, though all these things are involved.

All these things ultimately hang on the great constitutional principle of personal freedom which the very Constitution was called into being to safeguard. The doctrine that the Government seek to lay down is that the Ministry of the day shall have power to discriminate under what circumstances they will, or will not, grant or withhold from free British subjects the benefits of the British Constitution. In other words, if full significance is to be given to the attitude of the Government towards free labour, we have reached a stage in English history when Cabinet Ministers are seeking to suspend constitutional guarantees for freedom on any occasion when to enforce them might, in their judgment, have inconvenient results to themselves.

Reference has been made to the great constitutional principle of personal freedom. Public opinion has, of course, decided that personal freedom must be limited in the general interests of society. For instance, laws have been passed enforcing, with the assent of public opinion, such duties as the payment of taxes and the education of our children. Even these matters have been subjects for grave dispute. But an elementary right of citizenship about which there can be no dispute in any civilized state is the right of every man to make a free bargain, and as Mr. Austen Chamberlain said in the House of Commons on June 13th, 1912, "to sell his labour freely in a lawful calling and to be allowed to go about in the pursuit of his calling freely and without being subjected to intimidation, threats and violence."

If we were to start all over again in England with a written constitution, the rather wooden device that some countries, not inferior to our own in civilization, have found themselves obliged to adopt, this is one of the elementary rights that would have to be clearly reduced to writing. In this country primary rights are protected rather by remedies for their infringement than by their being expressed in any single document. In Belgium, for instance, the right to personal freedom is "guaranteed" in an article of a written constitution.

The important thing, however, is not the statement of the right, but the means to make the right effective. In England this means has been provided by the Habeas Corpus Acts, passed to prevent

anyone being kept in prison without being brought to trial. Arbitrary imprisonment is in this country unknown to the law, except in circumstances of peculiar danger to the State, when the Habeas Corpus Acts might be suspended. But imprisonment does not only mean being brought to a gaol by the policeman, and being kept there by the turnkey. Anyone who is prevented by the set purpose and action of his fellow citizens from going about his lawful calling freely may also be said to be imprisoned. And the portion of the Trades Disputes Act that legalizes peaceful picketing amounts to a partial repeal of the Habeas Corpus Act, one of the great landmarks in the history of personal freedom.

So far as the limits of this chapter will permit, the ways in which the individual is related to the Constitution have been in some measure traced. An attempt has been made to show how his or her interests are at the disposal of Parliament, the Law Courts, and the Executive. These three institutions combine to form what is called the State, which is that portion of the social organism that Society intends shall be the instrument of social justice. They will command public confidence, and serve their purpose, so long as their actions are animated by the spirit of the laws, conventions, understandings and traditions that are the ingredients of the British Constitution.

Of the three, the Law Courts still stand high in public estimation. It can safely be asserted that this is because the judges are removed as far

as is humanly possible from the influence of party politics. It is not so with Parliament and the Executive.

In England when we speak of the Executive we mean the Cabinet. The danger of a Parliamentary Executive responsible to Parliament is that it may be deterred from using its powers by the fear of losing the votes of some of its supporters either in or out of Parliament, and national interests may be overborn by the supposed interests of a political party. The danger to the individual of representative government from the legislative point of view is instanced by the attempt that is now being made to disestablish the Church in Wales and to give Home Rule to Ireland without submitting to the electors the Bills embodying these proposals. It is not easy to make out a claim that even the principle of either of these Bills was really what the country voted upon at the last election. But certainly no taxpayer was given to understand that he was going to be invited to pay a large sum for the maintenance of Irish concerns over which he is to have no direct control, while 42 Irish delegates are to come to Westminster to vote about British concerns.

There is only one remedy for this. It has been very truly remarked that every country gets the government it deserves. If we wish to save ourselves and our freedom from the abuse and abrogation of the Constitution we cannot set to work too soon to create a public opinion that will look to these matters, and insist that whenever

fundamentals are at stake, regard shall be had to principle instead of party.

We are told that we have outgrown our clothes, and that new organizations must be found. Let it be admitted at once that real progress will, and ought to, change the aspect of many things. But the old truths cannot be changed. They form the very bed-rock of civilization, and the vehicle of progress. They are to be found in the instrument of social justice known as the British Constitution. Any attempt to whittle them away will be retrograde and not progressive, and reproduce a condition of anarchy that our Constitution throughout the ages has gradually resolved into a system of orderly progress.

CHAPTER IV

THE PARLIAMENT ACT, 1911, AND THE DESTRUCTION OF ALL CONSTITUTIONAL SAFEGUARDS

By Professor A. V. Dicey

My readers may reasonably ask what is meant by a "constitutional safeguard"? My answer is this: A constitutional safeguard means, under any form of popular and parliamentary government (such as exists, e.g. in England, in the United States, or in France), any law, or received custom, which secures that no change in the constitution or the fundamental laws of the country shall take place until it has obtained the permanent assent of the nation.

So much may well be said as to the meaning of an expression which may cause some perplexity. With this explanation it is easy for me to state the object with which I have written this chapter. My aim is to impress upon my readers three important truths: The first truth is that the Parliament Act has destroyed our last effective constitutional safeguard. The second truth is that the whole experience of every country, which enjoys popular government, proves that the absence of constitutional safeguards imperils the prosperity of the

State. The last truth is that the absence of constitutional safeguards is full of danger to England; for it enables a party, or a coalition of parties, to usurp the sovereignty of the nation.

(A) The Parliament Act, 1911, has destroyed our last effective constitutional safeguard.

(I) **The nature of these safeguards.**—The different safeguards which have from time to time protected the rights of the nation may be brought under three heads:—

(i.) **The so-called Veto of the King.**—Down at least to the accession of George I (1714) the King was the real head of the Government. He took an active, sometimes a predominant, part in Parliamentary legislation. No man disputed the King's right to refuse his assent to a Bill which had been passed by the two Houses of Parliament. This right in theory still exists: it is not touched by the Parliament Act, but it has never (for any political object) been made use of for at least 200 years.[1] The veto of the King, though its existence is of importance, is all but obsolete. It is not in the twentieth century an effective safeguard of the Constitution.

[1] Burke has pointed out that the veto and other latent rights of the Crown may, under unforeseen circumstances, be of great utility to the country. As regards the King's veto, experience has fully proved Burke's foresight. The royal veto is the foundation of the right of the British Cabinet to disallow a Bill passed by the legislature of a self-governing colony, when such Bill is clearly opposed to the legislation of the Imperial Parliament and to the interest of the Empire (see Dicey, Law of the Constitution, 7th ed., pp. 98–116).

(ii.) **The Constitution of the House of Commons up to the full development of Household Suffrage in 1884.**—Everybody now acknowledges, what even thirty years ago educated men were slow to admit, that Parliament (by which term a lawyer must always mean the King and the two Houses) has constitutionally a right to make any new law it pleases, to repeal any law, or to change or abolish any law or institution whatever. But every one also knows that this doctrine of Parliamentary omnipotence has, during long periods of history, been combined with a strong public opinion that though the constitution and the more important laws of the realm could be changed, yet the constitution and such laws should be treated as practically unchangeable, unless their amendment were unmistakably demanded by the voice of the nation, or, in other words, of the electors.

The existence of this feeling was, down from the Revolution of 1688 to very near the great Reform Act of 1832, an adequate constitutional safeguard, and sometimes too strong a safeguard, against sudden change not approved of by the nation. I do not deny for a moment that the constitution of the unreformed Parliament did exhibit serious defects. All I do maintain, and maintain with absolute confidence is, that if reforms were, as I admit, at times unduly delayed—the Catholic Emancipation Act, for example, might have been with great advantage to the country passed in 1820 or 1825 instead of in 1829—yet the character of the unreformed House of Commons

and the opinion of the day provided an ample safeguard against the danger of usurpation of the national sovereignty by a party which had obtained a temporary majority in the House of Commons. Oddly enough the great Reform Act produced less immediate change of public sentiment than was expected by either the opponents or the authors of the Act. The Whig leaders themselves insisted on the finality of the Reform Act. Peel advocated administrative improvements instead of constitutional changes. Palmerston, after the middle of the nineteenth century, was in reality a Liberal-Conservative in domestic affairs. The few reforms in which he personally took an interest often did not command public support. At the height of his popularity (1857) he with great sagacity proposed to revive the habitual creation of life peerages; but this most statesmanlike idea was not heartily supported by the people.

All these things, which some men still living can remember, are sure signs that till 1867, or rather till 1884, Englishmen and Parliament on the whole practically accepted the unchangeableness of the constitution. The experience of the last 25 or 28 years proves that the change in the constitution of the House of Commons, and the change in public opinion has so weakened this second constitutional guarantee, that it can no longer be relied upon to protect the rights of the nation.

(iii.) **The legislative authority of the House of Lords.**—Till last year it was universally admitted that (except in respect of Money Bills) the House

of Lords possessed the same right as the House of Commons to reject any Bill whatever. Of course no man of sense had since 1832 ever supposed that the Upper House could reject or ought in fact to reject permanently any Bill passed by the House of Commons as the undoubted representatives of the nation. The legislative authority of the House of Lords meant, and was up to 1911 understood to mean, that the House had the power, and was under the obligation to reject any Bill of first rate importance which the House reasonably and *bonâ fide* believed to be opposed to the permanent will of the country. This doctrine, like every other constitutional doctrine, must of course, as most Englishmen have always felt, be construed in accordance with common sense. The nation's assent to a Bill may be given in several different manners. It may be made manifest by the clear absence of any vigorous opposition to a particular measure. It may again be signified by the whole character of a proposed measure (e.g. Gladstone's plan for the Disestablishment of the Church in Ireland), having been laid before the electors and been the main object of debate at a General Election. If under such circumstances the electors should, by their votes, ratify, as they did, Mr. Gladstone's policy, it was surely right to treat such ratification as the deliberate approval by the nation. But no one till 1910 and 1911 seriously disputed the doctrine that the House of Lords in modern times had the right to demand an appeal to the people whenever on any great subject of legislation

the will of the electorate was uncertain or unknown.

The House of Lords has, of very recent days, used its authority to safeguard the rights of the nation. Any one may feel well assured that in 1869 the Bill for the Disestablishment of the Irish Church would have been rejected, and rightly rejected, by the Lords had not the question of Disestablishment been clearly and undoubtedly placed before the people at the General Election of 1868. The Lords again in 1893 rejected the Home Rule Bill of 1893, which had been passed by a small but unwavering, majority of the House of Commons. The Ministry of the day, after their defeat, held office unconstitutionally till 1895. The appeal to the people which ought to have been made at once was, when it took place, decisive. The return of a large Unionist majority was the approval by the people of the rejection by the House of Lords of the Home Rule Bill of 1893. It was the solemn condemnation by the people of the United Kingdom of the whole policy of Home Rule. This condemnation should never be forgotten; it is of infinite significance, it means that at a great crisis in the fortunes of England, the hereditary House of Lords represented, whilst the elected House of Commons misrepresented, the will of the nation.

Nor was the authority of the House of Lords, as protector of the Constitution, seen only in the cases in which the House came openly into conflict with the House of Commons. The legislative power of the Lords was seen sometimes in the modification

of Bills passed by the House of Commons and even more frequently in preventing a Bill from being brought into the House of Commons.

The source of this power was, however, always one and the same, namely the doubt, and the reasonable doubt, whether the House of Lords in modifying or rejecting a Bill, might not be found at the next General Election to be the true representative of the will of the nation.[1]

Its authority supplied a true, though imperfect, constitutional safeguard; and it was, in 1910, our last effective safeguard.

(II) The Parliament Act, 1911, destroys the last of our constitutional safeguards, for it indubitably produces the following effects:[2]

The House of Lords retains no power whatever in regard to any Money Bill, and a Money Bill means, under the Parliament Act, any Bill which the Speaker of the House of Commons for the time being pleases to endorse as a Money Bill. The House of Commons, on the other hand, has absolute and uncontrolled power over every such Money Bill.

[1] The true defect of the House of Lords as a constitutional safeguard is not that it rejected Bills too often, but that it did not reject them often enough. It represented too much, not the conservatism of the nation, but a quite different thing, the interest of the Conservative Party. Its weakness was that it did not criticise with sufficient severity Bills proposed when Conservatives were in office. It is now admitted on all sides that the remedy for this weakness is a reform in the Constitution of the House of Lords. The so-called Liberals of the day have refused to apply this admitted remedy.

[2] See "Thoughts on the Parliament Act," iii and iv, *Times*, Tuesday, September 12th, and Saturday, September 23rd, 1911.

With regard to Public Bills (which are not Money Bills) the House of Lords has, under the Parliament Act, no final veto. The House of Lords may, however, exercise a suspensive veto which may delay such Bill (e.g., a Bill for the total abolition of the House of Lords or for changing the succession to the Crown, or giving to every woman of 21 years of age a vote for Parliament or the right to be elected to a seat in Parliament) from passing into an Act for a little more than two years.

But what is now the legislative power of the House of Commons in regard to any public Bill which is not a Money Bill? It is the answer to this question which I wish to force upon the careful attention of every one of my readers. The Parliament Act gives to the House of Commons, or in truth, to the majority thereof for the time being, power to pass into law any public Bill whatever,[1] in spite of the rejection thereof by the House of Lords. Every Statute, past, present or to come, and every law, whether contained in the Statute Book or not, is now rendered subject to the sole and despotic authority of the present coalition or of any other faction which may attain a majority by whatever means in the House of Commons.

Upon the present House of Commons and every subsequent House of Commons, has been conferred an absolute legislative dictatorship. England is now governed by one Chamber alone.

[1] Except a Bill to extend the maximum duration of Parliament beyond five years.

The House of Commons can repeal the Magna Charta; it can alter the Act of Settlement; it can enact that the Crown may descend to a Roman Catholic; it can extend the already enormous privileges conceded to Trade Unions under the Trades Disputes Act, 1906; it can dissolve the Union between Great Britain and Ireland, and between England and Scotland; it can establish universal suffrage in the strictest sense of that term, so as to include woman suffrage; it can pass an Act giving an old-age pension to every man or woman of 50. All this may be done though the House of Lords may have rejected every one of these Acts; all this and much more can be done without any necessity whatever for an appeal to the electorate. This statement is no delusion of a fanatical Unionist. The world knows that one motive at least, for the passing of the Parliament Act by the House of Commons, and forcing it by means of a ministerial misuse of the prerogative through the House of Lords, was that the Act makes it possible to pass a Home Rule Bill and a Woman Suffrage Bill without an appeal to the nation. Nor does the matter end here. The Parliament Act, as we shall see, must continue in force for at least two years, but otherwise the Parliament Act can itself be repealed and modified by the House of Commons. The Parliament Act indeed places two limits on the exercise by a House of Commons majority of unlimited legislative power.

The one limit is that any Bill which is to be

passed in spite of the dissent of the House of Lords, must be passed three times in three successive Sessions by the House of Commons. Note, however, that "three Sessions" is not the same as three years; two Sessions are often now held in one year. Note, too, that successive Sessions are a totally different thing from successive Parliaments. If the House of Commons would have substituted "Parliaments" for "Sessions" the inherent vice of the Bill would have disappeared. For such a change would have made it certain that no Bill rejected by the Lords could have passed into an Act without an appeal to the people. The first so-called restriction is worth little; its real effect, and in truth its real object, is not to restrain but to increase the power of a dominant party. It enables a House of Commons majority to pass Bills, say a Welsh Disestablishment Bill, which the party in power suspects to be opposed by the will of the nation.

The second limit or restriction is that no Bill can, without the assent of the Peers, be passed into law "unless" two years have elapsed between the date of the second reading [of a Bill] in the first of [three successive] Sessions of the Bill[1] in the House of Commons and the date on which it passes the House of Commons in the third of those

[1] "Sessions of the Bill" are the words of the Parliament Act. This language is dubious English. It apparently means "the three successive Sessions during which any Bill intended to pass into law, though rejected by the House of Lords, must be brought into, and passed by the House of Commons."

Sessions."[1] The meaning of these words is best made clear by an illustration. The second reading in the House of Commons of the present Home Rule Bill took place on May 9th, 1912. The Bill cannot, without the assent of the Lords, become an Act of Parliament till May 10th, 1914. This restriction is a real one. It means something, but it does not mean much. It gives to the Lords a suspensive veto for two years. But the importance of this suspensive veto is diminished by one material fact. A House of Commons majority may, under the Parliament Act, cut down the suspensive veto of the Peers to one year or to six months, or indeed may abolish it altogether. Under the Parliament Act then, any party which has obtained, by whatever means, a House of Commons majority, can arrogate to itself that legislative omnipotence which of right belongs to the nation.

(B) The experience of all countries, where popular and Parliamentary government exists or has existed proves the necessity for constitutional safeguards.

Many most respectable persons think that the House of Commons will never misuse its now exorbitant power to defy the will of the country. Every advocate of the Parliament Act relies upon this argument. It is utterly unfounded, it is confuted by universal experience.

The inhabitants of every country where popular and Parliamentary government exists or has existed

[1] Parliament Act, 1911, S. 2, sub-s. (1).

have acknowledged the necessity of having two legislative Chambers or, as we should say, two Houses of Parliament. No country, except England, now dreams of placing itself under the rule of a single elected House. The most democratic of existing Governments, further, are not content with the safeguard provided by the existence of two Houses. They have generally instituted many other safeguards against Parliamentary despotism. To illustrate this truth, consider for a moment the Constitution of the United States—of the Swiss Confederacy—of the Third French Republic—of Norway—and of the Australian Commonwealth—and the annals of the English Commonwealth.

The United States.—The Constitution of the American Commonwealth is based from top to bottom on the principle that no legislature can be entrusted with anything like unlimited power. Congress can alone legislate for the whole federation. It consists of two Houses: the Senate, which represents each of the States, and the House of Representatives, which represents in proportion to their numbers the citizens of each State. The two Houses have each real and effective power. The Senate may amend or reject any Bill passed by the House of Representatives; it has been through most periods of American history a more powerful body than the House of Representatives. The President again has a real, and an often exerted, veto on any Bill which has passed the two Houses; no Bill can be passed against his will,

unless, after it has been returned (i.e., vetoed) by the President, it is supported by two-thirds of each of the Houses of Congress. The power of Congress itself is confined within narrow limits by the terms of the Constitution. The Constitution cannot be changed by Congress. Any alteration needs the assent of at least three-fourths of the forty-eight States which make up the United States. The Courts further, and ultimately the Supreme Court of the United States, can treat any Act passed by Congress in excess of its powers as invalid. Note also that any power not conferred upon Congress resides in the people of each State.

Every State of the Union (except one) has itself a Legislature of two Houses. The Constitution of the Union cuts down in some respects the power of the State legislatures. What is of even more importance, each State has its separate Constitution. This Constitution always limits the power of the State legislature, and, speaking broadly, in every State the principle is recognized that amendments of the Constitution cannot be passed and become part thereof until they have been submitted to and approved by the vote of the people. This appeal to the people is really what we now call in Europe a Referendum. It is recognized and practised in almost all the States of the American Commonwealth. Add to this that the Courts treat as invalid any law passed by the legislature of a State, e.g., New York, which is inconsistent with any article of the State Constitution. Thus, throughout the Constitutions of

the American Commonwealth and of the States thereof, you find the strictest restrictions on the legislative power of elected Parliaments. The idea of giving in effect unlimited power to one House of any Parliament would be laughed down by all American citizens.

The Swiss Confederacy.—Switzerland is the most democratic of Republics; Switzerland is a well-governed country, and an economically governed country; Switzerland is a country of small extent and a comparatively small population; Switzerland is surrounded by huge military States, but Switzerland knows how to hold her own and to maintain both her dignity and her independence. This democratic Republic, however, repudiates the dogma of Parliamentary omnipotence. The legislature of the Confederacy is made up of two Houses—the Council of States, representing the cantons—the National Council, representing the people. This Two-House Parliament, or Federal Assembly, can pass Bills which change the Constitution, but these Bills cannot become law until they have been referred to the nation, and have received the assent both of the people and of the cantons. Here we have the celebrated Referendum.[1]

The Third French Republic.—France has during a period of some 120 years made trial of at least twelve Constitutions. Her experience has very

[1] I have purposely omitted all details as to the working of the Referendum in respect either of federal laws which do not touch the Federal Constitution or in respect of cantonal legislation.

peculiar value. Thrice she has at crises of her fate felt the practical and disastrous result of government by one Chamber. She has found it also extremely difficult to constitute a Second Chamber or, as we should say, an Upper House, which should be different from the Lower House and yet exercise real power without obstructing the course of government. The Third Republic has already outlasted by a considerable number of years every French Constitution created since 1789. It shows signs of strength and life; it is accepted by every Republican, and apparently by the mass of the people. Yet the Third Republic is the condemnation of government by a single and omnipotent Chamber. The Senate or Upper House is, like the Chamber of Deputies, or, as we should say, the Lower House, a wholly elected body, but it is a Second Chamber of real dignity and power. A modern French statesman—I have been informed on good authority—prefers a seat in the Senate to a seat in the Chamber of Deputies. Then, too, no constitutional law can be changed unless by the vôte of the two Chambers sitting and voting together at what is called a Congress. Modern France is assuredly not prepared to hazard the despotism either of Parliament or of one House of Parliament.

