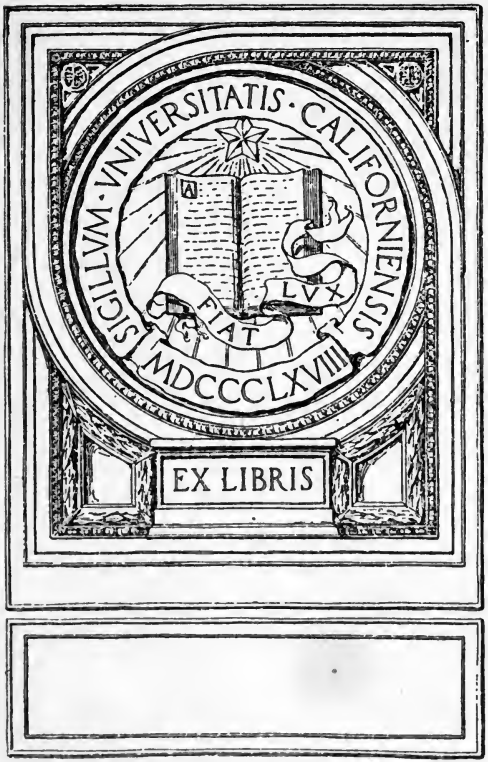
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THE STATE
AND THE CITIZEN

THE STATE AND THE CITIZEN

BY

THE EARL OF SELBORNE, K.G.

LONDON
FREDERICK WARNE AND CO.
AND NEW YORK
1913

Printed by BALLANTYNE, HANSON & Co
at the Ballantyne Press, Edinburgh

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CHAPTER I

INTRODUCTION

A CONSTITUTION is that part of the law and custom of a country which regulates the making and administration of its laws. All individuals in a civilised country stand in contact with a power that concerns itself, ever more fully, with a part of their doings, now conferring boons, now imposing restrictions, always charged with their defence against the force of the foreigner, and armed always, against its own subjects, with irresistible might. Such is the Government.

It is not less powerful in democratic England than in Russia under the old autocracy. It is even more powerful, for its organisation is more complete. Not only in the vulgar form of collision with a policeman, but in an infinite number of instances in all the business of life—in the home, the shop, the factory, and in the pocket—the influence of the laws is felt continuously by every

person. He may not be aware of it at all times, but it is only habit that dulls his consciousness, Little as he thinks of it, the course of his actions and the sum of his opportunities in life are affected by the mighty power of the laws and of those by whom the laws are administered. It behoves us, therefore, since the subject so deeply concerns us, to keep our observation open towards the machinery by which laws are, and will be, brought into existence.

When Pope wrote:

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

he begged the question. He would be a fool indeed who troubled himself about forms of government without caring how the chosen form would work in practice, but whenever the question of practical working is raised the question of the form will always provide room for contest.

There is no absolutely right form of government. There is no final answer to the question of the best form of government, as there is to the question of the result of multiplying six by three. In one country, and in one stage of civilisation, one form will work better than another.

The system of autocracy, the system of aristocracy, the system of democracy, have each had their successes and failures according to the conditions under which they were tried. For the

purposes of this book we shall need to consider none but democratic forms, though even among these there is wide scope for that "contest" which Pope deprecated. The systems of America, France, and Germany, for instance, have some of their democratic features in the sharpest contrast with one another; and we shall have to consider some of these different constitutional devices, so far, at least, as regards their relative suitability to the nation which is using them.

Among democratic Constitutions the differences most often noted are those between written and unwritten Constitutions, and those between rigid and flexible Constitutions.

When the ingenuous American walked into the shop of a London bookseller, threw down a shilling, and asked for a copy of the British Constitution, he was assuming that the British Constitution, like the American, was written on a piece of paper. The American Constitution, like a will or a deed of partnership, is a document. It declares in legal language that a body called Congress, elected in a certain manner, can enact laws on certain definite subjects in a certain prescribed manner. It declares that a man elected in a certain way shall be called President, and shall have certain powers. And thus it proceeds to cover the whole field of constitutional laws. Whoever wishes to learn about the American Constitution has only to buy this document and read it.

The American Constitution, we may say, *is* a document. Our Constitution is not. If an Englishman were asked what was the English Constitution, he would reply that it was a way of describing the fact that we are governed by King, Lords, and Commons, and that we have a number of institutions like free speech, freedom of meeting, freedom from arbitrary arrest, and so on. If you pressed him further he would add that our Constitution implied also that the King should not oppose the will of the people as expressed in Parliament, and that a Ministry defeated in the Commons ought to resign office, and that it would not be proper for a Ministry repeatedly to dissolve Parliament without any good reason.

What does this come to? It is simply the Englishman's knowledge that there are certain laws and certain customs by which public affairs are regulated. Some of them, certainly, are to be found in the written statute law, as when we find the rights of personal liberty protected by the Habeas Corpus Act. Others are parts of the common law, upon which courts and judges habitually act. Of this sort is the law that King and Parliament could grant, let us say, the vote to women. It is nowhere written down that they could do so. It is nowhere written down that King and Parliament could lawfully, as they have done, make it a crime to take a child into a

public-house. But we know that King and Parliament have in fact this lawful power. It is part of the common law. It has always been so.

Again, it is nowhere written down that a Government defeated on a serious occasion should resign or dissolve. There is no statute to this effect. It is not even part of the common law. No judge would listen for an instant to a claimant who sought to expel a Minister for this reason. But, apart from all law, the practice of the Constitution has grown to be that Ministers who are defeated should resign or dissolve, and on this account we should call it unconstitutional for them to refrain from doing so.

Our Constitution, therefore, is a mass of laws and customs, partly written and partly unwritten, but in no case written out, like the famous document in America, *as a Constitution.* There is nothing to prevent its being written to-morrow, and passed into law by King and Parliament. But even if this were to be done we should still be far from possessing such a document as they have in America.

The reason is that the American Constitution is rigid. It is above all law. It cannot be altered except by some very elaborate machinery which it itself provides, which involves a process far more complicated and solemn and difficult than is needed for the alteration of any ordinary law. It is, as has been said, above the law. It lays

down, for instance, that Congress has certain powers. But it does not merely state and explain these powers. It actually confers them, and if it were to cease to exist there would be an end of Congress too, and of all the powers conferred on Congress. President, Congress, and all else within the American Constitution, exist simply and solely because the document has created them. From it their powers are derived, and by its virtue they exist. Take it away, and nothing remains.

Observe that if our own Constitution were to be enacted, no such sanctity would attach to it. There would be nothing to prevent Parliament from repealing the document immediately, and all would go on as before under the old laws. The authority of Parliament would not have come to depend on the document, but the document would be a mere expression of the authority of Parliament. During the existence of the document one might say that our Constitution was written. But one could not call it rigid, for, under the ordinary law, it could be swept away without detriment to the authority of the power that called it into being. The American Congress is over the ordinary law but under the Constitution, while our Parliament is over both ordinary law and Constitution. It can alter both alike, in the same way, and this is what is meant when the British Constitution is called flexible.

One other definition requires to be noted. It is

extremely simple, and at the present time it is very familiar to the minds of English people. As Constitutions are either written or unwritten, as they are either flexible or rigid, so also, under representative institutions, they are either uni-cameral or bi-cameral. They maintain a legislative machine, that is to say, of either one or two Houses. Under the first system a Bill becomes law on passing one House of Parliament; under the other system, it does not become law until it has passed both Houses. Upon the importance of this distinction the following pages will bear.

CHAPTER II

THE HOUSE OF LORDS AT THE TIME OF OLIVER CROMWELL

In considering the respective merits of double-chamber and single-chamber systems of legislation, we are not without the aid of a lesson from English history. At a time which has much resemblance to our own time, when constitutional questions were agitating all men's minds, when the organised soldiery had appeared in English society as organised labour has appeared among ourselves, the experiment of government by a single chamber was tried for reasons that have again become familiar to Englishmen, and with results that are profoundly instructive to anyone studying the problems of to-day.

The great Civil War had not originally any connection with questions of class hatred, class jealousy, or theories of class equality. It was due to the fact that the incompetent family of Stuart had inherited the powers entrusted by the English people to the able family of Tudor, in whom was a double portion of skill and tact which were left out of the Stuart character.

The Tudors, with all the instincts and most of the advantages of sheer despotism, were so tender with English sensitiveness that the opposition to their rule never spread beyond extremists. They flattered the English spirit of legality as a poor relative flatters a rich one; and their administration, at home and abroad, was always supported by the prestige which comes of success.

With the Stuarts the position was reversed. The Government was weak, apt to fail in its undertakings, and given to a perpetual parade and display of arbitrariness. What the Tudors would have asked and received from the nation, the Stuarts commanded and were denied. Irritation accumulated on both sides, till the attempt to impose an Episcopalian Church on the Presbyterians of Scotland provided a single instance of irritation big enough to rally all others by natural attraction. The Civil War broke out. It was the result of forty years of discontent with the personalities of rulers and the manner of executive government. It was not the result of class jealousy, and it was not the result of any objection to the existing Constitution.

The peerage was split, at the outbreak of the war, just as the nation was split. It has been noted that a majority of the peers of older creation sided with the Parliament, while a majority of the newer creations were for the King. Similarly it is said that in 1832 the older creations

favoured the Reform Bill, the newer ones opposing it. A very simple explanation can be offered for these phenomena. Under Charles I the newer creations were his own and his father's, and had been chosen from among families temperamentally inclined to Royalism. In 1832 the newer creations were the outcome of close on fifty years of Tory government, and were consequently Tories and not Whigs. So the argument fails as an effort to call on the prestige of old families for moral support to revolution.

At the outbreak of the war the House of Lords consisted of about 150 members, in addition to the bishops. The latter, before the war began, were excluded from the House by an Act of Parliament. In this measure, again, there was no desire to attack the Constitution, and no attachment to democratic theory. It was avowedly an act of partisan retaliation upon a group of persons who habitually supported the Crown against the Parliament. The Parliament excluded the bishops. as it put Strafford and Laud to death, because they were personally obnoxious to the majority. No theory of government entered into their considerations.

Of the 150 lay peers some were children, some withdrew into private life, some went with the King from London to his armies in the north and west, and about thirty remained to sit in the House of Lords and act in conjunction with the

Commons during the progress of the war. It can be said, with broad accuracy, that the two Houses worked together in harmony. They had to fulfil functions beyond what is usual with legislative chambers, for they were the executive head of the half of a nation at war. The times, also, were times of revolution. Difference of opinion was bound to occur between the Houses, as between the individuals composing them; but while the war progressed there was not the least suggestion of either House calling the existence of the other House in question. Their quarrels were incidental, and were followed by flowery reconciliations. So matters continued for a time, while for a variety of personal reasons the number of the thirty peers remaining was steadily diminishing.

We have now to notice, however, the uprising of a new spirit. The Revolution, beginning without any animosity to the Constitution, the Peerage, or even the Monarchy as an institution, began to be affected by changes of opinion which can be seen now as quite inevitable. Violent opinions lead to violent acts, but violent acts lead also to violent opinions. From the moment when the Parliament took the command of a single soldier it was outside the law; it was launched upon violence. Without requiring to pass any moral judgment upon its conduct, we can easily see that it set an example to all whose opinions a violent course might assist. Having adopted, or been

driven to adopt, a complete breach with tradition, the Parliament morally invited all others to reconsider first principles, and to challenge the existence of any custom or institution which might strike individual opinion as foolish, unjust, irksome, or unattractive.

The greatest and most memorable effect of this loosing of the bands of moral discipline was in the sphere of religion. The most extreme forms of nonconformity at once adopted all the irreconcilability of the Popes who excommunicated Henry VIII, and every man's opinion became a sufficient basis for a complete system of intolerance. The culmination of this spirit was reached when the Puritan Government, after the death of Charles I, accorded the country a measure of what was described as toleration. They granted freedom of worship to all sects of Christians. Any satisfaction that this may have given to Roman Catholics or members of the Church of England was short-lived, for these found that they were not within the scope of toleration, not being accounted as Christians at all.

Constitutional reformers used the same licence as religious reformers. When the Civil War was drawing to a close, and the victory of the Parliament had been assured, and men's tongues had grown used to all the catchwords of liberty, in their quarrel with the King, a petition was pre-

sented to the House of Commons at the critical moment when a spirit of compromise had shown itself in that assembly. A prospect suddenly appeared of a general pacification, in which King, Lords, and Commons would have resumed their old functions.

"It is impossible for us to believe," said the petitioners, "that it can consist with the safety or freedom of the nation to be governed by three supremes. Most of the oppressions of the commonwealth have in all times been brought upon the people by the King and the Lords, who would nevertheless be so equal in the supreme authority (if the reconciliation should take place) that there could be no redress of grievances, no provision for safety, but at their pleasure." The petitioners then went on to state the things which the House of Commons should have achieved, instead of talking of compromise, if it was really to deserve well of the country. "It ought to have abolished all pretences of negative voices either in the King or Lords, to have made kings, queens, princes, dukes, earls, lords, and all persons alike" amenable to the laws of the land, to have "freed all commoners from the jurisdiction of the Lords." If the House of Commons would satisfy these requirements it would once more be "strengthened with the love of the people."

At the same time the regiments of the Army of the Parliament, by now the supreme power in

the land, petitioned the House of Commons for the abolition of the Lords. They demanded that the "supreme power and trust" should be in the representative assembly of the people, "without further appeal to any created standing power."