The Kingdom of Norway.—You may be surprised that I direct attention to the Norwegian Constitution. I do so because it has a peculiar interest of its own. Norway is (if the expression may be allowed) a monarchical democracy. It is based like

other democracies on universal suffrage. The Norwegian Parliament is elected by every Norwegian man of 25 years of age. It consists in one sense of one House, the Parliament, or Storthing containing 123 members. But from the moment the Storthing meets, 30 of such members are elected by the Storthing to form an Upper House or Lagthing, whilst the remaining 93 constitute the Lower House, or Odelsthing. The powers of the Upper House are real. That House may reject or send back any Bill twice, but after the second rejection both Houses vote together as one, though in that case a majority of two-thirds is required for carrying the Bill. Add to this that the King's signature makes a Bill law. But if he refuses to sign and the Bill is passed in three successive Parliaments (not Sessions) it becomes law in spite of the King's veto. The experience of this little but thoroughly democratic State is worth notice. It affords an exceptional example of a One-House Parliament. But here, if ever, the exception not only proves but supports the rule. The sagacity of the Norwegian democracy has detected and corrected the defects of a Constitution devoid of Constitutional safeguards.

The Australian Commonwealth.—Australia possesses one of the latest and most elaborate of our Colonial Constitutions. She is a typical self-governing colony, and has as much of independence as can be given to any land forming part of the British Empire. The Constitution was drafted by Australian statesmen. I will call attention to two facts only. The Parliament of the Commonwealth

is elected by strictly universal suffrage, for women no less than men, are entitled to vote as electors. This Parliament consists of two Houses—a Senate representing the separate States, a House of Commons representing the people of the States. No Australian dreams of a One-House Parliament. The Commonwealth Parliament, though created by an Act of the Imperial Parliament, can change most of the articles of the Constitution, but the alteration of the Constitution is surrounded by special safeguards. A Bill which is to alter the Constitution, must be passed by an absolute majority of each House. It cannot become an Act until it has been submitted to, and obtained the approval both of the majority of the States and of the electors who actually vote with regard to the proposed amendment. The Commonwealth has accepted and practised with success the Referendum, or Poll of the People.

From the examination of modern democratic Constitutions we obtain two undeniable and important results. The first is that every country where popular government exists has recognized the necessity of constitutional safeguards. No country has the folly to place absolute sovereignty to one omnipotent House of Parliament. The absurdity of the Parliament Act, 1911, does not find a parallel in any country whatever outside the United Kingdom.[1] The second conclusion is that during the last fifty or sixty years the

[1] Except it be Greece, and if Greece can afford any lesson to England the lesson is a warning against a One-House Parliament.

sensible and wise men of every country have recognized the fact that even a fairly elected legislature made up of members who intend to do their duty may misrepresent the permanent wish of their country. This possibility was hardly recognized by reformers during the first half of the nineteenth century, yet the experience of Switzerland is conclusive. The Referendum often reveals the incapacity of sensible and well-meaning members of Parliament to understand on some one topic the will of the nation. This is so well understood in Switzerland that the Swiss electors constantly return again to Parliament the very men who have on a particular point mistaken the wishes of the nation but loyally accept the formally expressed will of the country.

I am not pleading for any servile and pedantic theory of what is called a "mandate." This dogma may no doubt be so interpreted as to forbid to members of Parliament the fair exercise of their common sense and discretion. I fully admit that "to follow not to force the public inclination; to give a direction, a form, a technical dress, and a specific sanction, to the general sense of the community, is the true end of legislature."[1] But I confidently assert that the special danger of to-day in England is that a House of Commons majority, especially when it is a coalition of factions, should, in obedience to a policy of partisanship, defy the general sense of the community.

[1] Burke, "Works: Letter to Sheriffs of Bristol," vol. iii. p 180.

The English Commonwealth.—For eleven years (1649–1660), though most people have forgotten the fact, England was a Commonwealth. During these years she had a Parliament consisting of only a House of Commons. For four years (1649–1653) this One-House Parliament was supreme. It at once abolished the monarchy and the House of Lords. It claimed to establish the rule of the people of England as a Commonwealth or Free State. This unlimited authority of the House of Commons was for these four years no mere form. The House stretched its power to the utmost. It usurped judicial functions. It was accused, not without reason, of corruption. It had neither the strength to restrain nor the wisdom to conciliate the Army. When in 1653 Cromwell and his soldiers put an end to the Parliament, they did an act which was popular with the country. One lesson Englishmen, and especially English reformers and democrats had taken to heart—the despotism of a House of Commons which was legally under no restraint, might become a combination of incapacity and tyranny. Any one who doubts this should study the Constitution of 1653. It expresses in every line thereof the determination that the power of Parliament should be placed under strict restraints. That Constitution, known as the Instrument of Government, was a very rigid Constitution. It contained certain principles which Parliament had not the right to touch. According to the views of most historians the Articles of the Constitution were not changeable

by Parliament. The legislative power of Parliament was in one shape or another controlled by the Protector. A strong Council of State went a good way towards supplying the lack of a Second Chamber. It is not my object in this article to give historical details of the change in the constitution effected or attempted during the Protectorate; but to one or two general considerations it is worth while calling attention.

Cromwell was assuredly anxious to carry on Parliamentary government in England as he and his contemporaries understood it; yet with Parliamentarians filled with the idea of the unlimited authority of the House of Commons he found it impossible to act. He and the reformers of his day had no belief in a House of Commons of unrestained power. In the last year of his life he issued writs summoning to Parliament a newly created House of Lords. Many historians now perceive that if Cromwell's life had lasted, he would in all probability have accepted the Crown which had been pressed upon him and have re-established with some great reforms the old Parliament of England. He certainly would have kept alive and given force to the Parliamentary Union already created between England, Scotland, and Ireland. There is assuredly nothing in the failure of the experiment of a One-House Parliament during the seventeenth century[1] which supports the idea that a like experiment, though

[1] See Marriott, "Second Chambers," for the Unicameral Experiment, p. 26.

concealed under an absurd form, will be a success in the twentieth century.

(C) The Special Danger of the Absence of Constitutional Safeguards.

The Parliament Act gives, as I have shown, unrestricted powers of passing laws to a House of Commons majority. This power may assuredly be misused. Two new circumstances make this misuse certain. During the last fifty years, and especially during the last thirty years, the strength and the rigidity of the party system (or, as Americans would say, the machine) has been increased to an almost unlimited extent. This is an undeniable fact. There must still be alive some old men who, like myself, remember Palmerston and his immense popularity. In 1857 he had defeated a most unpopular coalition. At a general election he had obtained the support of what was then considered a huge majority. He was the people's hero. Yet before two years had elapsed, he was defeated in his own House of Commons and resigned the Premiership. This defeat means a great deal. It means that a good number of Palmerstonians, though elected as Palmerston's followers, felt free to withdraw their support. They were assuredly not under the pressure of the machine. Palmerston's return to power and his retention of office till his death (1859–1865) bear witness to the same laxity of party discipline. His authority arose from the fact that many men of both parties preferred the government of Palmerston

either to the government of the Radicals, as represented by Bright, or to the government of the Conservatives, as represented by Disraeli. Any man who keeps his eyes well open will see that neither Palmerston's overthrow in 1858 nor his subsequent tenure of office from 1859 to 1865, could find a parallel in the public life of to-day.

The second new circumstance to which I direct my reader's attention is the growth of Parliamentary groups or factions. A Parliamentary group is a body of members who are regularly organized and act together mainly for the promotion of some particular object. Such are, for example, the Irish Nationalists, the Labour Party, the Temperance Party, or the political Nonconformists. The degree in which each of these groups may be organized of course differs, but they notoriously each act with a view to some one or more political objects. They may or they may not be allied with one of the two great parties which, under the varying name of Whigs and Tories, Liberals and Conservatives, and the like, have for generations divided the political life of England. But a group always exists primarily for the attainment of its own special object. Now the existence of each of these two new circumstances, viz., the rigidity of the party machine and the existence of organized groups, does, it will easily be seen, immensely increase the easiness with which the Parliament Act may be misused.

Let us suppose that the two large parties, whom we may call the Ministerialists and the Opposition,

each command between two and three hundred votes in the House of Commons. Neither party can be at all sure of retaining office, for its opponents may always obtain a majority from having gained the votes of one or more of the groups or factions—say of the Irish Nationalists or of the Labour Party. It may even occur to some ingenious intriguer at the head, say, of the so-called Ministerialists, that he can obtain the permanent support of all or most of the groups by promising to each of them that if it will support his general policy, i.e., keep him in office, he will under the Parliament Act obtain for each group in turn the object for which it cares most, e.g., Home Rule for the Irish Nationalists, an extension of Trade Union privileges for the Labour Party, and an absolute prohibition of all traffic in liquor for the Temperance Party.

A moment's reflection will show that a coalition formed on this basis may represent neither the deliberate will of the nation nor even the true judgment of a majority of the House of Commons. A homely illustration will make my point clear. A business firm consists, we will say, of Brown, Jones and Robinson. Brown contributes a lot of money to the concern, and he therefore is entitled to four votes. Jones contributes little money, but, though a dull and cautious man, has a good deal of business experience. Robinson also contributes little money, but brings into the firm much cleverness and originality, though also no small amount of rashness. Each of these two partners has only three

votes. Brown, the predominant partner, imagines that his position is safe enough. He believes that the prudence of Jones and the daring of Robinson will balance one another, and that if Jones's caution degenerates into timidity, Brown may rely on the votes of Robinson, and if Robinson tries to embark on a rash venture, Brown may rely on the votes of the prudent Jones. All turns out as Brown wishes until one fine day Robinson suggests to Jones that the perpetual predominance of Brown is tiresome, and proposes to remove it by a tacit arrangement that alternately on a difference of opinion arising with Brown, Robinson shall support the proposal of Jones, and Jones the proposal of Robinson. Under this arrangement the wealthy Brown will find himself nowhere. There are always six votes against his four. But note the following circumstance. The coalition against Brown succeeds because the votes of the majority, though they obtain satisfaction for some of the private objects of each partner, do not represent the real judgment of the majority. Robinson supports the caution of Jones when both he and Brown agree in thinking it unwise. Jones supports the rashness of Robinson though he really agrees with Brown in thinking that it involves considerable risks. The private agreement between Robinson and Jones would be looked upon with very unfavourable eyes by any court of justice. Common sense shows that it may lead the partnership to ruin.

The rules of private life are in this case applicable to political life. A Parliamentary coalition

based on elaborate log-rolling, even though free from any taint of personal corruption, vitiates our whole Parliamentary system and is opposed both to the authority and to the interest of the nation. I confidently assert, as does every Unionist, that such a coalition exists. I appeal, not to secret documents, which probably do not exist, but to notorious facts. A Government which came into existence on the plea of protecting Free Trade is more and more inclining towards Socialism, and has entered upon a course of reckless extravagance foreign to every doctrine of Free Traders. Ministers who but a few years ago talked of Home Rule as a bogey invented by Tories, are now carrying through the House of Commons a Home Rule Bill far more injurious to England and far less likely to secure amity between England and Ireland than either of the Gladstonian Home Rule Bills. Their Irish allies have voted, consistently enough from their own point of view, for measures as, for example, the Old Age Pensions Act and the National Insurance Act, which they did not think desirable for Ireland. English Nonconformists have been induced, not one suspects without qualms, to turn, in Parliament at least, a deaf ear to the bitter cry of all Protestants, whether Nonconformists or not, in Ireland. The abolition of the Church Establishment in Wales has been carried through the House of Commons by the aid of Irish Roman Catholics, who are certainly not hostile to the State endowment of religion and who will have comparatively little to say—or rather ought to have little to say

—when the Home Rule Bill has passed into law, to any matter regarding the government of any part of Great Britain. At any moment when it suits the Government Mr. Asquith may, as Prime Minister, be advocating the proposal of Parliamentary votes for women which he as a private man avowedly condemns.

I have said that political log-rolling has hitherto been free from any element of personal corruption. But a desire to be fair to opponents may have led me to express myself with some rashness. Personal corruption, thank Heaven, does not yet exist in the Imperial Parliament, but the corruption of classes has already begun. When an election in a country district is to be won at all costs, the candidate, backed by the Premier, boldly advocates, we are told, a policy of land reform which he sums up in the cry of "the land for the people" and thus assuredly holds out hopes which must sound to agricultural labourers very like promises for the distribution of land. The National Insurance Act was certainly meant to gain votes though it has not exactly attained its end. What shall we say about the payment to every member of Parliament who has not got a lucrative office under the Government of a nice little sum of £400 a year, which to the astonishment of many plain men outside Parliament, is being paid for services which members had undertaken to perform gratuitously? And this £400 a year which imposes a tax of about a quarter of a million upon the overburdened taxpayer of the

United Kingdom, is full, to members of Parliament, not only of comfort, but of hope. The originally modest payment of members of the French Parliament has risen from about £300 to £600 a year. The payment of members of Congress has at last reached the sum of at least £1500 a year, and, as some people say, comes by force of certain allowances up to near £2000 a year. Who shall say that ten years hence our excellent M.P.'s who, we know rise so much above members of Congress, will not be each blessed with a comfortable income of £1500?

Let me conclude with a question which it concerns every Englishman to answer; let me also give to it the plainest of replies. Why is it that the revolutionary proposals of the Government fill men of sense, who understand what the plans of the Ministry mean, with intense fear? My reply may be given in a very few words: The fear is caused by the existence of the Parliament Act. This Act, and this Act alone, makes it possible, nay, even probable, that ministers who have lost, or are rapidly losing, the confidence even of their own followers, may pass into law without any appeal to the people proposals which ministers themselves dare not submit to the judgment of the nation.

CHAPTER V

THE HOUSE OF LORDS AND THE CIVIL WAR

By Viscount Midleton

The century during which England was ruled by the Stuarts forms a necessary link between the personal rule of the Tudors and the Parliamentary system of government which grew up under the House of Hanover. It is difficult at this distance of time to realize the wide divergence between the two methods of rule. The sons of a man who had been tortured under the actual eyes of Queen Mary or Queen Elizabeth lived to a period when actions treasonable to the nation as well as the sovereign obtained no worse punishment than exclusion from Court. Under the Tudors, individuals were possessed of or deprived of houses and lands almost at the will of the sovereign; Charles I in his turn claimed the whole revenues of Connaught, and after a farcical jury trial in Dublin usurped the entire rents of the County of Roscommon. Yet by the accession of George I property was more secure from the clutches of the sovereign than it is under George V from Parliamentary confiscation.

Religion had gone through even ruder phases.

By a reaction against the persecution of sects, the Puritans turned the England of Queen Elizabeth into one vast Nonconformist conscience; a counter reaction induced for 25 years an indescribable laxity of national life, and left the country indifferent as to the person and even as to the nationality of their ruler provided his Protestantism secured them from the instability of Charles II, and from the intolerance of which they had a taste under James II.

It would obviously be absurd to judge the Parliaments of the seventeenth century by the standard of the eighteenth. In truth both the House of Lords and House of Commons were then in the making. It was not a question of their title to control this or that part of the national business, but of their right to sit at all. The men who lived through the Long Parliament saw more constitutional history made than is usual within the compass of a century. In the course of twenty years power passed successively from the King to the Commons; from the Commons to the Army; from the Army to the Protector; from the Protector to a Junta, and nominally again to Parliament before the Restoration. In these remarkable transitions we must search in vain for consecutive development of our Constitution.

Lord Macaulay, reviewing this period, credits the House of Commons with keenness, dexterity, coolness, and perseverance while representing a distraught nation during the Long Parliament. The panegyric may be strained too far, but it is

difficult to recall any assembly which, under a similar ordeal at a time of national excitement, has acquitted itself better. Moreover as the Long Parliament went through every conceivable phase, being purged at different times of its cavalier members, of its anti-regicides and of the supporters of civil predominance against the Army, the proceedings of the various sections which successively dominated it must not be too closely analysed. But one law was common to the whole of the Parliament; whatever was lasting was achieved by the two Houses working in concert; from the day that the House of Commons was left alone, its decisions carried no weight at all.

This was not due to the special efficiency of the House of Lords. The Civil Wars found the House of Lords handicapped for serious responsibility. When Elizabeth died the peerage was select and powerful. Only 59 lay peers existed, and of these only eight had been created in 45 years. The Scotch prudence of James I and the rapacity of Buckingham exactly doubled the peerage in 25 years, besides flooding Ireland and Scotland with titles, paid for but otherwise unearned.

At the beginning of the century the peerage commanded almost exaggerated reverence. Thus the Commons of 1603 humbly represented to the Lords that a certain question was "a matter of State fitted to have beginning from the Upper House that is better acquainted with matters of State." In 1648 Prynne argued that to bring the Lords down to sit with the Commons "would be

such a dishonour and affront to the Lords that none but degenerate and ignoble spirits can bear to think of it with patience, and it would be detrimental to the character of members of the Commons, for it would too much puff and bladder them with pride, and make them slight those whom they represented." The opinions so universally held in 1603 had become confined in 1648 to select circles; Prynne's heroics found few sympathizers; the Levellers early the following year closed the House of Lords then reduced to about twelve members; and of the 150 commissioners appointed to try the King, only six were chosen from the ranks of the peerage.

Whatever differences of class may have existed between Peers and Commons, the two bodies acted very much in concert in the crucial years 1640 to 1649. Very early a definite opposition party was formed in the Upper House allied with the popular party in the Lower House. Indeed, the Duke of Newcastle, who had joined the House in 1620, told Charles II, 40 years later, that the Upper House was, from the King's standpoint, more factious than the Lower House. The main reason of this was that the King kept no engagements with either House, and the encroachments of Buckingham speedily removed the scruples of the Peers to interfering with a prerogative which the King had practically surrendered.

The Upper House consequently stood by the Lower till the Petition of Right was granted, and its members formed a target for the exactions and

oppressions of the Star Chamber. Lords Danby, Warwick, and Saye, during the intermission of Parliament, declined, like Hampden, to pay the illegal ship money, called upon the King to summon a Parliament, and suffered arrest for their plain speaking.

In the short Parliament of 1640, Charles's numerous creations helped the bishops who remained subservient to the Crown to counter the Commons in their spirited decision to take grievance before supply, the majority of 61 to 27 alleging that it was "indecent and unreasonable to press grievances when King and kingdom were in straits and in danger to be overrun by a pack of rebels." Charles dissolved the Parliament; but in September of that year, when he called the Peers alone to meet at York, they declined the unconstitutional functions which he proposed for them, and would not act without the Commons.

In estimating the proceedings of the Long Parliament, which shortly afterwards assembled, it must be remembered that two-thirds of the temporal peers and all the bishops owed their places to Charles or his father. That the Lords as a body were less forward in the path of reform and held a sort of middle position between Crown and Commons is unquestionable. The verdict of history has surely justified them.

Intolerable as was the conduct of the King, traditions die hard in this country. The war would have been shorter if the sword could have been drawn later. The execution of the King put back

the clock of progress. It terminated the theory of the divine right of kings—but left a chaos of institutions as well as of ideas, which outlasted one of the strongest administrations ever set up and opened the door in 1660 to a Restoration which preluded the most despicable chapter in English history. It would be rash to suggest that the Lords in 1649 foresaw these consequences; but at the least they evinced more statecraft than the Commons in realizing that there was use in retaining the King even from the democratic standpoint and that the baffled monarch might be a buffer between Parliament and the new military order, which was every whit as much out of sympathy as the Crown with Parliamentary liberties.

The successive steps which marked the breach between the two Houses may be briefly noted. Up to 1647 no serious difference had arisen between them. Both Houses had agreed in claiming for the English Parliament the right of demanding the king's consent to certain proposals as the basis of peace, and had agreed to ignore the Scots in disposing of the king's person.

In 1648, after a sharp discussion, the Lords carried the Commons with them in proposing to Charles terms which he had refused earlier, and which involved a complete surrender on his part. He was forced to accept them. He legalized the past action of Parliament in making war on him; he annulled all the titles he had given since 1642, and made his right of creation for the future subject to the veto of both Houses; he further

gave the Houses the control of the Army for twenty years and established Presbyterianism.

This treaty, had Charles adhered to it, would have been unique among agreements between him and his subjects, for the effect of it was to give the House of Commons a position it had never attained before, since it became impossible for the Crown to secure support in the House of Lords against the Commons by creating peers. The treaty was only accepted by the Peers from the conviction that if the monarchy fell they would also fall. It proved unacceptable and precipitated the final crisis, for it was altogether against the views of the Levellers and the Army, which within two months purged the House of Commons by excluding more than half its members, caused the remainder to vote the House of Commons supreme as representing the people, and, after some preliminary skirmishing, abolished the House of Lords.

Cromwell voted for the Lords and against the extreme party, giving thereby a noteworthy tribute to convictions which he afterwards put in practice, and which had already taken deep root in his mind.

Almost alone among the advanced politicians of the day, he saw the necessity of a balance in the Constitution. Few politicians at that moment regretted the loss of the Peers. Royalists despised their action; Levellers decried their existence; the nation resented their exemption from arrest for debt and from answering suits at law. Privileges which were tolerable when confined to a few great potentates became inexcusable when diffused among a

number of men who had been recently raised from among the commonalty and were now in sharp controversy with them. There could hardly, therefore, have been a weaker body to set up as a bulwark to the State, yet from the day the House of Lords disappeared, the people, on whose behalf its abolition had been decreed, took second place to the Army, and their representatives lost caste accordingly.