It is quite clear that the offence of the Lords, in the eyes of these extreme persons, was in their patronage of the attempt at reconciliation between the victorious Parliament and the defeated King. Behind all constitutional changes there will be found, at all times, a practical object. In this case the object was to enthrone the military despotism over the ruins of the throne, Parliament, and popular liberties alike. The object was achieved, but it was advocated always by constitutional arguments such as that quoted above.

The House of Commons, for the while, rejected all petitions and advices of an extreme character. A very simple expedient was adopted, therefore, by those who wished to modify the Constitution to suit their purposes. There are two ways of reversing the decision of a deliberative body. One is to add to the numbers of the minority; the other is to diminish the numbers of the majority. In 1911 the former method was threatened, and the decision of the House of Lords was to be reversed by the wholesale creation of peers. In 1648 the latter method was used to reverse the decision of the House of Commons. Colonel John Pride went to the House of Commons with a few

soldiers, arrested forty-five members who were voting the wrong way, and prevented ninety-six others from entering. Seventy-eight members were permitted to sit; and such was the assembly which was to abolish the House of Lords and perpetrate the death of the King.

The extremists had triumphed, and were now as strong in the House as in the Army. As on another occasion, when dealing with the same subject, this House dealt with the question of the Lords by means of three "resolutions." The resolutions were as follows:

1. That the people are, under God, the original of all just power.
2. That the Commons of England, in Parliament assembled, being chosen by and representing the people, have the supreme power in this nation.
3. That whatsoever is enacted or declared for law by the Commons in Parliament assembled, hath the force of law; and all the people of this nation are concluded thereby, although the consent or concurrence of the King or House of Peers be not had thereunto.

At the time at which we live it is hard to think patiently of a body of men who called themselves the supreme power in the nation chosen by and representing the people, when it was eight years since their election, when all opinions had changed,

when they had made their own dissolution illegal without their consent, when many of their number had been in arms against them, and when they had ejected by main force two-thirds of those who remained. Such considerations must deprive the three foregoing resolutions of any moral force. Yet they established, for the guidance of future generations, an invaluable example of the nature of government by a single chamber.

It need hardly be said that the assembly which thus made itself a single chamber never voluntarily dissolved itself nor parted with a shred of its powers. The idea of consulting the people, "the original of all just power," was the last it was likely to entertain. And, for the final verdict of the people upon the experiment of the single chamber we have to look to the passionate enthusiasm of the nation at the restoration of the King, Lords, and Commons, "the Free Parliament" as they called it, in the year 1660.

For the most part the objection of the nation to the rule of the single chamber was based on the partisan character of its actions. It perpetuated, as a single chamber must needs do, the domination of a party. The party in question, far from being that of a majority of the nation, was that of an always dwindling minority. The more the minority dwindled, the less disposed was the single chamber to consult the electorate. Yet that electorate was forced to live under a body of

rules, administered by military force, affecting the most private and personal side of life, in business, in religion, in the home, and originating in the strong prejudices of a sect that had control of the legislative machine. To popular complaints the answer of the party in power was that it was right and the people wrong, that its governance was for the people's good—a theory which did not lead to the popularity of the rulers nor their system of rule.

But it was not only in the ultimate judgment of the nation that the single-chamber system was condemned. It was assailed, and indeed for a time it was upset, by the head of the existing executive Government, no enemy of theoretic liberty, Oliver Cromwell himself. He had excellent opportunities of observing the system at work. He saw and had to put up with an assembly of unlimited powers, always in session, not content with the business of mere legislation but taking on itself by its committees to supersede the ordinary courts of law, uniting in itself the legislative, judicial, and executive powers of the State.

Cromwell pronounced this to be "the horridest arbitrariness that ever was exercised in the world." "This was the case with the people of England," he said, describing the system after he had made some attempt to rectify it, "the Parliament assuming to itself the authority of the three Estates that were before. It was so; and if any

man would have come and said, 'What are the rules you judge by?'—why, we have none. But we are supreme in legislature and in judicature."

At this time, about six years after the death of Charles I and about five years before the Restoration, Cromwell had dismissed by main force the old Parliament that fought the war and abolished the House of Lords. He had framed a new Constitution, called the Instrument of Government, under which there was provision for a House of Commons, but not for an Upper Chamber of any sort. Single chamber government was continued, and Cromwell found his Parliaments as difficult to manage as had the King before him. Quarrels between executive and legislature were as frequent as ever, and it appeared to Cromwell that the solution lay in the creation of an Upper Chamber as a moderating influence. In coming to this conclusion he was much assisted by the case of a certain James Nayler.

Nayler was the author of blasphemous pamphlets, for the punishment of which there was ample provision at the common law. The House of Commons, however—it was the second that Cromwell had called in the few months since the Instrument of Government—decided to look into the affair itself. Many weeks were spent by the House in discussing whether they should put Nayler to death by an Act of Attainder—an Act, that is, making it the law of the land that this

man should be hanged—or whether they should proceed against him by their judicial power. They had no judicial power. The Instrument of Government had given them none, nor was there any judicial power in the old Houses of Commons, under the old Constitution, which they could have inherited. But they were not deterred by such considerations. They felt, it is clear, that being the representatives of the people, "the original of all just power," they were quite at liberty to do as they pleased. Nor was there anybody to check them. So, while the question of the method of Nayler's final sentence was still under discussion, they proceeded, by way of filling the interval, to vote that he should be imprisoned, pilloried, whipped, have his tongue bored, and be branded on the forehead. After this Cromwell interfered. "We, being interested in the present Government on behalf of the people of these nations," he said, "and not knowing how far such proceedings, entered into wholly without us, may extend in the consequence of it, do desire that the House will let us know the grounds and reasons whereupon they have proceeded."

But the House would not recede from the position it had taken up. In order to avoid a quarrel, Cromwell let the matter drop. But his mind was now fixed in favour of the creation of a second chamber. "Here," said one of his friends in the House, "is your power asserted on the one

hand; the supreme magistrate, on the other hand, desiring an account of your judgment. Where shall there be *tertius arbiter?* It is a hard case. No judge upon earth."

Cromwell decided that such a judge there should be, and that it should take the historic form of an Upper Chamber. The House of Commons, under some fear of physical compulsion, consented. There was debate, naturally, as to the form to be allotted to the new chamber, "the Other House," as it was called, and as to the method of its constitution. In the end it was settled that the Other House should be composed of persons nominated by Cromwell, who, as Lord Protector, was the head of the Executive. He was left free to choose whomsoever he thought fit.

After long deliberation he chose sixty-three persons, and summoned them to Westminster. Forty-two of these accepted the summons and became the Other House. In general parlance they were called Lords. They belonged, of course, exclusively to the party which supported the Protector against the King over the water, and were therefore not representative of the body of national feeling at that time. But, within this limitation, they appear to have been the best selections that Cromwell could have made. If they failed as a constitutional experiment it was because an Upper Chamber, like a Lower Chamber, must fail if it represents no more than a partisan minority.