The House of Commons for ten years was the sport of the various contending parties. Nominally omnipotent, it was practically powerless. At first, about 100 members alone remained, and whole counties were unrepresented. The fact that a few peers, like Lords Pembroke and Salisbury, were returned to the House on by-elections, apparently reduced their own credit without raising that of the Commons. For four years this singular body sat continuously and claimed powers of legislation, judicature, and administration, without rules of conduct or restriction—a system which Cromwell emphatically declared to be "the horridest arbitrariness that ever was exercised in the world."

The Commons committed manifest injustice by keeping the Royalists in jeopardy long after the cessation of hostilities, by selling the estates of "delinquents" when money was required, and by including in their excessive greed some persons who had taken no part in the Civil War. Their zeal for their own privileges exceeded their discretion. Although their mandate from the nation had long since expired, it was not till nearly three years

after the execution of Charles that they decided to dissolve themselves, and fixed as a date November, 1654, three years further on. Cromwell took advantage of the general distrust in which they were held to expel them, and the Parliament fell unregretted.

Their successors, a nominated body nicknamed Barebone's Parliament, had their own views of "thorough," and acted on them. They abolished the Court of Chancery, recast the law without asking any advice from lawyers, proposed to abolish tithes without giving compensation, and transferred the ceremony of marriage from the clergy to Justices of the Peace. They also were turned out of doors by the Protector.

In 1654 Cromwell, now armed with an Instrument of Government which carefully defined the powers of the Commons, prohibited them from altering the Constitution, limited the duration of Parliament, and fixed a revenue for the Government independent of them, called together a body of 400 under a new franchise. These faithful representatives proved recalcitrant, refused to accept the bounds laid down for them, voted the protectorate to be elective not hereditary—and Cromwell dissolved them without delay.

In 1656 the Protector's second Parliament came as promptly as its predecessor to loggerheads with him, although he excluded 90 members, duly returned by their constituents, from taking their seats. They assumed the judicial powers of the House of Lords, and lost many weeks in trying,

without any semblance of justice, a blasphemer whom they punished by torture and other mediæval penalties.

Never was there a more flagrant example of "Nero fiddling while Rome was burning." The country was eager for some form of trustworthy government. The abortive rising of Penruddock, by reviving the fear of a Royalist reaction, had given Cromwell the excuse to divide England into districts which Major-Generals vested with supreme power governed by exactions without process of law. Liberty, for which such heavy sacrifices had been made, had vanished under military despotism. Property and person were less safe under the Major-Generals than under the Star Chamber. Taxes were illegally raised and in a celebrated case the three counsel of a complainant who refused to pay duty after the date when it had expired by law were committed by Cromwell to the Tower.

This was the time chosen by Parliament to spend weeks in parodying the judicial authority of the House of Lords which they had usurped, while neglecting such great issues as the illegal trial and execution of prominent Englishmen by the Protector. Yet with all their obsequiousness to Cromwell himself, their disregard of his prerogative in important particulars crystallized his views as to the evils of a Single Chamber government. Even his iron will shrank from the continual single-handed contest between the Head of the State and the House of Commons.

By 1657 Cromwell had become a convinced

Second Chamber man and declared himself openly. Replying to the 100 officers who came to him to protest against the revival of the monarchy and House of Lords, "By their judicial powers," said he, "the Commons fall upon life and member; and doth the Instrument enable me to control it? Unless you have some such thing as a balance we cannot be safe."

Curiously enough the mind of the House of Commons was working in the same direction. While Cromwell was restive under their control, they were conscious that without some equipoise in the Constitution, they would be always at the mercy of military rule. Thus within nine years of the abolition of the Upper House the Protector and the House of Commons combined to re-establish a Second Chamber, the nomination of the members being entrusted to the Head of the State.

Unluckily Cromwell's Lords were not a success. Cromwell made a fair selection from the influential men of the party supporting him; but only two of the old peers summoned obeyed the writs. The new men lacked prestige; their tenure was uncertain. Republicans objected to so many members of an Upper Chamber being officers and officials; men so tied to the Government, they argued, should be the servants of the people not their masters. There is much in the failure of this experiment which may be profitably studied by the amateur Constitution-mongers of the present day.

The main interest, however, of the last three

years before the restoration of Charles II lies not in the ups and downs of negotiations between two Houses, neither of which was representative of the people, nor in the divisions of the Army, nor in the waning power of the Protector, but in the great fact that the uncontrolled domination of each of these parties was found distasteful to the nation.

British politics furnish many instances of ascendancy which for a time has had the force of despotism; they furnish none in which measures hurried through under these conditions have not been followed by reaction.

It is not necessary to assume that the ways of representative governments are infallible. No one is so foolhardy as to ascribe a monopoly of wisdom or even a great measure of foresight to popular assemblies. It would be impossible to justify step by step, from day to day the channels by which Parliament comes to a decision. Prolonged and discursive debates, sudden compromises, appeals to passion outside, pressure of party exigencies, all appear inconsistent with sober judgment and reasoned decisions. Add to this the friction which, when feeling runs high, must occasionally arise between two chambers, and the medley appears to be complete.

But all these processes have their uses. The prosperity of a country which has enjoyed enlightened rule is best served by steady progress, not by the pursuit of visions which evaporate when the hot fit has passed away. Cromwell had a true grasp of England's foreign position, and

saw clearly what could be accomplished abroad by one-man rule. But in dealing with a distracted nation at home he ignored the preliminary processes by which Parliament feels the pulse of the commonalty, and quickly proved that he could not carry the English nation with him.

Henry Cromwell's analysis of his father's attitude to the Commons merits reproduction. He wrote (1657) to Thurloe:

"I wish His Highness would consider how casual (incalculable) the motions of a Parliament are, and how many of them are called before one is found to answer the ends thereof, and that it is the natural genius of such great assemblies to be various, inconsistent, and for the most part froward with their superiors, and therefore, that he would not wholly reject so much of what they offer as is necessary to the public welfare. And the Lord give him to see how much safer it is to rely upon persons of estate, interest, integrity and wisdom than upon such as have so amply discovered their envy and ambition and whose faculty it is by continuing of confusion to support themselves."

The failure of a Single Chamber (1650–1660) is a warning, and its significance lies not in the analogy between the conditions then and now, but in the greater need which then existed for prompt action. Under modern conditions the worst features of the ten years of republican rule could hardly be reproduced. The tyranny of the Government and the rapacity of the House of Commons, the contempt of law, the persecution of classes, would

in the present day cause too speedy a reaction to be allowed to go very far.

Far milder methods than those of 250 years ago would now be held injurious to the common weal. But in 1650 the right of Parliament to govern, the personal liberty of the subject, and the superior right of the many to those of the privileged few, were all in jeopardy. The time called for drastic remedies and for purges too long delayed. If under those conditions and with the directing force of Cromwell's personality, all parties found necessary "a balance in the Constitution" as a security against the haste and prejudice of the very human elements which then as now make up a House of Commons, surely no better testimony to the value of a powerful Second Chamber could be desired.

It should be remembered that it is not by the single effort of the House of Commons but by the co-operation of two chambers that our country has for a century been a landmark of liberty, order, and prosperity. An assembly which, relying upon the records of the past, demands unfettered powers, lacks authority and precedent for converting its independence into despotism. It is not necessary to warn a sovereign against renewing the errors of the Stuarts; it ought not to be necessary to warn the Commons against reproducing in the twentieth century the worst failures of Parliament under the Commonwealth.

CHAPTER VI

CONSTITUTIONAL SAFEGUARDS IN THE BRITISH DOMINIONS AND IN FOREIGN COUNTRIES

By the Rt. Hon. Sir Robert Finlay, G.C.M.G., M.P.

"When for such arguments as these you have abolished the House of Peers, how long do you think the privileges of hereditary monarchy will survive? I will tell you. Just so long as the privileges and prerogatives of monarchy can be made useful instruments and tools in the hands of the democracy which is to ride triumphant over the ruins of the House of Lords."

These words were spoken by Sir Robert Peel at Glasgow, on January 13th, 1837. The speech in which they occur, and the words themselves are curiously applicable to the events of our very recent political history and may be regarded as prophetic. In 1837 the House of Lords was threatened with destruction. In 1911 the House of Lords was not indeed abolished but effectually deprived of the right it had always exercised of securing that the nation should be consulted before any vital change was made in its capital institutions by those who professed to speak in

its name. This was the privilege, not of the House of Lords, but of the people. Of this privilege the country has been robbed by means of an abuse by the present Government of the Royal Prerogative which is without parallel in our history. The revolution was effected by the threat of the Government to swamp the House of Lords by a wholesale creation of peers in order to carry the Parliament Bill into law.

By the Parliament Act the House of Commons is given absolute control over Money Bills, and any Bill certified by the Speaker as such does not require the assent of the House of Lords in order that it may receive the Royal Assent. The Act further provides that any other Bill, if three times passed by the House of Commons, shall become law without the assent of the House of Lords. This applies to all legislation, whether of an ordinary character or involving the gravest Constitutional changes. The sole exception is with regard to Bills to extend the duration of Parliament. Any House of Commons, though elected upon a totally different issue, is at liberty to destroy the Union, to disestablish the Church, to abolish the House of Lords, or to convert the Constitution of this country from a Limited Monarchy into a Republic.

No more dangerous blow has ever been struck at the liberties of the people of the United Kingdom. Under our ancient free Constitution we possessed in the House of Lords an assembly which, as experience has amply proved

—notably in 1895—sometimes represented the settled convictions of the country more faithfully than did the House of Commons of the hour. The House of Lords did not claim to prevent the passage into law of any measure in favour of which the electors had definitely made up their minds. What the House of Lords did claim was the right to give the nation time to think, and to ensure that it should be consulted before any measure of importance, which happened to be desired by a temporary majority in the House of Commons, passed finally into law.

Under the Parliament Act the most vital changes may be effected in our institutions, not only without the consent but against the will of the electors, by a Government which has entrenched itself against the opinion of the country behind the barrier of a coalition of factions in the House of Commons, and which resolutely avoids an appeal to the country precisely because it knows that its temporary majority could not survive a General Election.

It may be added that the Parliament Act involves two consequences at once whimsical and disastrous. The House of Commons, in striking at the House of Lords, has dealt a heavy blow at its own efficiency and prestige. To comply with the conditions of the Act the Bill must be passed through the House of Commons three times in three Sessions in substantially the same form. If any change is made in the second or third Session, the Bill cannot be sent up for the

Royal Assent over the heads of the House of Lords. It is obvious that under such circumstances discussion in the House of Commons in the second and third Sessions will be a mere pretence. The Bill will be passed wholesale as it emerged in the first Session under the pressure of the gag and the guillotine. Any member on the Government side who votes for any amendment, however essential, and however clearly wanted, will be denounced as a traitor, and the House of Commons will cease to be a deliberative assembly. The Parliament Act in crippling the House of Lords and depriving the electors of their right to be consulted has also degraded the House of Commons. An attempt has been made in the Act to cure this blot by providing that the House of Commons may send up to the House of Lords in the second or third Session suggestions for amendments, but if these are not accepted the Bill is to pass as it stands without them. The grotesque result follows that the Bill is passed in a form which neither House approves; the House of Lords, regarding the Bill as vicious in principle, refuses to pass it even as amended, and it is passed into law without the changes which the House of Commons thought necessary and suggested for consideration. In the result the Royal Assent is given to a Bill of which both Houses disapprove.

The Parliament Act is without precedent in the history of the country, and indeed destroys one of the most valuable portions of our Constitution.

It is incapable of defence in principle, and it was hardly concealed that it was designed in the interests not of the nation but of the Liberal party.

It is without parallel in the civilized world, and runs counter to the lessons of experience in every other country and in our own Dominions beyond the Seas.

It is especially dangerous in view of the fact that we have no written Constitution to differentiate between ordinary legislation and legislation involving changes of the most revolutionary character in our institutions. In almost every other country in the world proposals for grave constitutional change are surrounded by special precautions which do not apply in the case of ordinary legislation. In almost every other country in the world there exists a Second Chamber exercising effective control over the passage into law of all Bills whether financial in their character or for effecting a change in the laws of the country.

Constitutions other than our own, when considered from this point of view, fall naturally into three groups.

I. The Constitution of the United States and the several States of the Union furnish perhaps the most perfect example of effective checks upon the vagaries of a Single Chamber especially in the matter of constitutional change. The Constitution of the United States is especially interesting to Englishmen as having been modelled upon the Constitution of this country as it existed in the eighteenth century, as was pointed out by Sir

Henry Maine in his brilliant essays upon Popular Government. That Constitution is interesting to all students of constitutional law, to whatever country they may belong, as showing the elaborate precautions that have been taken in the most democratic nation in the world to secure the people from the mischief of rash and ill-considered change.

II. The Constitutions of our great Dominions beyond the Seas afford cogent evidence of the recognition by all parties in this country of the necessity of such checks as existed in Great Britain until the Parliament Act became law. Whether we turn to Canada or to Australia or to South Africa the lesson is the same. The precautions which were enshrined in the ancient Constitution of England were recognized as necessary and were reproduced in the Constitutions of these great countries by British statesmen, and by the Imperial Parliament at the instance of our fellow-countrymen beyond the seas themselves.

III. The lessons taught by the Constitutions of other European countries are no less striking. These Constitutions make provision for an effective Second Chamber and draw a broad distinction between constitutional changes and legislation of an ordinary type.

It is proposed to pass in review the results yielded by an examination of Constitutions other than our own, taking the three groups in the order above specified.

A survey of this kind is calculated to give

pause to the most enthusiastic Radical and to make him doubt whether the Mother of Parliaments has been well advised in throwing over her own traditions and the experience of the whole world in order to embark on the new and perilous experiment of the Parliament Act.

I. The United States and the States of the Union.—The Constitution of the United States of America, like that of Germany and Switzerland, controls a Federation of independent States who retain for themselves sovereign powers over all matters not specifically entrusted to the Federal Legislature, and it must be differentiated from unitary Constitutions like those of Great Britain, France, or Italy, which are invested with full legislative power. In the United States the Federal Constitution presupposes the State Constitutions and its powers are delegated and not original; and so it happens that whereas in Great Britain, France, or Italy, Parliament is at liberty to alter the Constitution, in the United States the Constitution is above Congress and can only be amended by the people of the States whose creature it is.

The American Congress consists of two chambers, a Senate and a House of Representatives. The Senate is composed of 96 members elected for six years by the Legislatures of the States, one-third retiring every two years, and the House of Representatives of 391 members chosen every second year by the people of the several States in the Union. The two Houses enjoy equal and

co-ordinate legislative power in respect of all matters within their jurisdiction, except that Money Bills must originate in the House of Representatives, and all measures, whether they relate to finance or not, require the assent of each House of Congress. The Senate, however, not only possesses the right to reject Money Bills, but also the right of amendment—a right which it freely exercises by drastically altering such Bills in an overwhelming proportion of cases, thereby increasing the amount of appropriation. In the not infrequent event of a deadlock, a conference, usually composed of three members from each House, endeavours to arrive at a compromise, but if no compromise can be arranged the measure is lost. However, in practice, whenever the two Houses disagree about the provisions of a Money Bill, a sum intermediate between the respective amounts is adopted. All Bills before they become law must not only pass Congress, but must be presented to the President for his assent. If the President approves of the measure he signs the Bill, if he disapproves of it he returns the Bill within ten days to the Chamber in which it originated, with a statement of the grounds of his objections, and, if Congress passes the Bill again by a two-thirds majority in each House, the Bill becomes law without requiring the President's signature. The President's veto is a very real Constitutional safeguard, for the President is expected to exercise his veto, as he frequently does, in what he conceives to be the interest of

the people. Mr. Bryce, in his work on the American Commonwealth, expresses himself on this subject as follows:

"The people regard him (the President) as an indispensable check not only upon the haste and heedlessness of their representatives (the faults which the framers of the Constitution chiefly feared), but upon their tendency, a tendency whose mischievous force experience has revealed, to yield either to pressure from any section of their constituents or to temptation of a private nature."

To these constitutional limitations the Federal Legislature of the United States is bound to conform, and any legislative action not in accordance with the Constitution will be pronounced null and void by the Supreme Court of the United States. The Constitution of the United States, then, is not controlled by the Legislature, but the Legislature is controlled by the Constitution, which can only be amended subject to the most stringent safeguards. The mode in which the national will is to be ascertained in a matter of such supreme importance is set out in Article 5 of the Constitution as follows:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments which, in either case, shall be valid to all intents and purposes as part of the capital Constitution when ratified by the Legislatures of

three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress provided that . . . no State without its consent shall be deprived of its equal suffrage in the Senate."

No provision is made in the Constitution for the election or composition of constitutional conventions, and amendments of the Constitution have always been dealt with by the method first mentioned, namely by the Legislatures of the several States.

Congress has no power to alter the Constitutions of any of the Federated States, and the Legislatures of the States have no more power to alter the State Constitutions (with the possible exception of the little State of Delaware) than Congress has to alter the Constitution of the United States. Constitutional amendments in the several States are usually initiated by the State Legislature, but the amendments cannot be carried except with the assent of at least the majority of the citizens voting at the polls.

Such are the constitutional safeguards against the abuse of legislative power, which are considered necessary by the most democratic country in the world. Has that country no lesson to teach us?

The veto of the President was modelled on the veto of the Crown as exercised in earlier periods of our history, but with the development of Constitutional Government the veto of the Crown has

become obsolete. The Second Chamber of this country in the past has stood between the people and the arbitrary exercise of power by the House of Commons, but by the Parliament Act this safeguard has been destroyed, and measures to dismember the United Kingdom, and to disestablish the Church are avowedly to be passed as the first-fruits of the Parliament Act, 1911, without the opinion of the people being taken. Would it not be wise statesmanship to re-invest the Second Chamber once more with the power of referring to the people measures with respect to which the wishes of the people have not been ascertained?

II. The British Dominions.—An examination of the Constitutions of the British Dominions beyond the Seas demonstrates that, so far as the self-governing colonies are concerned, the Imperial Parliament has considered it advisable to incorporate in each of the Constitutions which have been granted to the British Dominions provisions to prevent the very abuse of arbitrary authority by a Single Chamber which the Radical administration has by the Parliament Act made possible in the Mother Country. It must further be borne in mind that these Constitutions were framed by the Dominions themselves, and by them submitted for the approval of the Imperial Parliament, so that in these Constitutions we have embodied the views of these great democratic communities as to the necessity of such safeguards as have now been discarded in Great Britain.

The Constitutions of the British Dominions possess fundamental characteristics which differentiate them from the Constitutions of other countries, for it must always be borne in mind that the Imperial Parliament in the first instance created the Colonial Constitutions by Imperial Statute, and retains, in theory at all events, the unfettered right to amend or even abolish them. Moreover, the several Constitutions of the Dominions differ *inter se*, for, whereas the Colonies which form the Commonwealth of Australia are entitled under the Constitution, as in the United States, to legislate in respect of all matters not specifically transferred to the Commonwealth Parliament, in Canada and in United South Africa the Provincial Legislatures have only such legislative power as is specifically allocated to them under the terms of the Constitution, while over all other matters the Federal Government has supreme and exclusive jurisdiction.

(a) *Canada.* — The Federal Constitution of Canada, which is contained in the British North America Act of 1867, as amended in 1871, 1875, and 1886, provides for a Legislature which is composed of the Senate nominated for life by the Governor-General on the advice of the Prime Minister, and the House of Commons elected by a poll of the people. The powers of the Senate and of the House of Commons are equal and co-ordinate, except that Money Bills must originate in the House of Commons, and no provision is incorporated in the Act to meet the difficulties

arising from a deadlock between the two Houses either with regard to finance or general legislation.

The number of Senators was in the first instance 72, but it was provided that the Crown, upon the advice of the Governor-General, might at any time add from three to six members to the Senate. Provision was made for an increase of the number of the Senate in respect of new Provinces which might be added to the Dominion or in respect of Territories not included in any Province. In this country the Prime Minister and his allies, before the House of Lords had rejected the Parliament Bill, or had even considered its provisions, threatened to overwhelm resistance to the measure by advising the King to appoint a very large number of new peers; this action amounted in effect to seizing the Royal Prerogative and using it for party purposes. No such constitutional outrage could be committed in Canada, for under the Constitution it is impossible for the Senate to be swamped at the will of the executive.

The Dominion Parliament possesses no power of amending the Constitution itself, and an alteration of the Constitution must proceed from the source which created it, namely, the Imperial Parliament.

(b) *Australia.*—The Commonwealth of Australia is undoubtedly the most interesting constitutional experiment of modern times. Like the Federal Constitutions of Germany and Switzerland and the United States, the Parliament of the Commonwealth of Australia possesses only such legislative

powers as are conferred upon it by the Act of the Imperial Parliament which created it; and all legislative power not exclusively vested in the Parliament of the Commonwealth by the Constitution, or withdrawn from the Legislatures of the several States, is retained by the States which form the Commonwealth.