No sooner was the Other House constituted than the House of Commons fell to wrangling about its powers. Cromwell, to settle or postpone disputes, dissolved the Parliament. In his speech of dissolution he referred to the constitutional question in these words: "I would not undertake it (the government) without there might be some other body that might interpose between you (the Commons) and me, on behalf of the Commonwealth, to prevent a tumultuary and a popular spirit."

When the next Parliament met, all the vigilance of the Government had been unable to prevent the return of a good number of members who were Royalist at heart. Cromwell was now dead, and his son Richard sat in his seat. The Other House, as constituted by his father, was summoned by Richard as part of the Parliament. Once more there was debate upon its merits in the Commons. But the spirit was changed. Criticism was now directed not at the Upper Chamber as contrary to liberty, but at its component members as contemptible puppets, nominees of military despotism, and very unworthy successors of the old peerage of England. With the Commons in this mood a fresh complication arose. The Army, still the deciding power in the last resort, was well represented in the existing Upper Chamber by the number of its officers who sat there. The Army, therefore, became the defender of the Upper Cham-

ber for the time being. But, in a month or two, internal intrigues in the Army led to the overturning of the whole of the new system; Protector, Other House, and Commons were dismissed at one blow, and the Army recalled the old House of Commons that fought the Civil War.

Once again there was, to outward seeming, a single chamber. But in fact there was nothing, for the revolutionary period was in its last throes, and only a few troubled months were to intervene, full of intrigue and negotiation and uncertainty, before the taciturn gentleman from Devonshire, General Monck, could sufficiently tame the Army to permit of the King's return. No one could have been blind, at this time, to the certainty that the old Constitution would be restored. Not even the standing Army could have long withstood the wishes of the nation.

It remained only for the theoretical democrats to make the best of their poor chance of imposing conditions upon the King before he was restored. They tried, in the first place, to strike the general imagination by suggesting constitutional experiments far more novel than any of Cromwell's. There was to be a Parliament of two chambers, each being elected by the same voters. Then there was to be a Parliament with one chamber with a body of twenty-one "Conservators of Liberty," who were to treat the single chamber as another body of Conservators treat the river Thames—to

keep it within due bounds. Never, however, was it suggested that a single-chamber system should be tried again. On this point it would seem that the minds of all classes were so firmly fixed that the most daring innovator ventured nothing against so general an opinion.

Failing to obtain the least degree of popular support for any of their constitutional suggestions, the party of revolution next sought to limit, in the party interest, the composition of the old House of Lords whose return they saw to be inevitable. First they asked that it should consist only of those lords who had sided with the Parliament in the war. Then they asked for the exclusion, at least, of the peers created by Charles I while the war was in progress.

They were attempting to bargain with a man who knew well that he could dictate terms. Charles II was aware that the date of his restoration depended on Monck and the Army, and by no means on the success of his negotiations with the crestfallen republicans at Westminster. Monck gave the signal; the King returned; and no further word was heard upon the constitutional question save the parliamentary recitation that the government "is and ought to be" by King, Lords, and Commons.

So ended the historic period of constitutional experiment in England. The Lords and the Crown had been abolished, and the Commons had been

dragooned by colonels and troopers. Yet, within the very period of the Revolution itself, it had been found necessary to replace the King by the Protector, the Commons by Cromwell's Parliament, and the Lords by Cromwell's Other House. Another turn of the wheel, and the rickety institutions of revolution fell to pieces. Protector, Other House, and Commons disappeared. Stability was not restored, even for the people's chamber, until the historic Constitution was brought back to Westminster.

CHAPTER III

FOREIGN SECOND CHAMBERS—THEIR ORIGINS AND COMPOSITION

ENGLAND, at the time of the Puritan revolution experimented with a single-chamber system. Very few foreign countries have made the same experiment. In copying from England the institution of representative government, practically all other countries have followed the rule which prevailed in England for centuries, and not the exception which so signally proved its value. They have copied the double-chamber system.

But it need hardly be said that foreign countries have not copied us in the composition of that House which performs the functions of a second chamber in England. The House of Lords could not be copied. It was never invented by anyone, and never could have been invented. It originated in the fact that the King of England was once little more than a great landowner who acquired a certain precedence over others less powerful than himself. He was surrounded, from the outset, by a number of great persons who inevitably formed,

when assembled, a council or Parliament to limit his authority not so much in virtue of any law as because they were very powerful men. History advanced; the Norman kings developed the idea of monarchy; but the great nobles still surrounded the King as before. The House of Commons came into existence, a novelty and an invention indeed, traceable to the minds of Simon de Montfort and Edward I. But the great men, the barons, the House of Lords, continued to be there. It is easy to see how they slipped into the position of a chamber of the Legislature. They were much more powerful than the Commons. But the change of ideas came about, and the democratic spirit, not unaided by manœuvres of the kings, magnified the authority of the people's House. Yet the House of Lords still remained. And so it became the second chamber which we knew before the Parliament Act of 1911—the chamber of revision which the nations of the world have tried to copy.

The countries of Western Europe had at one time bodies of nobles that might have developed like our own into an upper chamber. But the encroachments of despotism in all cases, and in some cases the multiplication of nobility through the lack of a system of primogeniture, cut short the process which is traceable in England. In the Middle Ages the beginnings of representative government can be seen throughout Western Europe, and can be seen to wither and perish.

Then came the nineteenth century, when they revived under the influence of the ideas of the French Revolution. It was then easy enough, copying England, to call upon the people to elect a people's chamber. But to devise and create an upper house was a matter of greater difficulty. The House of Lords, the only upper house that existed as a model in history, had been born and not made. The American Senate was a novelty, and was based on the exceptional circumstances of the American federal system, of no use as a model for European nations. Consequently it was necessary to go out into the domain of pure theory and find principles upon which a second chamber could be built up. Of these principles there are four. Two of them, Heredity and Federalism, can only be used in special cases, The other two, Nomination and Election, are available everywhere.

The Principle of Heredity

Hungary is the only country in which this principle has a substantial predominance. The reason, as will be guessed, is historical, and lies in the interesting fact that Hungary alone of continental nations resembles England in having preserved an element of representative institutions, more or less, throughout her history. Her House of Lords, called the Table of Magnates, at one time con-

sisted of some 800 members. The number now stands at about 384, of whom over 300 are hereditary peers with a high property qualification. The remainder, with the exception of three elected Croatian deputies, are official, ecclesiastical, and nominated life-members. Even here the hereditary principle has not been preserved intact.