The Federal Parliament is composed of the Senate and the House of Representatives; both Houses are elected by the direct votes of the people, and the electorate is the same for each House; the Senate being chosen by the people of the States voting as one electorate by *scrutin de liste*, and although the Commonwealth Parliament may increase or diminish the number of senators, the representatives of each original State must be equal in number and must consist of not less than six senators. Senators are elected for six years and members of the House of Representatives for three years, the number of Representatives being as nearly as possible twice that of senators. The Senate has equal power as to legislation with the House of Representatives, except with regard to finance. Money Bills must originate in the House of Representatives and the Senate has the power to reject but cannot amend such Bills, although it may suggest amendments by message to the other House.

Constitutional safeguards of the greatest importance, however, are incorporated to provide against any attempt being made, either to "tack" on to Money Bills provisions relating to general

legislation, or to lump into one Money Bill a number of separate taxing provisions.

"Section 54. The proposed law, which appropriates Revenue or monies for the ordinary services of the Government, shall deal only with such appropriation."

"Section 55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect."

"Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only, but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only."

It will be recollected that in this country after the rejection by the House of Lords of the proposed repeal of the paper duties, Mr. Gladstone in 1861 introduced the practice of combining into one measure all the financial proposals for the year which had previously been contained in separate Bills, and that practice has been followed and extended ever since. It was adapted avowedly for the purpose of making it difficult for the House of Lords to exercise its undoubted right of rejecting any financial Bill. Any financial legislation in such a composite form is expressly forbidden by the Australian Constitution.

The Senate may reject any Bill, whether it deals with finance or not, and elaborate provisions are found in the Constitution to obviate the

difficulties of a deadlock between the two Houses. If any Bill has been twice passed by the House of Representatives and twice rejected by the Senate, the Governor-General may dissolve both Houses, and if, after such dissolution, the Senate again rejects or fails to pass the Bill in a form acceptable to the House of Representatives, the Governor-General may convene a joint sitting of the two Houses, and, if the Bill with or without amendments is passed by an absolute majority of the total number of the members of the two Houses, it is taken to have been duly passed by both Houses.

It will be observed that, while under the Parliament Act, 1911, Bills can be passed over the head of the Second Chamber in this country without any reference to the people, in Australia, not only can the Second Chamber "force a dissolution" of Parliament, but even after the assembling of the new Parliament the proposed Bill, if again rejected by the Upper House, cannot be placed on the Statute Book unless and until it has received the assent of the two Houses sitting in joint session.

The Constitutional procedure to effect an alteration in the Constitution itself is as follows:

"Section 128. The proposed law for the alteration thereof must be passed by an absolute majority of each House of Parliament and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the

House of Representatives. But if either House passes any such proposed law by an absolute majority and the other House rejects or fails to pass it, or passes it with any amendments to which the first mentioned House will not agree, and if, after an interval of three months, the first-mentioned House in the same or the next Session again passes the proposed law by an absolute majority with or without any amendment, which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendments to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives. When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. . . . If in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Crown's assent. No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution

in relation thereto shall become law unless the majority of the electors voting in that State approve the proposed law."

Such are the elaborate Constitutional safeguards against reckless and arbitrary legislation which commended themselves to the Australians and the Imperial Parliament in 1900.

(c) *South Africa.*—In 1909 the Imperial Parliament, under a Liberal Administration, passed a Constitution for United South Africa, and an examination of the provisions of the South Africa Act discloses the remarkable fact that the same Government which has in effect set up an autocratic Single Chamber in this country, adopted in the Constitution of United South Africa. safeguards to prevent the possibility of Single Chamber Government similar to those found in the Commonwealth of Australia Act. Is it right and prudent that a strong Second Chamber should form part of the Constitution of a State? If not, what justification is there for imposing such a system upon one of the Dominions? But, if a Second Chamber with real powers ought to form part of a Constitution, what satisfactory explanation can His Majesty's present advisers give of the provisions of the Parliament Act, which destroyed the power of the House of Lords to refer ill-considered measures to the electors?

The legislative power of the South African Union is vested in the King, a Senate composed of 40 members to hold office for ten years (eight of whom are nominated by the Governor-General, and

eight elected by each of the four Provincial Legislatures), and a House of Assembly chosen directly by the European male adults of the Union for five years.

The Union Parliament possesses supreme legislative power and the Provincial Councils, subject to the Constitution, are entitled to legislate by ordinance in respect of such matters only as are specified in the Act of Union. A reference to s. 85 of the Act will show that these matters are of a local and private nature.

Except that the Senate may not amend the taxation or appropriation provisions of Money Bills, which must originate in the House of Assembly, or, by amending any Bill, increase any proposed charge upon the people, the Senate and the House of Assembly have equal and co-ordinate legislative authority. Moreover, Appropriation Bills can deal only with the appropriation of revenue or money.

In case of a deadlock between the House it is provided:

"Section 63. If the House of Assembly passes any Bill and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next Session again passes the Bill with or without any amendments which have been made or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Assembly will not agree, the Governor-General may during that

Session convene a joint sitting of the members of the Senate and House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the Bill as last proposed by the Assembly and upon amendments, if any, which have been made therein by one House of Parliament, and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting, shall be taken to have been carried, and if the Bill with amendments, if any, is confirmed by a majority of the members of the Senate and House of Assembly present at such sitting it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any Bill dealing with the appropriation of revenue or monies for the public service, such joint sitting may be convened during the same Session in which the Senate so rejects or fails to pass such Bill."

The Union Parliament is invested with legislative power to repeal or alter the Constitution provided that no provision thereof for the operation of which a definite period of time is prescribed shall during such period be repealed or altered; and provided that no repeal or alteration of provisions relating to the amendment of the Constitution, or the numbers of the House of Assembly (during a certain period), or of the provisions of s. 35 of the Act (a section dealing with the qualification of voters) or of s. 137 as to

the equality of the English and Dutch languages, shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament. In Australia and in South Africa the Governor-General may in his discretion give or withhold his assent to measures presented to him for the King's assent or he may return the Bill with amendments for further consideration; or he may, and in South Africa in certain cases must, reserve the Bill for the signification of the King's pleasure.

(d) *New Zealand.*—In the Constitution of New Zealand, a British Dominion, to which, as a colony, responsible Government was granted in 1856, there is no machinery for adjusting differences between the two Houses. The Legislative Council (the members of which are nominated by the Governor) and the House of Representatives enjoy equal and co-ordinate legislative powers. Twenty years ago, the relations of the two Houses in general legislation was under discussion in the Imperial Parliament and papers were laid dealing with the matter.

The result of this survey is to show that the Constitutions of all English-speaking civilized communities, both in the United States and in the British Dominions beyond the Seas, afford no

precedent for investing a Single Chamber with autocratic power. On the contrary, not only do Second Chambers with ample powers form part of each of their Constitutions, but an amendment of the Constitutions themselves is hedged round with special precautions. It must also be remembered that these Constitutions are not the result of Legislation passed in dim ages long since gone by, but are the outcome of modern constitutional experience, and have been adopted and carried out in practice by democratic communities of the most advanced type.

III. Other European Countries.—A consideration of the Constitutions of Continental European countries will show the importance therein attached to a strong and efficient Second Chamber, and to adequate safeguards against rash constitutional change. The Parliament Act has placed this country in a position of constitutional isolation which can hardly be described as splendid.

(a) *France.*—The constitutional history of France since the great Revolution of 1789 is both interesting and instructive; numerous and varied forms of Government have been tried; the present Constitution was brought into being in February, 1875, and, as subsequently amended, forms the present Instrument of Government.

The Legislative Power is exercised by the Senate and the Chamber of Deputies; the Senators are elected by Departmental Electoral Colleges for nine years, the members of the Chamber of

Deputies under a system of universal manhood suffrage for four years. The President, acting on the advice of his Ministers, possesses concurrent right with either of the Chambers to initiate legislation, and all Bills require the assent of both Houses. Money Bills must be introduced in the Chamber of Deputies, but otherwise the two Chambers possess equal and co-ordinate authority.

The Constitution itself can only be amended in accordance with Article 8, which runs as follows: "The Chambers shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare a revision of the Constitutional Laws necessary." After each of the two Chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision.

Any Acts effecting revision of the Constitutional Laws in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly. The Republican form of Government may not be made the subject of a proposed revision.

No constitutional machinery is in existence for settling disagreements between the Senate and the Chamber, although each of the two Chambers has drawn up Rules of Procedure which provide for the appointment by each House, in its discretion, of a committee to confer with a committee of the other House, in the

event of a deadlock taking place. Frequent disputes on general legislation have arisen between the two Houses, but they have almost invariably resulted in a compromise being arranged. In truth, it is only by a policy of conciliation that legislation in case of a deadlock can be carried.

In England, an election was forced upon the country in December, 1910, before the Parliament Bill had been even considered by the House of Lords ; in France no such *tour de force* could have been attempted, for it is only with the advice of the Senate, that the President may dissolve the Chamber of Deputies before the legal expiration of its term. Monsieur Ribot, in the course of a speech in the French Parliament in 1885, said: "The two Chambers should be allowed to continue their negotiations, which may probably be laborious, but which are the necessary conditions of a Parliamentary régime. An agreement will be the more easily found, seeing that the Constitution has rendered conciliation an everyday necessity ; it is indeed the basis of a Parliamentary régime and one of the inevitable conditions of the existence of two Chambers."

In countries where legislation can only be carried by compromise and conciliation, the executive has every inducement to introduce measures moderate in principle and carefully considered in detail. The position of uncontrolled authority set up by the Parliament Act will tend to engender in the Government in office a desire to exercise its supreme power for the benefit of one party

rather than of the State as a whole. "How oft the sight of means to do ill deeds makes ill deeds done!"

(b) *Germany.* — The legislative power of the German Empire is exercised by the Bundesrath, composed of 58 representatives proportionately allocated to the several States of the Union, and appointed by their executives (Prussia being granted seventeen representatives in all), and the Reichstag, the members of which are chosen for five years directly by the people. As in the United States, Switzerland, and Australia, the powers vested in the Federal Parliament are delegated and not original, and the States are, subject always to the Constitution, possessed of all legislative rights not entrusted to the Federal Parliament. The Bundesrath or the Reichstag may initiate legislation, including Money Bills, and the assent of both bodies is necessary and sufficient for the passage of legislation. The relative importance of the two Houses is in striking contrast with that which obtains in other European countries. The Upper House, which performs many important executive as well as legislative functions, altogether overshadows the Reichstag. The Bundesrath in practice always exercises the initiative in legislation, and from among its members are chosen the heads of the administrative departments. But, without the consent of the Reichstag, no legislation is possible, and no machinery exists to compel the Reichstag to defer to the decisions of the Upper House. How different from the position of the Second

Chamber in this country! Like the House of Lords before 1911, the power of the Reichstag is negative rather than positive, but unlike the House of Lords since 1911, it possesses the power to amend or to reject Bills which it does not conceive to be in the interest of the people.

The Constitution of the German Empire (except with regard to rights thereby secured to particular States which can only be amended with the consent of the States affected) can be amended by legislative enactment of the Imperial Parliament, but if fourteen votes of the Bundesrath are raised against any constitutional amendment, the amendment is to be treated as rejected. This is a constitutional provision which not only prevents the adoption of ill-considered amendments, but safeguards the privileges of Prussia, for as Prussia has seventeen votes in the Bundesrath, no amendment of the Constitution can be carried without her consent.

(c) *Austria.* — Austria and Hungary are independent States under a dual monarchy, the Emperor of Austria being also King of Hungary; and each State is supreme and uncontrolled, except in so far as administration and legislation in respect of certain "common affairs," e.g., Foreign Affairs, Naval and Military Affairs, and National Defence, have been placed within the jurisdiction of delegations, chosen from the Parliament of each State, which sit and deliberate separately, or, in default of agreement, in joint Session.

The Austrian Reichsrath is composed of an

Upper House of some 250 members (of whom 150 to 170 are nominated by the Emperor, and the remainder are hereditary Peers), and of a House of Representatives, the 516 members of which are chosen directly by the people. Both Houses have equal and co-ordinate legislative authority in all matters within the jurisdiction of the Reichsrath, and which are not transferred to the delegations, except that Money Bills and Bills relating to recruiting must originate in the Lower House. Each House has equal control over the public finances, and in case of disagreement with regard to Money or Recruiting Bills, the lower figure is to be considered as granted. No machinery exists for settling a deadlock in ordinary legislation, although in practice a joint committee is formed for the purpose of arranging a compromise.

Section 14 of the Constitution of 1867 provides as follows:

"If urgent circumstances should render necessary some measure constitutionally requiring the consent of the Reichsrath when that body is not in Session, such measure may be taken by Imperial Ordinance, issued under the collective responsibility of the ministry, provided it makes no alteration of the fundamental law, imposes no lasting burden upon the public treasury and alienates none of the domain of the State. Such ordinances shall have provisionally the force of law, if they are signed by all of the ministers and shall be published with an express reference to this provision of the fundamental law.

"The legal force of such an ordinance shall cease if the Government neglects to present it for the approval of the Reichsrath at its next succeeding Session, and indeed first to the House of Representatives, within four weeks after its convention, or if one of the two Houses refuses its approval thereof.

"The ministry shall be collectively responsible for the withdrawal of such ordinances as soon as they have lost their provisional legal force."

Similar clauses appear in the Constitutions of Russia and of Denmark. This provision has been more than once used to overcome racial obstruction to legislation, although its original object was to meet cases of sudden emergency, and, for this reason, it has been the cause of much bitter discussion in both Houses. Amendment of the Constitution or of the fundamental laws on the general rights of Austrian citizens can be made only by a majority of not less than two-thirds of the members present, and with the presence of not less than half of the members of the House of Representatives.

(d) *Hungary.*—The Hungarian Diet consists of the Table of Magnates or Upper Chamber, composed of 394 members, in part nominated and official, but mainly hereditary, and a House of Representatives whose members number 453 and are directly chosen by the people. Both Houses have equal legislative powers, and Bills may be introduced in either House, although in practice Bills are always introduced in the Lower House. No machinery for settling differences between the

Houses exists, but it is impossible to swamp the Table of Magnates, for the total number of life members appointed by the Crown may not exceed 50, and in no case may more than five appointments be made in a year.

(e) *Italy.*—In Italy, the legislative power is exercised by the King and two Houses, a nominated Senate and a Chamber of Deputies chosen for five years by the people. The two Chambers have equal right to approve, amend or reject Bills which may be introduced either by the King or in either House, except that Money Bills must be presented in the first instance to the Chamber of Deputies. There is no provision in the Constitution for the settlement of disagreements between the Chambers, but, in practice, the functions of the Senate are subordinate to those of the Chamber; the reason being, that the number of senators which may be appointed for life by the King, is unlimited, and in recent years the Royal Prerogative has been exercised on several occasions in order to change the political views of the Upper House; in 1886 41 senators, in 1890 75, and in 1892 42 being appointed "en bloc."

(f) *Spain.*—In Spain, the legislative power resides in the Cortes and the King, and the relations of the two Houses (the Senate and the Chamber of Deputies) to each other is analogous to that which obtains in Italy, with two important distinctions, viz.: (1) the number of senators sitting in their own right and appointed by the King for life is limited to 180, so that the Upper House cannot

be swamped at the will of the executive; and (2) although no machinery to deal with a deadlock is incorporated in the Constitution of 1867, by a law of July 12th, 1837, it is provided that "if one of the Chambers modify, or disapprove in any of its parts, a Bill already passed in the other Chamber, a committee shall be formed, composed of equal numbers of senators and deputies for the purpose of conferring on the mode of conciliating the conflicting opinions. The report of this committee shall be discussed without any alteration by the Senate and the Chamber, and if accepted by both, the Bill shall be held as passed." These joint committees have so admirably fulfilled their functions, that in practice any collision between the two Chambers has been avoided.

(g) *The Netherlands, Sweden, Denmark, Belgium.*—The Netherlands, Sweden, Denmark and Belgium possess Constitutions which differ, no doubt, in the composition of the two Chambers, but which, with certain modifications, are constructed on similar lines.

The States-General in the Netherlands, the Rigsdag in Sweden, the Rigsdag in Denmark and the Parliament in Belgium are each composed of two Chambers. It is impossible for the executive to swamp the Upper House under any of these Constitutions, for (except that twelve out of 66 members of the Upper House in Denmark are appointed by the King, and that the Princes of the blood are *ipso facto* senators by right in Belgium), the members of both Houses in these countries

are elected. The Upper House of the Netherlands is undoubtedly the weakest Second Chamber in Europe with the exception of the present House of Lords, for it cannot initiate or amend any legislation unless it is sitting in joint session with the Lower House. In other respects the Upper House has equal power with the Lower House, and no machinery to relieve deadlocks exists. The mode of carrying constitutional amendments is carefully safeguarded, for any proposal for a change in the Constitution must be embodied in a Bill providing for its consideration, upon the passage of which both Houses are dissolved. Newly elected chambers proceed to examine the modifications proposed, but the measure cannot become law unless it has been passed by a majority of two-thirds of the newly elected members. In the case of a proposal for a revision of the Constitution in regard to the dynasty a dissolution takes place, the new Chambers elected *ad hoc* being composed of double the normal number of members, each constituency or electoral college electing two members to every one elected under ordinary conditions.

The two Chambers in Sweden are accorded equal competence both in financial and other matters. Legislation requires the assent of both Chambers voting independently, except in financial matters, in respect of which under certain conditions a common vote is taken. The Parliamentary practice allows, when the decision of the Houses shows only a slight divergence, that the matter in hand

should be referred back to committee, with a view to effecting a compromise acceptable to both; but should the Houses reach different conclusions which cannot be brought into agreement, each House must vote separately upon the matter in dispute. The opinion which receives the majority of the votes of the two Houses shall be the decision of the Rigsdag. An amendment of the fundamental laws, including the law of the Constitution, can only be carried with the assent of the King, and of both Houses in two regular Sessions of the Rigsdag.

In Denmark both Houses possess the right to propose laws and to act upon them, but Money Bills must be first introduced in the Folkething, or Lower House. In case of disagreement, an equal number of members are appointed by each House to meet in committee and arrange a compromise if possible, but if no agreement is arrived at the Bill is lost.

Proposals for any constitutional amendment must be adopted by both Houses, and the proposed amendment can only become law after a General Election, and after confirmation by the newly elected Rigsdag, and the approval of the King.

In Belgium, Money Bills and Army Bills must originate in the Lower House, but in all other respects the Chambers possess equal and co-ordinate authority in respect of both financial and general legislation. No machinery to settle collisions between the Houses exists, but amendments of the Constitution can only be carried after

the proposed amendment has been adopted by the King and both Houses, in which event the two Houses are *ipso facto* dissolved, and the amendment becomes law, if with the approval of the King it has been adopted by a majority of at least two-thirds of the members of the newly elected Parliament, two-thirds of the members of each House being in attendance.

(h) *Norway.*—The Constitutions of Norway and Switzerland call for special treatment. In Norway the entire legislative power is vested in a body of 123 Representatives, chosen by the people every three years to form the Storthing; but it is provided that the Storthing shall at its first regular Session select one quarter of its members to form the Lagthing or Second Chamber, the remaining three-quarters constituting the First Chamber, or Odelsthing. Every Bill must, in the first instance, be deliberated in the Odelsthing, and if twice rejected by the Lagthing when sent up from the Lower House, the entire Storthing meets and acts by a two-thirds vote. Every Bill passed by the Storthing requires the consent of the King, but Bills automatically become law, even without the Royal assent, if passed without change by three Storthings after three successive elections. All Bills involving questions of finance, motions criticizing government action, etc., come before the whole Storthing and are decided by a majority of votes.

Amendments of the Constitution, provided they do not contravene the principles of the Constitution, can only be carried if they are presented in the

Storthing after a new election and are confirmed by a two-thirds majority of the Storthing after the next General Election.

(i) *Switzerland.*—The Constitution of the Swiss Federation is especially interesting as it is the home of the Referendum or Poll of the People, but, apart altogether from the Referendum which receives special treatment elsewhere in this work, ample constitutional safeguards are provided in the Constitution against Single Chamber government. The Federal Assembly, which (subject to the rights reserved to the people and to the Cantons to effect legislation by direct ballot) exercises supreme legislative power, is composed of two chambers, the National Council chosen directly by the people, and the Council of States consisting of two members appointed by each of the 22 Cantons. Like the United States Congress and the Federal Parliaments of Germany and Australia, the powers of the Federal Assembly are delegated and not original, and in Switzerland, as in America and Germany, the Federated States retain sovereign rights so far as their sovereignty is not limited by the Federal Constitution. The two Chambers possess absolutely equal and co-ordinate power. All Bills may originate in either House (the practice being to introduce the Budget in alternate Sessions in the National Council and Council of States), and all laws require for their validity the assent of both Houses. In the event of a disagreement between the two Chambers, which, however, is practically unheard of, a joint

committee of an equal number of members from each chamber is formed to effect a compromise. The Bill is dropped unless the committee succeeds in formulating an agreed proposal, in which case each Chamber affirms or rejects the Bill in its final form. Federal laws, however, which have passed both Houses, must be submitted for acceptance or rejection to the people. If the demand for a Referendum is made by thirty thousand voters or by eight Cantons, the Constitution gives the electorate a direct power, if it wills, to veto any legislation of which it disapproves.

The amendment of the Constitution not only may, but must be referred to the people for confirmation or rejection. A proposal for a total or partial revision may proceed either from one or both Houses, or from fifty thousand electors. If the two Chambers agree upon the amendment, the revision takes place in the manner provided for passing Federal Laws. If one Chamber does not consent to a revision proposed by the other, or if fifty thousand voters demand total or partial revision, there is a poll of the people, followed, if the amendment is approved, by a General Election of both Chambers for the purpose of undertaking the revision. The amendment must be adopted by a majority of Swiss citizens voting thereon, and by a majority of the Cantons.

Conclusions.—Certain obvious conclusions can be reached after an examination of the Constitutions in foreign countries and the British Dominions beyond the Seas. It is evident that no counterpart

of the system of government under which the affairs of the United Kingdom are at present being administered can be found in any other civilized community. In other countries, both Chambers of the Legislature almost invariably possess equal and co-ordinate authority. No modern State of any importance, with the sole exception of Great Britain, is willing to submit its destinies to a single autocratic Chamber, and it is a matter of some interest that even in countries such as Russia, Turkey and Greece, where the evolution of constitutional government is being slowly and painfully worked out, the bi-cameral system has been adopted as an essential and important part of the new Constitution. Again, every other Second Chamber (except in Sweden, Norway and South Africa, where the joint opinion of the two Houses is taken) possesses an effective power of rejecting measures which it considers to be injurious to the interests of the people, while in Great Britain the Second Chamber is now unable even to delay the passage of Bills until the wishes of the people have been ascertained. But is a strong Second Chamber desirable in other countries, and undesirable in Great Britain, and if not, upon what grounds can the Parliament Act, 1911, be justified?

In the Constitution of many States, provision is made for the settlement of disputes between the two Houses by joint Session or otherwise, but no such machinery exists in this country, and indeed it would be superfluous, for under the Parliament Act the will of the House of Commons is to

prevail. Again, in nearly all modern instruments of government, provisions are inserted to prevent ill-considered and unpopular attempts being made to amend the terms of the Constitution; and the more democratic the nation, the more stringent are these constitutional safeguards found to be. One effect of the Parliament Act is to abolish the power of the House of Lords to refer even measures which effect a change in the Constitution itself to the decision of the people. Everything is left to chance votes in an uncontrolled House of Commons.

England and France in times gone by have suffered from the evils of Single-Chamber government, and in each country the experiment proved a dismal and disastrous failure. It is to be hoped that the electors will realize, while there is yet time, the perils to which their country will continue to be exposed, so long as the Parliament Act, 1911, in its present form, remains upon the Statute Book, and will take steps to restore to the people the ultimate control of their own destinies.

CHAPTER VII

SECOND CHAMBERS IN THE BRITISH DOMINIONS AND IN FOREIGN COUNTRIES

By Lord Hugh Cecil, M.P.

The student of Parliamentary institutions, reviewing all the Constitutions in the world, finds himself perplexed by their number and by the variety of their details. Those who have not looked into the matter probably hardly realize the enormous number of legislative assemblies of one kind or another that exist at present. There are assemblies in every independent European country. In two of those countries which are federations, namely the German Empire and the Swiss Confederation, there are also assemblies in the different component States. In the American continent there are assemblies in every State of the United States besides the Federal Congress. There are in Canada similarly assemblies for each of the Provinces, as well as for the Dominion. And to these may be added the assemblies to be found in the Republics of South and Central America. In Asia we find Japan with assemblies in effective working; Persia with them at any rate in nominal

existence; China about to embark on a Parliamentary career; India with Legislative Councils both under the Viceroy and in the Presidencies. In Australia there are the two Chambers of the Commonwealth, as well as two for each State. In South Africa the supply is only a little less abundant, for there are two Chambers to the Union, and a single Council for each province. The smaller British Colonies, like the West Indies, have assemblies of various constitution, sometimes with a larger, and sometimes with a smaller, democratic element.

It is true that for the present purpose we are concerned directly only with those States that have two Chambers. But even with that limitation there is danger, in studying a large number of examples, of becoming lost in confusing details and failing to carry away any definite or useful impression. It will be well, therefore, to begin by an endeavour to divide the examples according to some easily distinguished characteristics, to set aside altogether examples from the least important States, to review only briefly many of the more important States, and to concentrate attention so far as possible on the examples which are really most instructive.

In the first place, we may note and put on one side those States which have only a single Chamber, and which therefore lie beyond the scope of our present discussion. There are a large number of these, but almost all of them are of insignificant importance. Twenty-two Swiss Cantons, sixteen German States, and six Provinces of the Dominion

of Canada have single Chambers; so have the Provinces of the South African Union. All these are States forming part of federations. Among unitary States, Costa Rica, Panama, Honduras, Salvador, and San Domingo have single Chambers, and many of the smaller British Colonies are legislated for by a single council. But the least inconsiderable unitary States that have single Chambers are Bulgaria and Montenegro. Of these, none can be regarded as States of the first or second, and scarcely of the third rank. Norway is in a peculiar position, for the Constitution of Norway provides for a second legislative Chamber, but that Chamber is only a committee of the first. The Storthing, as the whole Parliament is called, divides itself after election into two bodies; the Lagthing, which consists of a quarter of the members of the Storthing, and performs the functions of a Second Chamber; and the Odelsthing, which consists of the other three-fourths, and forms the Lower House. Norway might perhaps be described as having neither one chamber nor two, but one and a half.

Among States having independent Second Chambers, a distinction must be drawn between federal and unitary States. A Second Chamber in a federal State is not merely a checking, suspensory, or revising body, but a constitutional expression of the rights of the separate States as distinct from those of the federation as a whole. In the United States of America the Senate is constituted by the election of two senators by each of

the States who make up the Union. The senators are therefore representatives not of so many electors, but of States. A thinly populated State of the Union, like Nevada, returns two members to the Senate no less than the State of New York, although the State of New York is more than a hundred times as populous as Nevada. For Nevada is deemed to be a State, joined indeed in a federation with other States, but for some purposes and in some relations sovereign; and all sovereign States are equal in the federation. It matters not that Nevada is thinly populated, and New York densely populated; it matters not that in several States in the west the standard of civilization is less organized and complete than in the east; it matters not that there is a still greater discrepancy between the wealth of the older and the younger States; all are alike autonomous States joined equally in a federal union. And the representatives of each State in the Senate have therefore something of the character of ambassadors at a congress, although in practice they exercise their own judgments, and are not guided by the instructions of their State. They represent a State, and not a number of individuals, and in this aspect are sharply distinguished from the ordinary member of a legislative assembly, who is returned by a particular constituency. This characteristic of the constitution of the Senate does not diminish the importance of that body, but, on the contrary, tends to enhance it, and to give to the Senate a prestige and dignity superior to that of the House

of Representatives, which is returned by particular constituencies, and in rough proportion to population. The Senate in the United States is in a true sense the Upper House, while the House of Representatives is the Lower. And the Senate's federal character distinguishes it altogether from the Second Chambers in unitary States, and makes it the less instructive as an example to ourselves.

A similar observation applies to the Bundesrath or Upper House of the German Empire. This, like the Senate, is a federal assembly and represents not constituencies of electors but autonomous States. Yet, unlike the American Senate, the different States send not equal, but very different numbers of representatives to the Bundesrath; and the votes belonging to each State are given in a block as the Government of that State directs. Of the 58 members of the Bundesrath, Prussia has 17 in right of the Prussian dominions, 1 in right of Waldeck, which Prussia has purchased, and the 2 votes of Brunswick are in fact given under Prussian orders, because the ruler of Brunswick is a Prussian prince. Prussia therefore in effect controls 20 votes, Bavaria has 6, Saxony and Würtemberg 4, Baden and Hesse 3, Mecklenburg-Schwerin 2, and the other 13 States and 3 Free Cities 1 each. Alsace Lorraine is reckoned an imperial territory, and has no representative. Since no amendment of the Constitution can be carried against which 14 votes in the Bundesrath are given, the Prussian Government are assured of an absolute veto on all constitutional changes;

and the Prussian Government is controlled by the King of Prussia. On his authority even the Prussian Parliament has but slight influence; and that Parliament is itself so constituted as to give to the Prussian aristocracy a predominant voice. The Bundesrath is therefore a powerful instrument for securing the predominance of the king and aristocracy of Prussia in the German federation.

Among federal systems we must also note the Dominion of Canada and the Australian Commonwealth. The Upper House in Canada is called a Senate, like the Senate in the United States, but it only has a faint flavour of federalism about it. It consists now of 87 members, and they are nominated for life by the Governor-General, on the advice of his ministers. The only federal feature in the matter is that a certain number of senators must be appointed from each of the Canadian Provinces: 24 are appointed to represent Ontario; 24 to represent Quebec; 10 to represent Nova Scotia; 10 New Brunswick; 4 Prince Edward Island; 3 British Columbia; 4 Manitoba; 4 Saskatchewan; and 4 Alberta. But since they are all nominated by the Dominion Government, they can scarcely be regarded as really representative of the different Provinces. Every senator is required to be 30 years of age, and a British subject; he must be a resident in the Province which he is appointed to represent; he must in the same Province own land of the value of £800 clear of all charges and encumbrances, and his total property over and above his debts and liabilities must not be less than £800.

In the case of senators appointed to represent Quebec, these requirements are made rather more stringent by the condition that the senator must reside and have his property qualification in the particular electoral division of the Province in respect to which he is appointed.

It does not appear that the Canadian Senate has very great weight. It is appointed by a party ministry which gives it little moral authority; and the circumstance that since the passing of the British North America Act in 1867, first the Conservative and then the Liberal party have held office for long periods of time has made the system of nomination work specially badly. For the Senate was originally constituted in equal numbers from the two parties, and since all vacancies were filled by the Dominion Government, it soon happened that the party in power obtained a constantly growing majority in the Senate. That assembly became therefore subservient to the Government of the day, which is precisely what it is not desirable that Second Chambers should be. When the Liberals came in, there was a short period of friction during which the old Conservative majority remained and contested matters with the Liberal administration. But time soon cured this difficulty. The members of the Senate being all of them men of advanced years, vacancies were frequent, and it was not long before a Liberal majority, not less subservient to the Liberal administration than the former Conservative majority had been to its predecessors, was

established in the Senate. A similar process has now begun with the new Conservative Government. It is difficult for those who have not lived in a country to pronounce with confidence on the working of an institution. But it would seem that the principal defect of the Canadian Senate is its subservience to the Government of the day; and that this subservience is caused by a system of nomination which places overwhelming influence in the hands of that Government.

The Australian Senate closely resembles in constitution the Senate of the United States of America. It consists of 36 senators, 6 of whom are elected by each of the constituent States of the Commonwealth. But there is this important difference between the two constitutions—the American Senators are elected by the State Legislatures, the Australian senators by the popular vote of each State. The Australian Senate sits for six years, half of its members being renewed at the end of three years. Except in case of a deadlock between the two Houses it cannot be dissolved.

These are the most important Second Chambers of federations. But the function of a federal Second Chamber is essentially different from that of a Second Chamber in a unitary State. Its primary purpose is to safeguard the rights of the constituent states of the federation. In Canada, indeed, the Second Chamber has an ambiguous character, being substantially unitary and only nominally federal. But in America and Australia the federal

characteristic is still important, and we who live in a unitary State have the less to learn from the Australian and American examples. It would be impossible for us to set up a Senate which should have the character of those in the United States and the Commonwealth.

Of the States forming the Dominion of Canada, only two have Second Chambers; Nova Scotia and Quebec. They consist of members nominated for life. Newfoundland, which is of course separate from the federation, has, similarly, a Second Chamber, the members of which are nominated for life. Formerly, the South African Colonies of Natal, the Transvaal and the Orange River had Second Chambers nominated for a term of years, and the Cape of Good Hope, an elected Second Chamber. But now these States are merged in the South African Union, and, as Provinces, have each only a single Council.

Among the constituent States of the Commonwealth, Victoria, West Australia, South Australia and Tasmania have elected Second Chambers; in Queensland and New South Wales, the members of the Second Chamber are nominated. New Zealand has also a nominee Second Chamber, but, in 1891, the period of service was reduced from life to seven years. All these Chambers are smaller, and some of them very much smaller than the First Chamber with which they are associated. The members of the nominated Chambers sit for life, except in the case of New Zealand: the elected assemblies last for six years, unless sooner

dissolved. The Upper Chambers of the States of Victoria, West Australia, South Australia and Tasmania, are elected on a property franchise, which varies in the different States; but even in Tasmania, where it is widest, it is considerably narrower than the universal franchise by which all the Lower Chambers are elected.

In the newly constructed Constitution of South Africa, eight of the members of the Senate are nominated by the Governor-General in Council, and the other thirty-two are chosen by the component Provinces of the South African Union. The old legislatures of the four colonies each elected eight senators, and in future these thirty-two seats will be filled by each provincial council of the four Provinces, electing eight senators. Provincial councils are themselves chosen by a system of proportional representation on the same franchise as the Lower Chamber. The senators must be 30 years of age, British subjects of European descent who have resided for five years within the limits of the Union and are qualified to vote as electors of the House of Assembly, and own property worth not less than £500.

More important for instruction are the unitary States of Europe. Their conditions more closely resemble our own than do either the federations or the constituent states of the United States or the Dominions. But among the States of Europe it is impossible to find any one which is precisely like ourselves. We may divide them into those in which the monarchical element plays a greater

part than with us, and those which are substantially democratic. But even in the democratic States the more we study them the more are we struck by the unlikeness rather than the likeness to our conditions.

The most important States in which the authority of the monarch is of dominant significance are Russia, Austria, Hungary, Prussia, and perhaps Spain. Among these the first is Russia. The Council of the Empire in Russia is half of it appointed by the emperor and half of it elected by various public bodies. The Orthodox Church elects six; the Chambers of Commerce twelve; Assemblies of the Nobility eighteen; the Universities six; the landed proprietors of Poland six; and the Provincial Zemstvos one each. These together constitute one half of the Assembly, the other half being nominated by the emperor. All members must be 40 years old and must have an academical degree. The elected members are paid for attendance. The constitution of the Council of the Empire was evidently intended to make it subservient to the Government, but as a matter of experience (so unexpectedly do constitutions work out), the Council of the Empire has resisted the Government, and, though few are the years the Russian Constitution has been in existence, the resistance of the Council of the Empire has already once rendered it necessary to supersede its authority by proroguing both Houses and carrying important legislation by decree under a clause of the Constitution which permits such a proceeding.

In Austria, where the authority of the Throne is theoretically not so great as in Russia, the ascendency of the emperor over the Upper House is nevertheless no smaller. The Austrian Upper House, called the Herren-Haus, or the House of Lords, consists of princes of the blood, hereditary peers, ten archbishops, and seven bishops, and life-peers who must not number less than 150 or more than 170. Formerly the power of creating life-peers was unrestricted; but the limit of 170 was introduced, and as the emperor can only create hereditary peers from certain families, it is now practically impossible to overcome the resistance of the Upper House by the prerogative of the Crown. But hitherto the personal influence of the emperor has always been so powerful that where he supported the Lower House his wishes have always prevailed. It is important to notice that the authority of the Crown in Austria means the personal authority of the emperor, not, as with us, the authority of the ministry who advise the Crown. Accordingly, when the Herren-Haus gives way to the emperor, they do not give way to the leaders of a party but to a national sovereign. A similar observation must be borne in mind in considering the case of Hungary, where the same sovereign rules as king. The House of Magnates in Hungary now consists of 249 hereditary members; 67 official, ecclesiastical and nominated life members; and three elected Croatian deputies. But this was only settled on its present footing in 1885. In the older Constitution the House was almost

purely hereditary, but a reform on the lines described was agreed to in that year. Since then there has been one great deadlock between the two Houses, which was only overcome by the threat of the creation of hereditary magnates by the king.

Prussia, forming though it does part of a federation, is nevertheless so important that it demands separate notice. The composition of the Second Chamber is exceedingly complicated. It is composed, firstly, of the Hohenzollern family; secondly, of sixteen mediatized princes; thirdly, of about 50 representatives of the landed nobility; fourthly, of life-members nominated by the king from landowners, manufacturers, and men intellectually or otherwise eminent; fifthly, of eight noblemen elected by the eight old provinces of Prussia; sixthly, of representatives of universities, heads of chapters and burgomasters of large towns; seventhly, by an indefinite number of men nominated by the king for life. The power in the Crown of creating life-members at will, no less than the personal ascendancy of the monarch, make the Upper House in Prussia almost entirely subservient to the king, and the constitution of the Lower House is so undemocratic that very little dislocation or difficulty at present arises between the two Houses. Both are, in effect, under monarchical or aristocratic influence.

The Senate in Spain is, like the Upper House in Prussia, a composite assembly. It consists of:

(1) Senators in their own right.

(2) Life Senators named by the Crown.

(3) Senators elected by the "Corporations of the State," and the highest tax-payers.

Half of the assembly, that is, 180 members, consist of non-elected senators and half of elected, making the whole assembly 360. The life senators named by the Crown must be named from twelve categories which comprise members of the Lower House of a certain standing: ministers, bishops, nobles, high officials, the heads of the six academies, members of academies, professors, etc., former members of Parliament not qualified by standing, members of provincial assemblies and ex-mayors who have a certain pecuniary qualification, and finally, those who have been senators under previous constitutions.[1] Those who sit in their own

[1] The following are the twelve categories exactly set out:

1. Presidents of Senate and Chamber of Deputies.

2. Deputies who have sat in three different Parliaments, or in eight Parliamentary Sessions.

3. Ministers of the Crown.

4. Bishops.

5. Grandees of Spain.

6. Lieutenant-Generals and Vice-Admirals after two years' employment.

7. Ambassadors after two, and Ministers Plenipotentiary after three years' active service.

8. Members of Council of State, Supreme Council of War and Marine, and various other officers of the law and military orders.

9. Presidents of the six Academies, viz. Royal Academy of Spain, and Academies of History, Fine Arts, Exact Sciences, Moral and Political Science and Medicine.

10. Senior members of the above Academies, Inspectors General of Civil Engineers, University Professors of four years' seniority. They must have an income of 7500 pesetas (£300 at par) a year.

11. All persons of title, ex-Deputies to Cortes or provincial Assemblies, ex-Mayors of provincial capitals and towns of over

right are certain great officers of State; the archbishops; and those grandees in their own right who have an income of 60,000 pesetas (£2400) a year derived from land or property deemed legally equivalent.

The elected portion of the Senate has also a complicated Constitution. The Corporations of the State, who elect 30 of the 180 elected members, are as follows:

(1) An Ecclesiastical Corporation consisting of the archbishop, bishops and chapters of the archiepiscopal Sees of Spain, which are nine in number. This Corporation elects nine senators.

(2) The six learned Academies of Spain elect six senators.

(3) The Universities elect ten.

(4) The "Economic Societies of Friends of the Country," which are five in number, belonging to the five districts of Madrid, Barcelona, Leon, Seville and Valencia, elect five senators. The remaining 150 senators are elected by the provincial Deputies and the representatives of the Town Councils and highest tax-payers in the 49 Provinces of Spain, each returning three senators except Madrid, Barcelona and Seville, which return four. The elected portion of the Senate may be dissolved by the king, and is, as a matter of practice, dissolved whenever the Chamber of Deputies is dissolved. In theory the king might dissolve

20,000 inhabitants. These must have an income of 20,000 pesetas (£800) a year, or pay 4000 pesetas (£160) in direct taxes.

12. Ex-senators under former Constitutions.

either singly, but he appears never to have done so.

No serious disagreements appear to have taken place between the two Houses in Spain, agreement being usually attainable either by discussion in a committee jointly appointed by the two Chambers or by a dissolution of the Chamber and the elective portion of the Senate. The probable explanation of this harmony, apart from the prevalence of counsels of conciliation, is to be found in the large influence exercised by the king's Government over both Chambers.

These are the most important European States in which the power of the Crown is a dominant element in the Constitution. Italy is an example of a more democratic monarchy. The Senate in Italy consists, with the exception of the princes of the blood who sit by hereditary right, entirely of nominated members. The senators are nominated for life from certain categories of official, literary, and scientific distinction and from among persons who have for three years paid a sum equivalent to £120 in direct taxes. The power of the Crown to nominate senators is unlimited, and this has enabled on several occasions the ministry of the day to overcome the resistance of the Upper Chamber by nominating a batch of senators to support their government. Accordingly the Italian Senate appears to suffer from the same defect as the Canadian, and in an even worse degree, since in Canada the Minister has at any rate to wait until there are sufficient vacancies to enable him

to acquire a majority, whereas in Italy he can, if driven to an extremity, create one at any time.

The nominated Second Chambers in democratic unitary States, such as in some of the British Colonies and in the Kingdom of Italy, are intended to be founded on a democratic basis. The members are appointed not as under the stronger monarchies by the Crown acting independently, but by the ministry, which is itself the creature of the First Chamber. In Russia and Austria and Hungary the Second Chamber in so far as it is subordinated at all, is subordinated rather to the Crown than to the First Chamber, and it could at any time resist the First Chamber with ease and triumphant success if it were acting in co-operation with the sovereign. It has therefore a real independence of the other House of Parliament. But this is not so in democratic States. For the members of a nominated Senate take their title to legislate from the First Chamber. It is the First Chamber that gives its confidence to the ministry, and the ministry appoints the Second Chamber. But the nominated senators suffer from the defect that the ministry does not represent in reality the whole of the First Chamber, but only the party that has a majority within it. Accordingly the nominated Second Chamber becomes a reflection not of both sides of the First Chamber but only of one party.