In other countries it has been yet further abated. In Austria, in a second chamber of 266 members, the hereditary element numbers about 89. In Prussia, in a second chamber of 365 members, it numbers 115. In Spain heredity accounts for about a fourth of a second chamber, of which it is said that "the nobility have but slight influence, and the Senate in which they sit usually follows the action of the Chamber of Deputies." In each of the five lesser States of the German Empire there is a hereditary element, mixed in varying proportions with members nominated for life. In Japan, where the traditions of the aristocracy are strong, one half of the second chamber are either hereditary peers or peers elected by their own hereditary order: the other half is either nominated by the Crown, or elected by persons of wealth, with a Crown veto limiting their choice.

In general, it cannot be said that heredity plays a distinguished part in the upper chambers of foreign countries. In Prussia it is practically at the service of the Crown, and in Japan also; in Spain it is timid and self-effacing; in the lesser

German States it occupies, together with the whole system of representative institutions, a place of little importance. Only in Austria and Hungary can we find second chambers of noticeable influence composed partly of hereditary members; and only in Hungary do these members form a large proportion of the whole chamber.

Principle of Nomination by Executive Government

By far the most interesting example of this principle is the Senate of Italy. To English people it is interesting, because, of all the continental institutions, that of Italy was modelled most closely upon our own. The Italian Cabinet occupies in the lower chamber a position exactly similar to that of our Government in the House of Commons. The Italian kings have studied the constitutional example of our own Crown. And the Italian Senate was, in intention, a conscious and deliberate attempt to create a counterpart of our House of Lords.

It consists entirely of Senators nominated for life by the King. They must be over forty years of age; they must either be persons who have distinguished themselves in official positions, or in literature, science, or some other intellectual attainment, or they must be persons who for the last three years before appointment have paid a

sum equal to £120 in direct taxes in respect of their property or income. It is easy to see whence the idea of these qualifications was derived. They mark out precisely the kind of men on whom the English Crown bestows hereditary peerages, men of official distinction, or of eminence in some other career, or of wealth. If England were to abolish the hereditary right to a seat in the House of Lords, and, at the same time, were to enlarge the number of peerages bestowed each year, the House of Lords would come to be practically identical in composition with the Italian Senate.

Now for the weaknesses which the Senate has shown. The nominations, coming in theory from the Crown, come in practice from the Prime Minister who commands a party majority in the lower chamber. English practice is followed in this respect also, and it is followed further in that the Prime Minister's appointments are always of a party character. The weakness appears, of course, on the arrival of a new Premier and a new lower chamber with new proposals to carry into law. Then, either the Senate opposes, in which case a parliamentary deadlock ensues, or it submits and thus sacrifices its moral authority. By this date submission has become the rule. For the Italians have copied England in yet another point; they have provided for the swamping of the upper chamber by new creations. This has been done in several cases. In 1890 the Premier advised,

and the King granted, the creation of seventy-five new Senators to turn a minority into a majority. The creation was not only threatened but actually carried out, the numbers of the existing Senate being thus increased by about one-fourth. A direct consequence is ~~this~~ that the actual and moral power of the Senate as a chamber of impartial revision has greatly waned since this proceeding.

In another chapter we shall deal with another Senate which is nominated for life without the personal qualifications required for Senatorship in Italy, but with the all-important difference that there is no provision for swamping it. It is impossible not to wish that the Italian Senate had a happier history. In theory, as a body of distinguished men, it is admirable. It is free from all the defects charged against the hereditary and the elective systems, and it has all the promise of commanding the greatest moral authority. Yet it is less powerful than was our own hereditary second chamber and than the elected Senate of France.

No other foreign country has a purely nominated second chamber. But in all those second chambers where we have seen that a hereditary element is present there is a nominated element present too. In Hungary it is very small; in Austria it is large; in Spain it accounts for about a quarter of the chamber; in Prussia for exactly one-fifth; in Japan for about a third. In Russia,

where there is no hereditary element, the second chamber is nominated, as to one-half, by the Tsar, and elected as to the other half by various interests and groups in the country.

The Principle of Election

Upon this principle rests the second chamber of France, and France is one of those countries which have upon occasions experimented with the single-chamber system. To this extent, therefore, it is worth glancing at French history before the present and powerful elected Senate of France is described. The old Constitution of France, before the Revolution, provided for a Parliament; but the Parliament did not meet. When Louis XVI summoned it in 1789 it was the first time that it had come together for 175 years. It had three chambers, representing the clergy, the nobles, and the people. After some discussion, and in spite of royal prohibition, the three chambers decided to sit, not as three, but as one. Thus they became the National Assembly, and they proceeded to draft a new Constitution for France. They were recommended by a committee of their own appointment to adopt the double-chamber system of England; but deeply imbued with democratic theories, they would have nothing but a single chamber. The statesman Mirabeau, while hostile to a Senate or House of Peers, warned the Assembly

of the dangers incidental to single-chamber government. His own expedient was to confer on the King a right of absolute veto on the legislation of the single chamber. He argued as follows:

"Since the nature of things does not necessarily result in the choice of the most worthy representatives, but of those whose situation, fortune, and circumstances mark them out as able to make the most willing sacrifice of their time to public affairs, the choice of representatives will always result in the creation of a sort of aristocracy, always tending to become more solid, who will become equally hostile to the monarch whom they wish to equal and to the people whom they will always seek to hold in abasement."

This prophetic warning was disregarded. The Crown was given only a "suspensive veto," and the legislative power was vested in a single chamber of 745 members. The Constitution lasted but a few months, but it did not expire before the single chamber had had time to perform the characteristic action of all single chambers of which we have record. It abolished the one check established upon its own omnipotence. Instead of allowing the Crown to use the "suspensive veto," it suspended the Crown itself.

After this, in 1792, the Assembly was superseded by another single chamber, the Convention, which continued to govern France for three years. It was this body which has the credit of the

period known as the Reign of Terror. It formally abolished the monarchy, established a republic, and framed another single-chamber Constitution, which, as a fact, never came into force. Before the time arrived for its working to begin, the Convention, still sitting, had had some internal revolutions against its own extremists. A more moderate spirit was prevailing, and the result was the establishment of a double-chamber Constitution which commenced operations in 1795. This was the Constitution of the Directory. It provided an upper house, the Council of Ancients, whose sole function was to exercise a right of veto. It could not initiate legislation.

The Directorial Constitution was the sanest and most practicable of the systems of government thrown up during the French Revolution, and, in quiet times, it might have worked. The cause of its failure is admirably expressed by Thiers, in words that may serve as a warning not only to Frenchmen. "Constitutional government," he says, "is a chimera at the conclusion of a Revolution such as that of France. It is not under the shelter of legal authority that parties whose passions have been so violently excited can arrange themselves and repose; a more vigorous power is required to restrain them, to fuse their still burning elements, and protect them against foreign violence. That power is the Empire of the sword."

It was the Empire of Napoleon. This, first of all, at the time when it upset the Directory, took the form of the Consulate. As if to seek safety in ever further divergence from the single-chamber system, the Consulate Constitution set up three chambers, none of them popularly elected, and their odd feature was that one could deliberate but not vote while another could vote but not deliberate.

This system lasted two years. It lasted until Napoleon was ready to unmask a practical despotism, as First Consul. He declared himself Emperor in 1804, and, with modifications in favour of the principle of nomination, and with the elimination of one of the three chambers, he preserved the Constitution of the later Consulate until his fall in 1814.

The restored monarchy in 1814 published a Constitutional Charter. This gave legislative power to the King and two chambers, but gave to the King the sole right to initiate legislation. The upper house was a House of Peers, unlimited in numbers, composed of hereditary peers and life peers nominated by the King. It is obvious that no great importance can attach to either House of Legislature which can but say Yes or No to the proposals of a King whose Ministers are not dependent upon it. In 1830 another revolution placed Louis Philippe upon the throne, each House was given a right of initiating legislation,

and the hereditary element in the House of Peers was done away with. This arrangement lasted for eighteen years.

In 1848, at a time when all Europe was seething with democratic ideas, France availed herself of a further revolution to experiment once more with a single chamber. This was under the Second Republic, of which Louis Napoleon was President. The chamber consisted of 750 paid members, elected upon a universal suffrage. The President had a suspensive veto upon its legislation, and the right of initiation belonged equally to the chamber and the President.

As the first of France's single-chamber Governments conducted the Reign of Terror, so the second made the memorable experiment of the Right to Work. State workshops were opened for the benefit of all the workless and idle who came in portentous numbers to be kept in comfort at the public expense in return for scanty and useless services. This and other excesses, terrible to the economical ideas of French people, soon brought the Second Republic to an end.

In the first days of 1852, after another revolution, a second chamber was established, based on the nomination principle, and the right of initiating legislation was confined to the President. Before the year expired the President became hereditary Emperor, and he contrived to vest in his nominated Senate all serious remnants of

legislative authority that existed out of his own hands.

The Second Empire fell in 1870, after the Franco-Prussian War. The Third Republic followed it. Though the constitution of this Republic, which still endures, was not enacted until 1875, and though the Senate contained a proportion of life nominations until 1884, it will be convenient to ignore these variations and consider the French Senate as it now exists.

The Senate consists of 300 members, each of whom is elected for a period of nine years. One-third of the total membership is re-elected every three years. The method of election is as follows. The constituency is the Department, or county as it would be here, and each Department is entitled to return to the Senate a number of members proportionate to its own population. But the election is not a direct election by the people themselves, such as we know in this country and such as the French employ in choosing the members of their lower chamber. It is election by a special Electoral College constituted in the Department for the express purpose of choosing Senators. The Electoral College is constituted as follows: (i.) Members of the lower house who sit for the Department in question; (ii.) the Prefect of the Department, an official appointed by the Government whom we might compare to the Chairman of an English County Council; (iii.) the

Prefect's Council, which consists of six persons elected within the Department; (iv.) the Sub-Prefects, who are officials appointed by the Government to administer the various Arrondissements, or districts, within the Department; (v.) the Sub-Prefect's Councils, elected within each Arrondissement; (vi.) delegates elected by the Municipal Councils of the communes, or villages and towns, within the Department, which councils are themselves elected by universal suffrage within the commune. It is to be noted that the last of these elements in the Electoral College, the delegates of the elected Municipal Councils, greatly outnumber all the others. It follows that the Senators are elected, for the most part, by those who are themselves elected by universal suffrage. Yet the election takes place in the presence of such persons as the Prefect, Sub-Prefects, and members of the lower house, who are likely to possess no small moral influence over the minds of the bulk of the Electoral College. It is, in fact, an extremely democratic election conducted under circumstances likely to throw particular gravity and solemnity about the proceedings.

The influence of the Senate, thus constituted, is remarkable. It possesses far greater weight than the nominated Senate of distinguished persons in Italy. Without doubt this is partly due to the fact that there is no way of swamping its majorities. But it is felt in France that the

influence of the Senate comes from the consciousness that its origin is as democratic as that of the lower house, though its members are chosen with more care and by a process more elaborate. Be it as it may, the authority of the Senate is such as would surprise an English Minister. M. Yves Guyot writes: "On March 15, 1890, the Tirard Cabinet resigned on account of a vote passed by the Senate refusing to accept a treaty with Greece. I was a member of that Cabinet, and not one of us questioned the Senate's right. It is impossible for a Cabinet to govern in opposition to the Senate." On April 20, 1896, the Senate passed a vote of no confidence in the Ministry of that day. The Ministry ignored the vote, whereupon the Senate refused to sanction credits for sending troops to Madagascar, thus forcing the Ministry to resign. On five occasions has the Ministry of the day appealed to the Senate for votes of confidence. The world has certainly one other second chamber, the American, whose actual powers in legislation exceed those of the French Senate; but there is nowhere another second chamber that has acquired this power over the Executive.

Quarrels between the two Houses are uncommon in France, not on account of any timidity or accommodation on either side, but because the broad feeling of the two Houses on important questions is apt to coincide. But it should be noted that

habitual agreement between two chambers is no argument against the utility of the double-chamber system. The value of the second chamber in revising legislation is continuous. Its value as a check to the excesses of the lower chamber can only be seen when those excesses are committed. Like a lightning-conductor, it will not show its value until the time arrives. Like the loaded revolver, its very presence lessens the probability of its employment becoming necessary.

The French Senate is the most interesting instance of the principle of election among second chambers. Other cases do not call for such full description. Sweden and Holland have senates elected, by indirect election, on universal suffrage. Denmark has the same, with a small addition of nominated members. In Spain one-half of the second chamber is elected, indirectly, to sit with the hereditary and nominated members. Belgium has a senate of 110 members, of which 83 are directly and 27 indirectly elected. In Norway the senate is elected by the lower house from among its own members. In Russia, where half the upper house is nominated by the Tsar, the other half is elected by the Church, the Chambers of Commerce, the Assemblies of Nobility, the Universities, the landed proprietors of Poland, and the Provincial Councils. In some of these cases there is a property qualification required of the

voter in elections to the second chamber. There is another second chamber which is elected, one of the most remarkable of all, but it comes under another heading.

The Principle of Federation

The Senate of the United States is of special interest. The first attempt to federate the separate States, after the end of the War of Independence, was unsuccessful. The Constitution under which the attempt was made provided a Federal Legislature of one chamber; but it contained another defect which, under the circumstances, was fatal. It did not adequately allay the intense jealousy with which each State cherished its independent existence. This, the characteristic difficulty of all federations, can never have been greater than in the early history of the American Union. During the war, when the States sent their contingents to the army of Washington, it was at first stipulated that not the smallest breach of discipline by a soldier should be punished without a reference to the legislature of the State from which he came. Where such grotesque notions prevailed the State feeling must have been strong indeed.