This partisan origin has unquestionably greatly weakened the moral authority of nominated Second Chambers, and has been the cause of serious defects in their working. Theoretically the powers

given to such Chambers in Italy and in our Colonies are great, but practically they have proved to have very little authority. In Italy especially the effort of the Second Chamber to assert itself has been met by the creation of new members on the part of the Crown, acting of course in obedience to the advice of its ministers, a method which has repeatedly been used to overcome the independence of the Upper Chamber. On one occasion no less than 75 additional senators were created in Italy. These creations of course were resorted to because the Chamber, having been appointed by previous ministries, was not in sympathy with the ministry that at the moment had the confidence of the First Chamber. And having only a partisan origin, the Senate could not pretend to any moral authority in resisting the wishes of the First Chamber, and was therefore easily "swamped" by the prerogative of the Crown. The same process was resorted to in New South Wales on one occasion, but it has not been tried elsewhere, and is not legally possible in all cases. Yet apart from swamping, the partisan taint which is inherent in the system of nomination by a party ministry has so weakened the authority of these Second Chambers that they are seldom able to offer any effectual resistance to the desires of the Lower House.

The weakness, therefore, of the nominated system in democratic States is that it does not take its origin from any respected principle. A nominated member, unlike an elected member, cannot claim to have been chosen by the people; again, if he be

nominated by a party ministry, he cannot claim the authority which in undemocratic States is still given to the choice of the monarch. He is weak because he cannot trace his origin to any respected source. The Russian nominated member has authority because the emperor, who chooses him, has authority. The elected senator of France has authority because he is the choice of a free people. The Canadian or Italian senators have no authority because they are the choice neither of a respected sovereign nor of a free people, but of a party ministry.

A similar observation appears to be true of the nominated Second Chambers in the different colonial states which form part of the Canadian or Australian federations and of the Second Chamber in New Zealand. In none of these cases does the real authority of the Second Chamber at all equal its ostensible power under the Constitution. This is evidently due to some lack of moral force, and the most likely explanation is that, where members of an assembly are nominated by a partisan ministry, the circumstance of their appointment destroys their authority and that of the assembly which they compose.

The case of Belgium deserves some notice, although it is not a kingdom of great importance, because its general economic condition is not very dissimilar from our own. Belgium has an elected Senate chosen in rather a complicated way. The constitution of the Belgian Senate, which was finally brought to its present shape in 1899,

provides that the Senate shall consist of 110 members elected for eight years, half retiring alternately at the end of each four years, whereas of the First Chamber one-half retires every two years. Of the senators, 83 are directly elected by the same electorate as elect the First Chamber or House of Representatives, except that the senatorial electors must be 30 years of age instead of 25 years. The Senate, like the House of Representatives, is elected by a combination of plural votes and proportional representation. There is universal manhood suffrage: every man has a vote. But a married man has a second vote in right of his marriage, and an additional vote is also allowed to every man who attains to a certain educational standard. Those both married and educated (who may be supposed to be inclined to a conservative political attitude) have, therefore, three votes. And the elections are made under a system of proportional representation. The other 27 senators are elected by the Provincial Councils, which are themselves elected by the same franchise as directly elect the 83. There is also a property qualification for senators: each senator must be the owner or occupier of real estate worth £480, or pay £48 a year in direct taxes. And he must be 40 years of age.

France is a Republic and, so far, unlike ourselves; but the constitutional system is largely modelled on England and is worked in a manner not dissimilar from our own. The French Senate is a good example of the elective Upper House.

It consists of 300 members elected by Electoral Colleges. A number of senators proportioned to the population of each Department is chosen by the Electoral College of the Department. This Electoral College is composed of the Parliamentary deputies to the Department; the members of the Council of the Department (the equivalent of our County Council); the members of the District Councils in the Department; and the delegates elected by each Council of a Commune from among the electors of their own Commune. It is these delegates from the Communes (of which our parishes are the nearest equivalent) who form the large majority of the Electoral College. As all the members of the college ultimately owe their membership to universal suffrage, the Senate in the end rests on the same suffrage as the Chamber, but it is indirectly elected instead of directly. Accordingly it follows that there is no very great discrepancy in political opinion between the Senate and the Chamber.

In reviewing these various examples of Second Chambers, it will be convenient to classify them according to the principles of their Constitutions. At the same time it will be natural to notice more precisely the powers that are assigned to them and to point out how these powers are related to the principles on which their Constitutions are framed.

It is clear that there are three main principles at work. First, a Second Chamber is sometimes an organ of some authority within the state, like the sovereign or the nobles, other than the people

at large who are represented in the First Chamber. Secondly, a Second Chamber may rest directly or indirectly on the same democratic foundation as the First Chamber, and is then designed either to express the second thoughts of the people or to secure to the people an opportunity of expressing those second thoughts. A third principle is found in federal States where the Second Chamber expresses the rights and authority of the separate component States as against the federation as a whole. An illustration of the first principle is the Russian Council of the Empire, which represents partly the official bureaucracy depending ultimately on the will of the emperor, and partly certain classes, noble, wealthy or educated, who, in right of their qualities, are thought fit for a separate voice in the government of the country. Similarly in Austria and in Hungary and in Prussia, official, noble, wealthy, and educated influences are represented in the Second Chambers. But in democratic States this principle is either not admitted, or is allowed a very limited recognition.

The Constitution of the Belgian Second Chamber seems intended to give a very moderate degree of weight to wealth alone of the influences distinct from pure democracy. In Victoria, West Australia, South Australia and Tasmania the Upper Chamber is elected on a narrower and richer franchise than the Lower; and there appears to be a considerable consequent difference between the Houses. But in the constitution of most elected Second Chambers the main principle is different. The

Second Chamber is constituted to secure what may be called democratic second thoughts. It is not less democratic than the First Chamber. It derives its authority, like the First Chamber, from the people, and the only apparent purpose of having two Chambers instead of one is to give a double opportunity for considering matters, although always under the same influences and from essentially the same point of view. In federal constitutions another consideration comes in, and the principle expressed in the Second Chamber is the principle of the autonomous rights of the component states.

There are thus three principles operating: the authority of some undemocratic element in the community; the desire to give the democracy an opportunity for second thoughts; and the authority belonging to the component States of a federation. The powers and functions of the Second Chamber correspond to the weight which opinion in the country concerned attaches to the particular influence which the Second Chamber expresses. Some Second Chambers are both in form and substance equal and co-ordinate to the First Chamber: some are nominally co-ordinate (or nearly so), but in practice are inferior; in some this inferiority confines the Second Chamber to a suspensory function pending appeal to the people; some have in reality only powers of revision and suggestion and are entirely subordinate. In Russia, where the influence of the throne and of the educated and wealthy classes is still profoundly

reverenced, the Council of the Empire has powers co-ordinate with those of the Duma. Both the Council and the Duma are subject to a common disability, that no change in the constitution can be proposed in either chamber except on the initiation of the emperor. But the two Chambers enjoy concurrent rights in all matters, even including finance, save that financial business comes first before the Duma.

In the case of Austria the powers are similar. The Upper House cannot initiate Money Bills except under the paragraph of the Constitution that allows the Crown temporarily to supersede the action of Parliament and to carry emergency legislation by decree. This is, of course, altogether an abnormal proceeding, although the violent obstruction prevailing in the Lower House has actually compelled recourse to it. But in the normal working of the Constitution the Upper House has full power both to amend and to reject Money Bills. In practice the personal authority of the emperor has the greatest possible weight with the Herren-Haus. And though by an arrangement made in 1906 it has been rendered impossible for the emperor to overcome resistance by a creation of members of the Upper House, there is no reason to think that the emperor's authority has lost its decisive importance.

The House of Magnates in Hungary has powers, not indeed so extensive as those of the Lower House, but still of a substantial character. It has the powers that the House of Lords had before the

Parliament Act passed; that is, absolutely co-ordinate powers subject to a conventional restriction in respect to finance. This is due to conscious imitation of the English system. Though in law the House of Magnates has equal powers even in regard to finance, it is regarded as unparliamentary for it to amend and possibly for it even to reject a Money Bill, though there appears to be some difference of opinion on this latter point. By custom only the Lower House can originate legislation. Otherwise in ordinary legislation the powers of the House of Magnates and those of the Lower House are theoretically equal, but in practice the magnates have lost greatly in authority since the king compelled them to give way to the Lower House in 1895 by threatening to create magnates to "swamp" the opposition of their House. Probably its authority could not now be pitted against that of the Lower House except as an instrument in the hands of the Crown, the personal authority of the king being in Hungary a most important political power.

The Prussian Herren-Haus has co-ordinate powers with the Lower House in respect of all legislation except finance. In dealing with Money Bills the Herren-Haus is expressly precluded from originating or from amending Money Bills, but it may reject them altogether. Here, as in the case of Hungary, there is no doubt conscious imitation of England. This imitation does not, however, extend to the relations between the Crown and the Upper House, for the King of Prussia has

an overwhelming influence over the Herren-Haus. This influence not only arises from the ascendancy that monarchical sentiment gives to the king, but also from the fact that he can overcome the resistance of the Herren-Haus by creating life-members at will; and this course he actually adopted in 1872. The king's authority is of course personal to himself. His ministers are not the creatures of Parliament, but his own servants responsible to him.

Federal Second Chambers, like the Bundesrath or the Senate of the United States, have great authority. In the case of the American Senate this is probably due partly to the fact that it represents the independent rights of the component States, partly to its elected constitution, which puts it on an equality in respect to origin with the House of Representatives. And the Senate is not only equal to the House in legislation: its consent is also necessary to many executive acts with which the House has nothing to do. The Bundesrath, though not an elected assembly, is also a truly federal assembly, and its members owe their appointment to the sovereigns of the different German States who, according to German opinion, possess a deeply respected authority. Its powers surpass those of the Reichstag; for all Bills—even Money Bills—originate in the Bundesrath and are returned to it again for final assent; and it has in addition important executive functions as a Council of State. As has been already pointed out, the Canadian Senate, though nominally representing the com-

ponent provinces of the federation, really derives no strength from its federal character because it is appointed not by the provinces but by the party ministry of the Dominion. The American Senate and the Bundesrath, being truly federal, have the authority that belongs to that character.

In France the Senate has the authority that attaches to an elected Chamber in a democratic State. Accounts differ as to whether the Senate is stronger or weaker than the Chamber. Theoretically they are co-ordinate; but the circumstance that they are not of very different political opinions makes it difficult to judge what would be the result of a persistent disagreement between the Houses, since such disagreement does not easily arise. The Senate has the unusual power that the President can only dissolve the Chamber with the Senate's consent, which seems to give the Senate a moral superiority. In finance it has absolutely equal powers with the Chamber, except that Finance Bills must originate in the Chamber.

The only quarrel of great importance between the two assemblies which has occurred did not relate to legislation. But it is the rare, or probably the unique, case of a Second Chamber insisting on the principle that a ministry must enjoy its confidence as well as that of the First Chamber. For the Senate in 1896 used its undoubted power over finance to drive a ministry from power, although that ministry was supported by a majority of the Chamber. The Senate, having censured the ministry on more than one occasion, declined to

pass supplies necessary for conducting military operations in Madagascar until the ministry resigned. The Senate affirmed that the Government was responsible to both the Senate and the Chamber, and that, since it had lost the confidence of the Senate, it was necessary for it to resign. Accordingly the Senate would not vote, as the leader of the majority declared, the Madagascar supplies while the obnoxious Cabinet remained in power. The proposal to vote supplies was adjourned until "a constitutional ministry having the confidence of the two Chambers" should be appointed. This was decisive and the ministry resigned, the Chamber contenting itself with affirming the preponderance of universal suffrage, which may be understood to imply a reflection on the indirect election of the Senate. Since 1896 no similar crisis has arisen; but it appears to be established that the Senate can force the resignation of a ministry.

In Belgium the Senate has all the powers that belong to the Chamber except the power of initiating Money Bills. According to the law of the Constitution the Senate may reject or amend Money Bills, but it appears that this power has not been very freely exercised, though there is no reason to doubt that it might be in any case about which a sharp controversy arose. Mainly as a matter of convenience, the Senate has been accustomed to pass Money Bills with comparatively slight criticism, because they have generally come up late in the Session and a prolonged discussion

has therefore been inconvenient. But the chief operative cause for this, as well as for the general harmony between the Senate and the Chamber which exists in Belgium, is that, since they are both elected by the same franchise—the Chamber directly, the Senate indirectly—they are naturally of not very dissimilar political complexion. They are really two organs of the same body of opinion, and as such, are commonly in agreement. It is not easy to see what advantage a Second Chamber is which is constituted in this manner, except merely for purpose of revision; and the powers that are entrusted to the Belgian Senate go far beyond any such purpose.

If to secure deliberation and revision is to be the only function of a Second Chamber, the Norwegian Lagthing is perhaps the best. For in Norway the Second Chamber in its constitution recognizes without veil the theory that it exists only for the purpose of expressing the second thoughts of the First Chamber. Being as it is, only a committee chosen by the First Chamber and not independently elected, it is evidently the creature of the First Chamber. If the theory of a purely revising Second Chamber be adopted, it is impossible to have a more simple and logical arrangement. Its only function is either to accept or reject the conclusions of the Odelsthing, and if it twice rejects them a joint sitting of the whole Storthing is held, and if in that joint sitting a majority of two-thirds approves the Bill it is presented for Royal Assent.

This system of a single House sitting in two chambers and ultimately deciding by a majority of two-thirds, seems a very good mechanism for deliberate and revised legislative action, if it be not desired to put any check upon the popular assembly once it has been elected. But the normal theory of Second Chambers as expressed in their Constitutions is plainly that there should exist a power capable of thwarting the First Chamber, either in the name of some non-democratic authority or in the name of the component States of a federation, or in order, not merely that the First Chamber should have an opportunity of thinking things over a second time, but that the people at large should not be committed to legislation within the compass of the sitting of a single Parliament and therefore possibly against their will. Unless it be the function of the Second Chamber either absolutely to thwart the First Chamber in the name of some independent authority or at least to suspend its conclusions until the people themselves can in some form decide, there would appear to be no purpose whatever in entrusting Second Chambers with the large powers which, in almost every state except Norway, they possess.

In Russia, Prussia and Hungary the resistance of the Second Chamber can only be overcome by the prerogative of the Crown ; in Austria only by its influence. Here the reason for large powers in the hands of the Second Chamber is plain enough. Nothing but the joint agreement between the sovereign and the Lower House can make legisla-

tion effective against the sentiment of the noble, wealthy, or educated classes. A similar observation is true of Spain, though the actual machinery for solving a deadlock by a dissolution of both Houses, seeing the difference in their constitutions, might theoretically be ineffectual; but practically the casting voice is with the king. But in Italy, where the Upper House can be "swamped" at the will of the ministry of the day, there seems but little advantage in having a Second Chamber except on Norwegian lines. And in France and Belgium, where the Second Chambers are strong enough to exercise independent authority, the circumstances of their origin are too like those of the First Chamber to make their independent power of much practical significance. Nothing is gained by a machinery to do the same thing twice over.

The Constitution of Queensland, where the Second Chamber is nominated for life, but where its resistance can be overcome, not by "swamping" on the advice of a partisan ministry, but by a Referendum to the electorate at large, like the Norwegian, presents a clear and logical system, though constructed for a different purpose. Queensland has, however, the weakness that its Second Chamber is nominated by a party ministry, and this same weakness attaches to all the nominated Second Chambers in the British Empire and apparently prevents them efficiently exercising even the suspensory function of obliging reference to the people either formally by Referendum, as in

Queensland, or elsewhere informally by a General Election.

Those colonial Second Chambers which are elected on the same franchise as the First Chamber are, like the Senates of France and Belgium, too much in agreement with the First Chambers in opinion to fulfil usefully any purpose more important than that of revision. They are organs for doing the same thing a second time over.

It is difficult not to feel that there has been a lack of clear purpose in the minds of those who have made Second Chambers in the various constitutions of the world. No one seems to have asked himself very distinctly what it was that the Second Chamber should do, before determining what its constitution and its powers should be. It seems silly to have a Second Chamber like that in Italy, which is merely subservient to the Government of the day, and which, if it ventures to show independence, can be reduced to obedience by the creation of new members. Nor does it seem very wise to have, as in France, two Houses representing the same body of opinion, and therefore normally of one mind. One would have thought that it was very obvious that, if a Second Chamber is worth having at all, it is only worth having because and when it disagrees with the First Chamber.

That disagreement must indeed ultimately be capable of solution by an appeal to whatever authority is thought of as the true embodiment of national sovereignty. This, whether consciously

or unconsciously, seems to be the underlying principles of the monarchical States of Eastern Europe, where the final word really lies with the monarch. And by one mechanism or another, either by dissolution or Referendum, it is enforced in some of the democratic States which believe in the sovereignty of the people, though all democratic States have not been so wise. But to have a Second Chamber which never disagrees or which, if it does agree, can be suppressed by the ministry of the day, seems to add little to the utility of the First Chamber, unless it be by giving the First Chamber an opportunity for further deliberation and revision.

The study of foreign and colonial Second Chambers will be of use to ourselves only if that study forces us to reflect on what is precisely the function we wish our Second Chamber to perform, so that we may construct it with a clear intention of adapting our means to our ends and giving to the Second Chamber that constitution and those powers which will enable it properly to play the part that we assign to it.

In composing this article, the following works were consulted :

"Senates and Upper Chambers," by Harold W. V. Temperley.

"Second Chambers," by J. A. R. Marriott.

"The Report on Second or Upper Chambers in Foreign States" (White Paper, Miscellaneous, No. 5 (1907)); and

The House of Commons Return (March 30th, 1910), entitled "British Colonies (Legislature)."

The following tables are, by the courteous permission of Mr. Harold Temperley and Messrs. Chapman and Hall, reprinted from Mr. Temperley's book entitled, "Senates and Upper Chambers":

COLONIAL UPPER CHAMBERS

METHOD OF APPOINTMENT

Electoral Franchise for Upper Chamber	ELECTED	NOMINATED	
		FOR LIFE	FOR A PERIOD OF YEARS
Freeholder, £50, or Leaseholder, £20 yearly, or Educational test.	Victoria	New S. Wales New Zealand (before 1891)	New Zealand (for 7 years since 1891)
Freeholder, £100, or Leaseholder, £25 yearly.	W. Australia	Queensland	
Freeholder, £50, or Leaseholder, £20 yearly.	S. Australia	Nova Scotia †	
Freeholder, £10 yearly, or Leaseholder, £30 yearly, or Educational test.	Tasmania	Quebec †	
Same as Lower House.	[Australian Commonwealth]	Newfoundland	
		[Dominion of Canada]	
" " "	[S. Africa]*		

* Eight members are, however, nominated.

† Nova Scotia and Quebec are the only Provinces of Canada which appear in these tables, the remaining seven being uni-cameral.

NOTE.—Federal Upper Chambers are distinguished from those of Unitary States by the name of the country being placed between brackets.

The figures are those of 1909–10.

RESTRICTIONS OF THE FINANCIAL POWERS OF COLONIAL UPPER CHAMBERS

The right of initiation is always confined to the Lower House. The following table gives a list of the cases in which further legislative restrictions have been made.

Upper Chamber cannot amend	Newfoundland	No. 249 of the *Rules* of the House of Assembly
	[S. Africa]	Sect. 60 of S. Africa Act of 1909
Upper Chamber cannot amend but can suggest amendments	S. Australia	Resolution of both Houses 25 Aug. 1857
	Victoria	Sect. 30 of Victorian Act of 1903
	W. Australia	Amending Act of 1899
	[Australian Commonwealth]	Sect. 53 of the Constitution

COLONIAL UPPER CHAMBERS: IN RELATION TO THE LOWER CHAMBERS

(1) ELECTIVE

Colony	Upper Chamber		Lower Chamber	Provisions for avoiding Deadlock
	Period for which Members sit	Number of Members	Number of Members	
Victoria	6 years	34	65	Dissolution followed by simultaneous dissolution of both Chambers
W. Australia . . .	6 years	30	50	
S. Australia . . .	6 years	18	42	Dissolution followed by simultaneous dissolution of both Chambers. Or, by election of a limited number of additional members to the Upper Chamber
Tasmania	6 years	18	30	
[Australian Commonwealth]	6 years	13	75	Joint-session after simultaneous dissolution of both Chambers Referendum for Constitutional Amendment
[S. Africa] (1910) .	10 years	40 (8 nominated)	121	Joint-session without dissolution of Lower or Upper Chamber
New S. Wales . .	Life	57	90	"Swamping" is constitutionally possible
Queensland . . .	Life	44	72	Referendum
New Zealand . .	Life before 1891, 7 years since 1891	45	80	"Swamping" is legally possible
Nova Scotia . .	Life	21	38	
Quebec	Life	24	74	
Newfoundland . .	Life	18	36	
[Canada]	Life	87	221	Six members may be added to the Upper Chamber

CONTINENTAL UPPER CHAMBERS

N.B.—Luxemburg, Russia, Turkey, Roumania, Servia, and Japan are omitted from the following table. . . .

The princes of the reigning family are members by right of the Upper Chamber in monarchical countries, and must therefore be reckoned in addition to the constituent elements of those assemblies which are enumerated in the table. Brazil and the United States are added at the end of this table. . . .

CONTINENTAL

(1) UPPER CHAMBERS ELECTED

Country	Upper Chamber	
	How Appointed	Number of Members
France	Indirect election based upon universal suffrage	300
Sweden	Indirect election (proportional representation)	150
Netherlands (Holland)	Indirect election by provincial legislatures	50
Belgium	Eighty-three members by direct election, 27 members by indirect election based on universal suffrage. (Plural vote and proportional representation)	110
Norway	Appointed from and by the Lower Chamber	30
[Switzerland]	Elected by the cantons	44

(2) UPPER CHAMBERS PARTIALLY

Denmark	Fifty-four members elected by indirect election and 12 nominated	66
Spain	(1) One hundred and eighty members (indirect election) (2) Hereditary, official and ecclesiastical members (3) Nominated life members	360

(3) UPPER CHAMBERS VARIOUSLY

Italy	Life members nominated out of certain categories	328
Austria	(1) Nominated life members (2) Hereditary members (3) Ecclesiastical *ex officio* members	257

UPPER CHAMBERS

ON A POPULAR BASIS

Lower Chamber		Provisions for avoiding Deadlocks
Number of Members	How Elected	
584	Universal suffrage	Rules of procedure provide for joint committees to report; joint-sessions for constitutional amendments. Senators' consent necessary to dissolution of Lower Chamber
230	Universal suffrage	Joint-sessions decide on disputed finance Bills Simultaneous dissolution of both Chambers is possible
100	Small property franchise	Upper Chamber forbidden by law to amend money or other Bills Simultaneous dissolution of both Chambers is possible
166	Universal suffrage (proportional representation)	Simultaneous dissolution of both Chambers is possible
123	Universal suffrage	The Chambers sit as one House in finance, and in all cases of dispute. In the latter case two-thirds majority needed to pass Bill Simultaneous dissolution of both Chambers is inevitable by the constitutional provisions
167	Universal suffrage	Joint committees report; Joint sessions for certain matters

ELECTED ON A POPULAR BASIS

114	Universal suffrage	Joint committees can report (Art. 53 of Constitution) Simultaneous dissolution of both Chambers is possible
406	Universal suffrage	Joint committees must report (Law of Relations, 1837) Dissolution of elective part of Senate simultaneously with the Chamber is usual

COMPOSED ON A NON-POPULAR BASIS

508	Property, educational or occupational franchise	"Swamping" is possible
516	Universal suffrage	Joint committees can report. Since 1907 "swamping" is practically impossible

(3) UPPER CHAMBERS VARIOUSLY COMPOSED

Country	Upper Chamber	
	How Appointed	Number of Members
Hungary	(1) Hereditary members (249) (2) Official, ecclesiastical and nominated life members (67) (3) Three elected Croatian deputies	319
[Germany]	Nominated by the rulers of the individual States of the Empire	58
Prussia	(1) Hereditary members (115) (2) Official and ecclesiastical representatives (177) (3) Nominated life members (73)	365
Saxony	(1) Hereditary members and representatives (2) Official and ecclesiastical members and representatives (3) Nominated life members	46
Bavaria	(1) Hereditary members and representatives (2) Ecclesiastical and official members (3) Nominated life members	69
Würtemberg	(1) Hereditary and ecclesiastical members (2) Representatives of various interests (3) Nominated life members	50
Hesse-Darmstadt	(1) Hereditary members and representatives (2) Twelve nominated life members (3) Ecclesiastical and official members	34
Baden	(1) Elected representatives of various interests (2) Hereditary, ecclesiastical and official members (3) Nominated life members	40

AMERICAN FEDERAL

[Brazil]	Three elected by direct vote from each State	63
[United States]	Two elected by each State Legislature	92

ON A NON-POPULAR BASIS—*continued*

Lower Chamber		Provisions for avoiding Deadlocks
Number of Members	How Elected	
453	Property, educational or occupational franchise	"Swamping" is possible
397	Universal suffrage	
433	Indirect election by three classes of electors	"Swamping" is possible
82	Indirect election by three classes	Joint committees report
163	Qualification by payment of direct taxes	
93	Universal suffrage	Disputes as to Budget decided by a majority of total votes of both Houses
50	Indirect election based on universal suffrage	
73	Universal suffrage	Disputes as to Budget decided by a majority of total votes of both Houses. In ordinary legislation joint committees can report (Law of 1904)

UPPER CHAMBERS

212	Universal suffrage—proportional representation	Joint committees confer
391	Partially universal suffrage	Joint committees report Biennial renewal of one-third of Senate coincides with dissolution of popular House

CHAPTER VIII

THE REFERENDUM

By The Earl of SELBORNE, K.G.

The theory of government of the United Kingdom is a partnership between the Crown and the people. The sphere of the Crown is rule; the sphere of the people is policy. As it would be impossible for the people always as a whole to express their opinions on matters of policy, they do so through representatives elected to the House of Commons; and, because it is possible that a temporary and discredited majority in the House of Commons might abuse the trust committed to them, a Second Chamber is necessary to insure the people against the usurpation and abuse of their authority.

In all modern States, government tends to become more and more complicated. If there were to be a General Election in the United Kingdom to-morrow, in each constituency the electors would have to give a decision between two or more rival candidates, and between two or more rival parties—the Liberal, the Unionist, and the Labour Parties—and also to give a decision in respect of the policy of Home Rule for Ireland, on the proposal to disestablish and disendow the Church in

Wales, on the National Insurance Act, on a host of minor matters, and on the labour and foreign policy of the Government. It seldom occurs that an elector thinks exactly the same on all such subjects as the candidate or party for which he decides to vote. He is obliged to strike a balance and to vote for a Liberal candidate, although he may be opposed to the disestablishment and disendowment of the Church in Wales, or for a Unionist candidate, although he may be in favour of Home Rule for Ireland.

How far it may be due to this confusion must remain a matter of opinion, but the fact is that the influence of the representatives of the people in Parliament is steadily waning, and that the power of the Cabinet, a body of some twenty ministers who exert their influence over the members of Parliament by the machinery of the caucus, is steadily waxing. That they can do so, is due to the high state of organization of each party in the country at the present moment. The party managers in each constituency may be very far from representing the average opinion, even of the adherents of the party in their constituency, much less that of the constituency as a whole, but they can make it impossible for a man to remain a member of Parliament if he quarrels with them. The influence of the party machine over the votes of members continues constantly to increase, and the party machine is controlled by the Cabinet. The question which has arisen in the United Kingdom is this: How can the danger be averted,

that the Cabinet, acting through the party machine, may misinterpret the real opinion of the electors? How can the opinion of the electors on some grave national issue, such as Home Rule for Ireland, be tested, if necessary, without recourse to the complicated and unsatisfactory machinery of a General Election? It is in this connection that a suggestion has been made that the Referendum should be incorporated into our Constitution as part of its mechanism.

An argument which is often put forward against the Referendum is, that if incorporated into the mechanism of the Constitution it would be liable to be used too often. The argument is framed somewhat as follows. If used too often on issues which are keenly contested, the disturbance and agitation throughout the country, approaching that of a General Election, will cause the Referendum to become hateful, and the demand will arise among traders and business men first of all, and afterwards among other classes, to be relieved from what would be an intolerable burden.

I agree that the Referendum should not be used too often, the less frequently it can be brought into use, the better, so long as it is brought into use, either to settle matters of very grave importance, such as, though not necessarily limited to, a change in the Constitution, or to adjust disputes between the two Houses of Parliament which have become so acute or chronic as to amount to a grave political inconvenience. But I wish to insist on the fact that neither the too frequent recurrence of a Referendum

nor of a General Election is really the greatest political danger or evil which now confronts us, and I would say the same thing in respect of the cost of a Referendum, which, indeed, has been much exaggerated.

The greatest political evil which now confronts us is the usurpation of the authority of the majority by a minority, a usurpation of which we stand in constant danger, partly through the peculiar working of our party system, and partly through the preposterous manner in which seats are now distributed. It is common to talk of the swing of the pendulum, and of the fickleness of the electorate. The electorate has been much maligned; it is nothing like as fickle as it is supposed to be; nor has the pendulum ever swung in reality as it is supposed to have swung.

First let us see how in this connection our party system works. Take a typical constituency. Many such may be found where the vote of the Liberal and Radical Party never fails to amount to a given figure. For the sake of this illustration we will suppose 5000. At times the vote is larger, but even at the lowest fortunes of the Liberal and Radical Party it never falls below 5000. This means that there are in that constituency a constant 5000 electors who, under all circumstances, will vote Liberal and Radical. There is sure to be a Liberal and Radical Association in that constituency. How many of that constant 5000 Liberal and Radical voters will be paying members of that association? It would, indeed, be a

strong association if there are 500 such. Every year an annual meeting is called to elect the officers of that association. How many of those 500 attend this annual meeting? Very rarely would it be more than 50, and those 50 would elect a committee of five, who will manage all the affairs of the party in that constituency, and, above all, select the Radical candidate. It will be observed that the result is a sort of mathematical progression in Radicalism. The 500 paying members are the keenest Radicals among the 5000 Liberals and Radicals in the constituency; the 50 who attend the annual meeting are the keenest among the 500 members; and the five who do all the work are the keenest, and therefore surely the most extreme men, and they select the candidate. The result is, that when the Radical member is returned to Parliament, he not only does not represent the average opinion of the constituency, in which there may easily be 4800 Unionists to 5000 Liberals and Radicals, but he will not even represent the average Liberalism of the 5000 Liberals and Radicals in the constituency. He will generally be more advanced in his opinions than the average of his party in his own constituency, and the result is that no majority in the House of Commons ever really represents the average opinion of the country, or even of their own party. A Radical majority in the House of Commons is always more Radical than the average opinion of the country at the time; and a Unionist majority in the House of Commons, similarly, is always more Conservative

than the average opinion of the country at the time.

Now let us look at the record of the electors themselves, and I will take that record in England, Scotland, and Wales only, in the General Elections from 1886 to December, 1910, both inclusive. I exclude Ireland, because the pendulum is not supposed to have swung there, the fight having been all through those years always on the question of Home Rule alone. I have taken the aggregate votes cast on the one hand for Conservative and Liberal Unionist candidates; and, on the other hand, for Liberal, Labour, Socialist, and Nationalist candidates; and I have allotted the seats as they would have fallen in true proportion to the two groups of parties, according to the votes which they have received. I have made no calculation in respect of the uncontested seats; I have simply added their numbers to the number of seats allotted to each party under this calculation. On the other side I set down what the majority actually was at each election under our present preposterous distribution of seats. I repeat again that the figures are for England, Scotland, and Wales only.

In 1886 the Conservative and Liberal Unionist majority should have been	87,	but was 183.
In 1892 the Conservative and Liberal Unionist majority should have been	17,	and was 17.

In 1895 the Conservative and Liberal Unionist majority should have been	111, but was 213.
In 1900 the Conservative and Liberal Unionist majority should have been	125, but was 195.
In 1906 the Liberal, etc., majority should have been	89, but was 289.
In January, 1910, the Liberal, etc., majority should have been	17, but was 63.
In December, 1910, the Liberal, etc., majority should have been	5, but was 61.

These figures show real and distinct movements of public opinion, but they indicate a far greater stability of opinion among the electorate than that with which they have been credited. The electors have never been so fickle, and the pendulum has never really swung as much as has been supposed.

It has already been stated that the Referendum has been proposed as a remedy for this evil in certain cases, but what is the Referendum? How it can be used in this country, and under what conditions, it will be for Parliament hereafter to determine, but the first step towards a wise decision in this matter will be an accurate understanding of what it is, and how it works in other countries. For the Referendum is no suddenly invented device, of which the world has no experience. On the contrary, it is in use, in one

form or another, in forty-five out of the forty-six States of which the United States of America is composed. It is in constant use in the Swiss Republic, and in almost all the cantons of which that republic is composed. And lastly, it is part of the constitutional machinery of the Commonwealth of Australia, it has been used at a grave crisis in the Colony of Natal, and it is in use in the United Kingdom in the municipalities and in the Trades Unions.

United States.

Mr. James Bryce, the British Ambassador to the United States, describes its use in that country as follows:

"The institution of the Referendum owes its origin in the United States neither to abstract theory nor to the example of Switzerland. It is a natural outgrowth of the habit of submitting to the vote of the people of a State changes in the Constitution of the State. These Constitutions are superior in authority to the statutes passed by State Legislatures; and among other things, they limit the authority of those bodies. It is, therefore, necessary to enact a Constitution by a power superior to that of the Legislature, viz. the citizens of the State as a whole. Accordingly, when a State Constitution had to be altered, the amendments proposed to be made in it were submitted to and voted on by the citizens. It was presently found that this was a convenient method of securing

any kind of alteration in the law of the State which the people desired to make. Various causes combined to recommend the method. Sometimes the people could not trust the Legislature to make the alterations desired. Sometimes the Legislature preferred to leave them to the people instead of making them itself. Sometimes the people wished to put it out of the power of the Legislature to change them. Thus the people of the States almost unconsciously drifted into the practice of enacting measures by their own direct vote, and the Constitutions of most of the States now contain an immense number of laws which, although they are parts of the Constitution, do not differ in kind, *i.e.* in the nature of their contents, from ordinary statutes.

"The habit of direct popular legislation having been thus formed, the transition to the use of the Referendum has been natural and easy. There is now an active propaganda in favour of its being further extended, carried on specially in the western states, where it is regarded as being the legitimate outcome of democratic principles. But it may be doubted whether the experience of its practical working has yet been long enough to enable a full and final judgment to be passed upon its utility."

The standard work on the use of the Referendum in the United States is to be found in a book by Professor Oberholtzer. The following example of the case of Massachusetts in 1870 is taken from that work:

"From this time onwards, when the old States adopted new constitutions, they were submitted to popular vote, and nearly all the new States admitted to the Union brought constitutions with them which had received the direct sanction of the citizens. . . . In by far the greater number of cases the electors are twice consulted; first by the Legislature as to whether the Convention should be called or not; and secondly by the Convention itself, when its labours have been finished and its draft of the constitution is complete."

In Oregon in 1857, in New York in 1846, and in Illinois in 1848, articles granting equal suffrage to the negro were separately referred to the citizens of those States; and in connection with the Constitution of Illinois in 1870, nine different points were submitted to the electors for their decision.

But the use of the Referendum in the American States is not confined to changes in the Constitution; on the contrary, questions of great importance such as a proposed change of the capital, the raising of particular loans after the State debt has reached a certain point, the creation of corporations with special powers, women's suffrage, the sale of alcoholic liquors, have been submitted to the people for their direct decision in many States.

As in England the Referendum has been used to a limited degree in municipal matters, so in the United States it has been widely used in the counties, cities, towns, and other local districts, for the decision of matters of great local importance, such as the boundaries of districts, the sites

of towns, charters, loans, questions affecting public lands, and questions affecting the public schools.

The machinery of the Referendum in America is not always exactly the same. It varies in different States; sometimes, for instance, a three-fifths or a two-thirds majority is required for assent to a proposition instead of a bare majority.

Switzerland.

The use of the Referendum in Switzerland has been thus described by Mr. Bax-Ironside, the British Minister:

"The institution known as the Referendum, which provides for the reference to all the electors of the confederation, or of a canton, for acceptance or rejection of laws or resolutions framed by their representatives is now firmly established in this country.

"The Referendum is of two kinds, compulsory and optional. It is compulsory in certain cantons where all laws adopted by the Grand Council or other representative body of a canton must be submitted to the people, and optional where limited to those cases in which a certain number of voters demand it.

"These two Referendums, the one compulsory and the other optional, are exercised by the collective vote of the citizens of the whole confederation. The application of the optional Referendum to federal laws and resolutions is regulated by the

Federal Act of June 17th, 1874. The following is a summary of its most important provisions :

"All federal laws must be submitted to the people for adoption or rejection on the demand of 30,000 citizens or of eight cantons. The same provision applies to resolutions of the Federal Council which are of general application and are not of an urgent character. The Federal Assembly has power to declare when a resolution is urgent or not of general application.

"Every federal law and every federal resolution, with the two above mentioned exceptions, must be immediately published and communicated to the cantonal Governments.

"A demand that a law or resolution should be submitted to the popular vote must be addressed in writing to the Federal Council within 90 days of the publication of the law or resolution in question. Every elector supporting the demand must sign in person, and his signature must be attested by the local authorities of the district in which he has a vote. This demand may also be formulated by the cantonal council.

"If it appears from the examination of the petitions sent in that the demand has been signed by 30,000 duly qualified citizens, or by the cantonal councils of eight cantons, the Federal Council issues an order for taking the popular vote. It notifies the cantonal Governments, and takes the necessary steps to ensure the general publication of the law or resolution to be voted on.

"The voting takes place on the same day

throughout the country. The date is fixed by the Federal Council, but at least four weeks must elapse between the general publication of the proposed law and the date of the vote.

"Every Swiss of not less than 21 years of age, and not deprived of his civic rights by the authority of the canton in which he resides, has a vote.

"The arrangements for taking the vote devolve upon the cantonal authorities, who distribute to each qualified elector the necessary voting paper provided by the Federal Government. The elector fills it in, takes it to the local polling station and deposits it in an urn. The authorities must transmit within ten days to the Federal Council the official result of the voting in their respective cantons, and must, if required to do so, forward the voting papers themselves to the Federal Council.

"If a majority has voted for the proposed law it comes into force at once; in the contrary case it is considered as rejected. In either the Federal Council publishes the result of the vote, and reports to the Federal Assembly at its next session.

"The Referendum has struck firm root in Switzerland, and no party would now dream of demanding its abolition. The application of the Referendum as worked in Switzerland and the issues raised by it are so easy to understand that public opinion acquiesces at once in the result."

We are not dependent, however, only on an

official report for the working of the system in Switzerland, any more than in the United States. The following quotations are taken from a book on the Swiss Federation by Sir F. O. Adams, K.C.M.G., C.B., and C. D. Cunningham:

"The Referendum is of two kinds, compulsory and optional. It is compulsory in certain cantons where all laws adopted by the Grand Council or other representative body of a canton must be submitted to the people, and optional where limited to those cases in which a certain number of voters demand it.

"In Federal matters there are now two Referendums. The first was established by the Constitution of 1848, and was limited to one point, viz. the revision of that Constitution. All such revisions became subject to a compulsory appeal to the people, and the articles relating to this matter were reproduced in the revised Constitution of 1874. But as we have seen, the latter also contains an article, extending the exercise of the popular vote, when demanded by 30,000 citizens or eight cantons, to all federal laws and all resolutions of a general nature which have been passed by the Chambers. These two Referendums, the one compulsory and the other optional, are exercised by the collective vote of the citizens of the whole confederation. By the cantonal Referendum, whether compulsory or optional, many important local matters are submitted to the collective vote of the citizens of the particular canton interested, and the institution is now to be found all over Switzerland, except where

there is still a Langsgemeinde and in Freiburg, where the Ultramontane majority are perhaps a little prone to deprecate changes.

"A sufficient period has elapsed to allow the people of Switzerland to form an opinion of the working and results of the popular vote. As regards the former, nothing could be more simple. All the voter has to do is to deposit in the urn his voting paper with either "Aye" or "No" written upon it. As to the moral effect which the exercise of this institution has had upon the people, we are assured that it is admitted to be salutary even by adversaries of democratic government. The consciousness of individual influence, as well as the national feeling, is declared to have been strengthened, and the fact of a large and, on several occasions, increased participation of the people in the vote is quoted as tending to prove that their interest in political questions is growing keener.

"Extreme measures, whether radical or reactionary, have no chance whatever of being accepted by the people, who, while in a manner fulfilling the functions of a Second Chamber, have infinitely more weight than any such body usually possesses, even if it be thoroughly representative and chosen by universal suffrage.

"It would seem that, of the two forms of Referendum existing in cantons, the compulsory is more practical than the optional.

"Since the adoption of the Federal Referendum in 1874, for laws and general resolutions passed by the Chambers, many such measures have been

accepted by the Swiss people without a vote. Others have given rise to much discussion and difference of opinion, some being ultimately sanctioned and some rejected by the popular vote.

"On May 11th, 1884, no less than four measures which had been adopted by the Chambers were rejected by the popular vote."

Australia.

In Australia no amendment of the Constitution can become law, even although agreed to by both Chambers of the Legislature, until after it has been submitted to the electors in a Referendum; and a bare majority of electors is not sufficient to pass it into law. There must not only be a majority of the whole number of the electors voting, but also a majority in a majority of the States of the Australian Commonwealth. As there are six States in that Commonwealth, it follows that there must be a majority in favour of the proposed change of the Constitution in four of those States.