Those who framed the second Federal Constitution, which is the Constitution that has endured ever since, were under the necessity of disarming this jealous particularity. Two considerations

were clear before them. Since the Constitution was in the nature of a bargain between the States, each sacrificing some independence for the sake of some protection, it was necessary to ensure that the bargain should never lightly be broken or varied. It was desirable, therefore, to have a Constitution of a very conservative type, under the operation of which there should be the least possible likelihood of a temporary majority in the legislature acting harshly towards the interests of any of the States. The second consideration was that the Constitution must itself, by its very provisions and daily application, be a guarantee and emblem of the perpetual independence of the States within the limits of the original bargain. Both these considerations raised problems of difficulty, and both problems were settled by the creation of the Senate.

Article III of the American Constitution runs thus: "The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote." It is also provided that one-third of the members of the Senate shall retire every two years, and that each of its members shall be (1) over thirty years of age; (2) resident in the United States for nine years; (3) resident in the State for which he is elected.

The particularist feeling of the States was gratified by this plan because of the guarantee of equal

voting power to all States, large and small, in one branch of the legislature, and a branch, as will be shown later, that had very special and formidable powers. In the election of the President and of the lower house the small State had a voice proportionate to its smallness, and was thus far merged in the whole as the county of Rutland is merged in England. But in the Senate the big and powerful State was to count for no more than than the smallest. Further, the conservative character of the Constitution was ensured by the wide powers with which the Senate was invested, and with the particular elaborateness of the machinery by which alone, with the consent of three-fourths of the individual States, the Constitution could ever be altered.

"Chosen," as the Constitution says, "by the Legislatures thereof," the Senate belongs to that class of upper chamber which is chosen by indirect election. But so important has it become in the world of American politics that the elections to the State Legislatures themselves frequently turn on the question of how the various parties and candidates will act upon the next election of Senators. The greatest tribute, however, to the authority of this second chamber is that though it has repeatedly and unblushingly opposed the Lower House, and possibly also the "will of the people," there has never been the slightest inclination among Americans to question its value and

necessity. Americans are given to particularly emphatic speaking on all the themes of freedom and liberty, but they have never murmured against the most active—almost aggressive—of all the second chambers in the world.

It is worth while to quote words written by Alexander Hamilton, the statesman who contributed more than any other to the framing of the American Constitution: "There is reason to expect," he says, "that this branch of the Legislature will usually be composed with peculiar care and judgment; that the senators . . . will be less apt to be tainted by the spirit of faction, and more out of the reach of those occasional ill-humours or temporary prejudices and propensities which in smaller societies frequently contaminate the public deliberations, beget injustice and oppression towards a part of the community, and engender schemes which, though they gratify a momentary inclination or desire, terminate in general distress, dissatisfaction, and disgust."

The only other notable instance of a federal second chamber is the Bundesrath of the German Empire, called usually by English newspapers the Federal Council. This, like the American Senate, originated historically in the desire to embody within a federal constitution a guarantee and expression of the idea of State independence. At the outset there is a sharp distinction between the American and the German methods. The Senate

in the United States is elected by elected legislatures; the Bundesrath is nominated by the executive governments of the German State. It is a nominated second chamber. Again, it makes no attempt to establish equality among the States. They are represented in the Bundesrath by numbers of members proportionate to their size and population, Prussia having seventeen out of fifty-eight members, Bavaria six, Saxony and Würtemberg four each, Baden and Hesse three, Mecklenburg and Brunswick two, and fourteen other States and Free Cities one apiece. The peculiarity of the Bundesrath is in its system of voting, in which no other chamber resembles it at all. The American Constitution says, needlessly as one would think, "each senator shall have one vote." In the Bundesrath it is not so. A single member can record all the votes to which his State is entitled, if his State colleagues are not present. One Prussian member can, in the absence of the others, record all the seventeen votes of the seventeen Prussian members. It is also provided that even though more than one member from any State is present, all the votes of that State must be cast on the same side. One senator from an American State may vote contrary to the vote of his colleague; but in the Bundesrath all who represent any one State must vote together. In fact they are mere delegates, ambassadors, of the governments of the States of the Empire. They

sit in secret. They sit, not in sessions, but continuously. Two-thirds of its members may at any time demand a sitting. Its members also have the right to sit and speak, though not to vote, in the lower house. So, in several ways, the Bundesrath is more like a Council of State than a second chamber, but, nevertheless, it has all the functions of a second chamber in legislation.

Switzerland, a federal union, has a second chamber which is hardly to be distinguished from that of the United States. For this reason it is not necessary to describe it. Nor has there been any mention in this chapter of the Balkan and South American States, though these, in the great majority of cases, join in the general witness to the necessity and utility of the double-chamber system.

CHAPTER IV

ORIGIN AND COMPOSITION OF COLONIAL SECOND CHAMBERS

AMONG the second chambers of foreign countries, it is not always the most remarkable that are the most interesting to us. The American Senate has more power than any second chamber in the world, but American institutions differ so widely from our own, that, in spite of all that is common to the history of both countries in law and custom, the interest of the Senate for ourselves must be limited, like the interest of a man in a woman's hat. It is not a Senate that we could ever imagine ourselves "wearing."

But the French Senate, on the other hand, might be adopted in England to-morrow without any immediate breach with the traditional working of our institutions. The Italian Senate we might adopt also. It is likely, of course, that we should soon come to realise the consequences of having an upper chamber as strong as the elected Senate of France, or as weak as the nominated Senate of Italy, but these consequences would only become

visible in the light of experience. France and Italy have constitutions largely modelled upon our own. Each has a second chamber which, under possible circumstances, we should be able to imitate.

In this lies the interest which attaches to their Senates, but when we turn to consider the second chambers of the British Dominions overseas, the interest is heightened. In the case of these, we see communities who share not only our constitutional practice, but our laws and political instincts, who have systems of government modelled on our own, but who, because our House of Lords is not susceptible of direct imitation, have been driven to invent second chambers upon such principles as they or the British Government believed at each time and place to be most suitable; and in them we have a class of purely British experiments in the making and working of double-chamber government.

If one is to imagine that at the time of the granting of Colonial constitutions any difference of opinion arose on the question of second chambers between the Colonial statesmen and the Ministers in London, the natural supposition would be that the home statesmen took the more conservative view. They had scrupulously studied to reproduce all the features of the British Constitution for Colonial use. They were setting up a Governor to undertake the part of limited monarch

and a Cabinet to be, like our Cabinet, responsible to an elected lower chamber, and responsible not as individuals but as a body which stands and falls together.

They were making counterparts to all the characteristic organs of the home government, and yet, as is most remarkable, it was in some cases only at the urgent desire of the Colonies themselves that a second chamber was introduced into the constitutions. "I now consider," said Lord Grey, who more than any other man contributed to shape and mould the Colonial constitutions of the middle of the nineteenth century, "that it is very doubtful, at least, whether the single Legislature ought not under any circumstances to be preferred." This was said in reference to the Australian constitutions.