It has been noticed that in America sometimes not so much interest is taken in the voting at a Referendum as there is in the election of members to the State Congress; but that has not been the experience in Australia. In that country, as many electors have voted respecting proposed changes in the Constitution as in respect of an election of Members of Parliament when the two duties of citizenship had to be performed simultaneously in

the same polling booth; and in April, 1911, they showed as lively a sense of responsibility on the occasion of the first Referendum, which, as it were, stood alone, unsupported by the interest of a General Election. Two amendments of the Constitution were submitted to the electors, the first of which may be roughly summarized as a proposal that the Commonwealth Government, in contradistinction to the State Government, should have control of all legislation affecting industry and commerce, and the second as a proposal for the nationalization of all monopolies. In Australia every adult male and female has a vote, and, in round figures, 1,200,000 voters went to the poll out of a total population of under five million souls. The amendments were rejected by over 240,000 votes.

In the State of Queensland, and again in the State of South Australia, the question of denominational or undenominational religious education has been decided by a special Referendum, and in Queensland henceforth obstinate disputes between the two Houses of Parliament are to be settled by a Referendum.

Natal.

In Natal in 1909, when the Union of South Africa was contemplated, and after the Constitution had been drawn up by a South African Convention and published and explained in Parliament, the question was submitted to the electors. The Parliament of Natal felt that the question at issue was too

important for them to decide, and they passed a special Referendum Act, leaving the decision to the electors. The Schedule to that Act was in the following form:

SCHEDULE.

REFERENDUM ACT, 1909.

Are you in favour of the Draft South Africa Act?

Yes. ☐

No. ☐

If you are in favour of the Draft Act, make your cross in the square opposite the word "Yes."

If you are against the Draft Act, make your cross in the square opposite the word "No."

The result was published in an extraordinary number of the *Natal Government Gazette* on June 12th, 1909. The votes had been counted, not as a whole, but separately in connection with each constituency, and the returns showed that not only was there a majority among the whole of the electors of Natal in favour of union, but that there was a majority in every single constituency into which Natal was then divided—a truly remarkable result!

UNITED KINGDOM.

It has been already stated that the Referendum is, as a matter of fact, used in the United Kingdom,

both in municipalities and in trades unions. It is a matter of common knowledge that, when the question of a strike is before a trades union like the Miners' Federation, the question is not decided by any committee of the union but by all the members of the union themselves at a ballot, which is exactly the same thing as a Referendum. It is not, however, equally commonly known that the Referendum is used for important purposes in connection with our municipal government. The following is a copy of the declaration of the result of the poll on an important occasion recently in Bristol:

DECLARATION OF RESULT OF POLL.

COUNTY BOROUGH OF BRISTOL.

IN PARLIAMENT—Session 1911.

The Bristol Corporation Bill, 1911.

WHEREAS a poll of the Electors of the above-named County Borough was taken on the 26th day of January, 1911, with reference to the resolutions put to the Public Meeting of Electors, held on the 6th day of January, 1911, in favour of the promotion of the Bill, the title of which is set forth above, and such resolutions were in the following terms:

1. "That this Meeting of the Electors approves of the provision made in the Bill to be promoted in the ensuing Session to empower the Corporation

to lay out and utilise for burial purposes lands adjoining Canford Cemetery and Avonview Cemetery, Bristol, and to borrow the moneys necessary for these purposes."

2. "That this Meeting of the Electors approves of the provision made in the Bill to empower the Corporation to revise the rates of tonnage on vessels entering or leaving the Port; to make provision for better securing the payment of rates on goods imported or exported coastwise; and to enable the Corporation to charge Passenger fares for Passengers using the Railways forming part of the Dock Undertaking."

3. "That this Meeting of Electors approves of the provision made in the Bill to empower the Corporation to adjust moneys already raised and to raise further moneys for the completion of the Dock Works at Avonmouth; to borrow moneys for the erection of sheds and warehouses at Avonmouth, and for the general purposes of the Dock Undertaking."

4. "That this Meeting of Electors approves of the provision made in the Bill to authorize the Corporation to spend money upon advertising the City and Port, and to enable them to appoint on any committee which they may select for the purpose of advertising persons who are not members of the Council."

I, the undersigned, being the Returning Officer at the said Poll, do hereby declare that the number of Votes recorded thereat is as follows :—

In favour of Resolution No. 1	15,833	Votes	22,490
Against Resolution No. 1 . .	6,657	„	
Majority in favour	9,176		
In favour of Resolution No. 2	17,718	„	22,088
Against Resolution No. 2 . .	4,370	„	
Majority in favour	13,348		
In favour of Resolution No. 3	16,751	„	22,201
Against Resolution No. 3 . .	5,450	„	
Majority in favour	11,301		
In favour of Resolution No. 4	15,218	„	21,695
Against Resolution No. 4 . .	6,477	„	
Majority in favour	8,741		

Dated this 27th day of January, 1911.

C. A. HAYES, LORD MAYOR,
Returning Officer.

The descriptions given above show how the Referendum is worked elsewhere, where the same difficulties in the working of a democratic form of Government, although occurring doubtless in different forms, have been solved by the Referendum as a remedy. Consideration must now be given to the objections urged against the Referendum itself, or to its introduction into this country.

It has been urged that the Referendum is the fanciful creation of theorists, and that in practice it would be impossible to put it into operation. I will say at once, for the sake of clearing the ground, that because the Referendum has been found to

work well in, and to suit the political conditions of, so many states in Switzerland and the United States of America, it does not follow that it would suit us. But the argument can surely be drawn from its extensive and continuous use in America and Switzerland that the Referendum is a piece of political machinery which can easily be used in practice, and that there is no objection alleged in respect of its cost or inconvenience or the difficulty of adjusting it to Parliamentary government, that it is not a mere bogey invented by Radicals as part of their effort to keep the Referendum out of the British Constitution by all means in their power. Furthermore, the fact that the Referendum is used for certain limited purposes in Australia, and as part of the regular constitutional machinery of the Commonwealth, is surely proof, not only that it can be used, but that it can be used by our own race and as part of one of the Constitutions of the Empire.

Another objection is that the introduction of the Referendum into the British Constitution would be unfair to the Liberal Party, because if a Unionist Government were in power, and had a majority in both Houses of Parliament, then it would only be under very exceptional circumstances that a measure would be sent to a Referendum. To this argument there are two replies. The first is, that in a reconstructed Second Chamber there would be no assured majority of Unionists; and that, although that reconstructed Chamber might be conservative

in a national sense, it would certainly no longer be conservative in the party sense as the House of Lords is now alleged to be. It must, however, also be pointed out that this is a contingency for which the Radicals themselves do not, even in the Parliament Act, attempt to make provision. The Referendum is put forward partly as an answer to the pet Radical grievance that the House of Lords prevented the passage of Liberal legislation which the electors ardently desired. The Parliament Act is now part of the statute law, and if an Unionist Government were to come into power to-morrow that Government would be far more powerful than any Unionist Government has yet been to pass such legislation as it chose to pass, whether the electors really desired that legislation or not.

Again, as it is urged that if the Referendum be adopted into the Constitution, so must also the Initiative, let me remind my readers what the Initiative is. It is not always quite the same under all circumstances; there are more forms of it than one, but in its crudest form it is the provision by which a certain number of electors may put forward a project of legislation that has not been discussed in Parliament at all, and which is then submitted to the electors in a Referendum to be passed or rejected.

It is obvious that machinery of this kind might be used by Socialists to put forward predatory proposals direct to the electorate; but its special inherent danger consists, not in the fact that the proposals might be predatory, but in the fact that

these predatory proposals might be voted upon by the electors at a Referendum without that adequate preliminary and sustained discussion and criticism which is necessary for the purpose of informing them of their true nature, and consequently no proposal in respect of the Referendum will ever be put forward by the Unionist Party which does not ensure to the electors a period for adequate and sustained preliminary discussion and criticism before being asked to vote upon a Bill.

If a democracy like ours is determined to embark on a course of legislative injustice and spoliation, in the long run it will do so, but I do not believe the British people will intentionally ever do any such thing. The real danger of the democratic system to us consists in the possibility of the electors being cajoled into the approval of a proposal before they have understood its full significance, and which they would have unhesitatingly rejected if they had had time to understand it. The British people do not grasp quickly the full bearing of a political proposition which is new to them, but if they are given time, history proves their judgment to be sounder than that of any democracy of which the world has hitherto had experience.

But the question must be answered—is there any necessary connection between the Referendum and the Initiative? I assert that the answer is "No," that there is no necessary connection. The Referendum, in one form or another, is to be found as part of the Constitution of forty-five of the forty-

six States of which the United States of America is composed; the Initiative has a place in the Constitution of only seven of those forty-six States, and I understand from Mr. Bryce's Report that it is in actual operation in only one. In Switzerland, the Referendum is in operation in every canton but one; the Initiative is in operation in some cantons, but not in all. In the Commonwealth of Australia no change of any kind can be made in the Constitution, even when both Houses of Parliament are in agreement, unless it be approved by a majority of the electors in a majority of the States, voting at a Referendum, but the Initiative has no place in the Constitution of the Commonwealth. The Initiative is, in fact, another red herring dragged across the trail of the Referendum. The Initiative can be discussed on its own merits, but there is no reason whatever why, because the Referendum is introduced for certain definite purposes into the British Constitution, the Initiative should also be introduced.

The argument used above has in part also served as an answer to the objection that the Referendum can be used for the bribery and debauchery of the electors, and that their ignorance and unfitness to decide an issue are an absolute bar to its introduction, but it will be well to develop it further. The objection has been formulated in this way: If the Referendum were used for measures which might take the form of a direct bribe to the electors, it would demoralize first ministers, then Parliament, and then the electorate. A crude bribe

might, perhaps, be rejected by the electors, but could they be trusted to withstand the insidious mixture of bribery and sentiment which forms the staple of the platform speeches of Radicals and Socialists?

This argument deserves careful attention, but I protest that it must be discussed in comparison with the facts as they are, and not as we would wish them to be. What is the present position? Are not the Bills of the Radical Government already introduced to the electors in a dangerous and insidious mixture of bribery and sentiment? What else have been Mr. Lloyd George's speeches at Limehouse and Mile End and elsewhere? We are already confronted with this gross abuse. The demoralization feared is not prospective, it is existent; and the question is, not whether there is not a danger of the abuse of the Referendum by such means, but which is the greater danger—the danger to be feared from the votes of the electors themselves at a Referendum, after attempts have been made to debauch their sense of honesty and justice, or that to be feared from the votes of the members of the House of Commons dominated by the caucus, in its turn dominated by Mr. Lloyd George, or some unknown demagogue of the future?

The truth is that politicians who do not scruple to resort to such methods of sustaining themselves in office, will resort to these methods under any democratic system, and the real question now to be answered is, not whether the Referendum would or would not be responsible for introducing such

methods, but whether they could be more easily defeated if the final word rested with the electors at a Referendum or with an autocratic Single Chamber (as the House of Commons at present is), unchecked by any Referendum. In my own judgment the path of safety undoubtedly lies with the Referendum. I would far rather argue before the electors, who themselves were about to give a vote on a definite concrete proposal, however predatory in character, than I would argue to a tyrannical majority in a Single Chamber dominated by the caucus.

Those who advocate the use of the Referendum do so as an appeal to the electors, not in substitution for the fullest debate in Parliament, but as an appeal in certain cases after that debate is concluded. So organized, they consider that the Referendum cannot justly be described as an additional danger, and that the real danger to be guarded against already exists in the autocracy of a Single Chamber. The Referendum properly organized would, they urge, be a powerful check on that autocracy. If the electors at a Referendum endorsed a decision of Parliament, the situation would be no worse even from a Conservative point of view. Every time they rejected a Bill approved by Parliament, the country would have been saved from a piece of legislation which would otherwise have been imposed upon it against its will.

Some of our friends think that, when the Parliament Act has been repealed and the House of Lords reconstructed into a strong Second

Chamber, there will be no need for the Referendum. I cannot share that opinion; I agree that the stronger the Second Chamber the less frequent will be the occasions for recourse to the Referendum, and, as I do not desire to see the Referendum too freely used, I should consider that a great additional advantage; but I hold that the absence of any provision for settling an acute difference of opinion between the two Houses of Parliament other than a general election to be a grave defect in the constitution, and, however strongly the Second Chamber may be reconstructed, the Referendum will be required as the constitutional method of settling such persistent irreconcilable disputes.

All who have had the experience of being brought into close contact with the British electorate will agree that they are, on the whole, a set of men genuinely anxious to do what is right, and to give fair play to all interests and classes. The closer Unionists can get to them in the settlement of the grave questions of the future, the more stable will be the Constitution and the rights of property; the more effectually the Radicals can interpose an autocratic Single Chamber between the people and the champions of the Constitution, and of the rights of the individual citizen, the more unstable will be all our conditions. Mr. Disraeli was never wiser than when he adjured his party to trust to the sublime instincts of an ancient people.

I lay great stress on the educative effect of requiring the electors to consider one question

at a time. Public meetings, the Press, all sorts of literature, and elections, are the chief instruments of the political education of the electors; but in a General Election the issue is a bewildering complication of rival policies, diverse bills, and personal considerations, while everything is overshadowed by what I must call the "cup-tie" aspect of the giant struggle between the great political parties. The inevitable tendency is to attach the elector blindly to a colour or a label. A Referendum on a single great issue would in my judgment do more than anything else to make him regard himself more as a trustee, and less as a sportsman. The Referendum would be a potent instrument for the political education of the democracy.

Remembering the quarter from which it comes, the most extraordinary argument which is used against the Referendum is that the electors are not fit to decide the kind of issue which would be submitted to them. I can understand the argument and appreciate its full weight when it is directed against democracy as an institution, when it is used to point out how absurd it is to expect the average elector, with his comparatively limited opportunities of information, and his hard struggle to live, to decide the great issues which are the subject of modern politics. I can understand such an argument used by one who desired to restrict the franchise to comparatively few persons, well educated and possessed of property. But I confess I am wholly unable to understand the argument when it proceeds from a man who lauds democracy

as the best possible form of government, or who at any rate accepts it so long as it is not equipped with the machinery of the Referendum.

For what is the proposal to which this objection is taken? That after a measure such as a Bill for Home Rule for Ireland, or for the Disestablishment and Disendowment of the Church, has been debated in Parliament for at least two sessions, when it has been before the country for many months, when it has been discussed in every newspaper and on every platform, when its leading features are fairly well-known to the great majority of the electors, it should then, under certain circumstances, be submitted to the electors to say whether they approve of it or not. When this proposal is made, the objection is raised that the electors are not fit to decide, and in the same breath it is asserted that they are fit to decide at a General Election whether that particular measure shall become law, and whether a dozen other measures, most of which have not been discussed at all, shall become law. The proposition, in fact, amounts to this, that the more measures on which an elector has to give an opinion at the same moment, and the less they have been discussed, the fitter he is to give a decision on them; but that if one measure, after ample discussion, is eliminated from all others and stands by itself alone, then he is quite unfit to give a decision upon it!

Mr. Asquith is reported in *The Times* of April 4th, 1911, to have used the following words: "When this Bill (the Parliament Bill) was presented to the

country, as it was at the last election, it was presented with its preamble. The assent given by the electorate to the Bill was an assent given, I do not say to every detail, but given to the Bill as a whole." This was a Bill which had been printed and published in the early part of 1910, but never discussed for one single day in the House of Commons. It was a Bill presented to the electors under such conditions as no Bill could ever be presented to them in the form of a Referendum. Mr. Asquith would probably make a great point of the unfitness of the electors to decide such a question after ample discussion at a Referendum, and yet he claimed that they gave their decision upon it at the General Election of December, 1910, although there had been no preliminary discussion! To judge by his speech at a further stage of the Parliament Bill, as reported in *The Times* of April 21st, 1911, I understand him to have said that at the same election—December, 1910—the electors gave him a mandate to pass Home Rule for Ireland. Mr. Asquith would absolutely decline to refer a Home Rule Bill to a Referendum after it had been discussed in all its details for many months in Parliament, and he would probably say that the electors were unfit to give a decision in such a manner; yet he tells us that they have given him a mandate to pass a Home Rule Bill for Ireland, the details of which, I presume, had been indicated to them by some process of telepathy—as they had never been published!

Again, it is said that the frequent or habitual

use of the Referendum would necessarily weaken the sense of responsibility of Parliament and encourage members to vote for measures of which they disapprove if they were popular among any considerable section of their supporters, trusting to others to reject what they themselves were afraid to oppose, or at least washing their hands of a responsibility for the consequences. This argument, again, must be weighed in connection with facts as they are. The Member of Parliament to-day is in the grip of the party machine, and he cannot escape from it. What effect the Referendum would have on the sense of responsibility of Members of Parliament, and Cabinet Ministers, can only be a matter of opinion; but I suggest in the first place that the present position in this respect is so bad that it cannot easily be made worse, and in the second place that it is more probable that the effect of the Referendum would be to heighten than to weaken the sense of responsibility. Cabinet Ministers would think twice, and oftener, before they proposed measures which they knew were deeply resented by a very large section of the population, a number which they might well suspect really to comprise a majority, and Members of Parliament would feel the same influence and make their representations felt within the party before the question took shape in the form of a Bill in the House of Commons. This, in my opinion, would be just as true of the Unionist Party as of the Radical Party.

The influence of the Referendum would, in fact,

be towards compromise, and where we have those acute divisions of opinion which exist in this country among great bodies of men, as, for instance, in the matter of religious education, compromise, I submit, is what all sensible people should desire. This objection also ignores the introduction of the system of log-rolling into our Parliamentary tactics, which is now an accomplished fact. The groups of Welsh, Irish, Scottish and Labour members scheme to tie themselves to each other like men in a three-legged race. Each group is willing to support the others to realize their pet legislative projects provided that the support is mutual, and that each group is repaid for its votes by receiving the votes of the other groups when its turn comes. This system is capable of almost indefinite extension, and it is commonly reported that it has been so extended in America. Log-rolling involves the destruction of the sense of responsibility, both of Cabinet Ministers and Members of Parliament, and whatever else it did the Referendum would certainly defeat log-rolling.

Yet another objection urged against the Referendum is that a Cabinet could not retain office after a Bill promoted by it had been rejected at a Referendum. Of course, if a Cabinet had staked all its fortunes on a measure such as Home Rule for Ireland, and if that Bill were rejected by the electors at a Referendum, the credit of that Government would be so shaken that it might not be able to retain office. But the question is essentially one of degree. If the Bill rejected was only one of

secondary importance, there is no reason whatever why the Government should resign. Of course, its credit *pro tanto* would be damaged; but the probability is that the Cabinet would be very sensible of this danger in advance, and would endeavour to avoid the necessity for a Referendum by reasonable compromise, which is exactly the tendency it is most desirable to foster.

The doctrine of verbal inspiration in legislation and of infallibility in administration is a new and very mischievous one. It is only within comparatively recent times that a Government has affected to regard an amendment of detail in committee, or a resolution in respect of some ordinary administrative blunder as a question of confidence. If the Referendum had no other result than that of destroying this ridiculous heresy, which has had much influence in impairing the independent action of Members of Parliament, it would perform a great service to the cause of Parliamentary Government. The fact is that Liberals and Radicals are so obsessed with the sense of their beneficent omniscience that they consider it a matter of no importance that the majority of the electors may be really opposed to the laws they pass. Those who happen to think that a democracy becomes an absurd and dangerous farce, if a minority can persistently impose its will on a majority of the electors, will not be distracted in their advocacy of the Referendum by the plaintive cries of the Radicals that it might sometimes make their retention of office more difficult.

But in connection with this argument it is interesting to note that the Labour Cabinet in Australia has never resigned, although the electors of the Commonwealth in April 1911 rejected at a Referendum the proposed amendments to the Constitution to which it attached great importance, and that it continues to enjoy the support of its Parliamentary majority and the confidence of the electors.

I have now shown what the nature of the Referendum is, and how it is used in foreign countries and in the Dominions of the Empire, and to a limited degree for local or trade purposes in the United Kingdom. I have also endeavoured to meet the objections urged to its introduction into our Constitution, but for the arguments I have used I am alone responsible. The leaders of our party have accepted the principle of the Referendum, but in what manner and for what purposes and in what degree its use shall be recommended it will be for them with the consent of the Unionist party to decide.

THE PARLIAMENT ACT, 1911

An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament. [18*th August*, 1911.]

WHEREAS it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Powers of House of Lords as to Money Bills.—**1.**—(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the Session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being

signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

Restriction of the Powers of the House of Lords as to Bills other than Money Bills.—**2.**—(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not

consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding Session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

Certificate of Speaker.—**3.** Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

Enacting words.—**4.** (1) In every Bill presented to His Majesty under the preceding provisions of this Act, the words of enactment shall be as follows, that is to say :—

> " Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Act, 1911, and by authority of the same, as follows."

(2) Any alteration of a Bill necessary to give effect to this section shall not be deemed to be an amendment of the Bill.

Provisional Order Bills excluded.—**5.** In this Act the expression " Public Bill " does not include any Bill for confirming a Provisional Order.

Saving for existing rights and privileges of the House of Commons.—**6.** Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons.

Duration of Parliament, 1 *Geo.* 1, *stat.* 2, *c.* 38.—**7.** Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715.

Short title.—**8.** This Act may be cited as the Parliament Act, 1911.

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THE END

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