There is no doubt that Lord Grey did not favour single-chamber constitutions in general, but the practical difficulties of erecting proper second chambers in the Colonies affected his judgment strongly. His opinion was that the division of the Legislature into two branches withdrew some of the most able and intelligent men from the lower chamber, a result which was not to be desired "in a community not numerous enough to furnish more than a few persons qualified for such duties." In the alternative, he thought that the upper chamber might be composed of mere party men without ability, in which case it would carry little

credit and exhibit little strength. But these views were not to prevail. An Act of Parliament, passed in 1850, handed over the construction of the Australian constitutions to the Colonial statesmen themselves; and they, adopting in the first flush of their liberty an opinion which their successors have never changed, set up the double-chamber system. It is curious that statesmen born and bred among English traditions should thus have lapsed from English beliefs, only to be corrected by the inexperienced but practically-minded constitution-makers of the antipodes.

Speaking generally, the statesmen of the British Colonies have never taken enthusiastically to constitutional theorising. The Colonies have no constitutional hymnology, such as the Americans have. They are not proud of their constitutions, as the Americans are proud of theirs. Independence, of course, is prized, equally highly, if with less demonstration than is the case in America. But no particular constitutional principle has ever appealed to the Colonial imagination as the principles of the American Constitution have fascinated the patriots of the United States. Not theory nor fervour, but practical requirement has been the underlying motive of Colonial constitution-making. Of this the most recent example is in the unification of South Africa, and the construction of a new constitution for its particular purpose. There could have been nothing less

fervid in spirit or more practical in aim than the manner and method of South African unification. It is worth while to remember this characteristic attitude of the Colonial mind as regards constitutions, so different from the French and so different from the American, while their various second chambers are examined in detail.

Canada.—The original colony of Canada was conquered from the French in 1760, and had an exclusively French population. It was governed by a British Governor assisted by a Legislative Council. This Council was a nominated body, established in 1774. It may be regarded as the ancestor of the present Canadian Senate. The following were the changes by which the one grew into the other.

After the American War of Independence a large number of loyalists flocked into British territory, thus giving Canada a British as well as a French population. The latter were settled in what is now the province of Quebec; the former occupied Ontario. The British Government, in 1791, in order to prevent the clashing of nationalities and religions, divided the colony into two provinces, Upper Canada, which was British, and Lower Canada, which was French. Opportunity was taken of this change to set up, in each province, an elected lower chamber, in addition to the Legislative Council which had existed in the united colony before the division and was now

reproduced in each of the provinces. Each province, therefore, had a double-chamber legislature. But they had not responsible government. Conflicts between the executive and the legislature began to rage after the fashion of the Stuart times in England and eventually ended in rebellion in 1837. After this, under the auspices of Lord Durham, responsible government was given, and the two provinces were united.

The legislature consisted as before of a nominated upper house and an elected lower house. And then began troubles between the two houses. To remedy this, in 1856, it was decided that as the nominated members of the second chamber died or retired, their places should be taken by elected members until there should be a fully-elected second chamber containing twenty-four representatives of each of the divisions of Canada—Ontario, Quebec, and the Maritime Provinces. The electors were to be the same as those who voted for the lower chamber. It does not appear that this second chamber worked with the lower chamber any more smoothly than its nominated predecessor. But in 1867 the system was again changed. Racial and religious difficulties had led to the opinion that a federal system alone would quiet the storms of Canadian politics. So, under the British North America Act, the Dominion of Canada was brought into existence, a federal union, to be enlarged a little later by the inclusion

of the full number of provinces as we know them to-day, stretching from the Atlantic to the Pacific.

There are two types of federation. The constitution may say to the federal government: "Here are your rights and powers, definitely enumerated and described, and all other powers and rights whatsoever are to remain with the individual States as before." On the other hand, the constitution may say to the federal government: "Here is a list of rights and powers which are specially reserved to the States; these you must not encroach upon; all others, of every sort, are left to you to exercise." The federation of the United States is of the first of these types, and the federation of Canada is of the second.

It is not hard to see why. Federation in the United States was wrung from a body of jealous and unwilling States, and the powers of the central government were given in a grudging spirit. In Canada, on the contrary, a single government was broken up into a federation. If anything was grudged it was the powers allotted to the provinces. The central government remained, as before, invested with all authority that was not specifically taken away and given to the provinces. The Senate bears the marks of this spirit in which the constitution was framed. It is not, like the American Senate, a chamber in which all provinces have an equal voice. It is not intended for this purpose of preserving the

relics of State independence. Nor is it like the German Bundesrath, the living voice of the State Governments addressing the Government of the federation. It is merely an upper chamber established for the sake of having an upper chamber.

But it is clear that the framers of the Canadian constitution did not take this view completely. The original arrangement was that the Senate should consist of seventy-two members, of whom twenty-four were to be representatives of Ontario, twenty-four of Quebec, and twenty-four of the Maritime Provinces. As thus constituted, the Senate lasted for a year or two. It looked like a distinct attempt to embody the federal principle in the Senate on the American model. Yet it was not really so, because the senators were not elected by their Provinces, nor even appointed by their Provincial Governments. They were appointed to sit for life by the Crown, which in practice means nomination by the leader of the political party in power in the federal government.

Their quality of provincial representatives existed only in the fact that they were electors of the Province from which the head of the federal government selected them. Supposing that there was a party question in which French Quebec leaned one way, and British Ontario the other, it would not be hard for a Premier with French sympathies to appoint senators from Ontario, whenever vacancies occurred, who would express

his own views and the views of Quebec rather than those of the Province from which they came. The senators of Ontario would vote contrary to the wishes of Ontario. With this possibility within the working of the constitution, and with the actual experience of its having occurred, it cannot be said that the Canadian Senate is one of those second chambers that serve the particular purposes of a federation. Furthermore, the idea of State equality was soon abandoned. Upon the admission of new Provinces within the federation, each of these was assigned a number of senators in proportion to the population of the Province.

The Senate is (at this date) a body of eighty-seven members, nominated for life by the Governor-General of Canada on the advice of his Ministers. A senator must be thirty years of age, a British subject, a resident in the Province for which he is appointed, and he must possess property of the value of £800 in the same Province. He may resign his seat at any time, and must vacate it if (1) he is absent for two consecutive sessions; (2) becomes subject to foreign allegiance; (3) is adjudged bankrupt; (4) is convicted of treason or felony; or (5) ceases to be qualified.

The Canadian Senate is not among the strongest or most successful of second chambers. Stability of government has many advantages, no doubt, but the extraordinarily long tenure of office enjoyed by successive political parties in Canada has

not worked well for the Senate. Under the rule of either party it has been gradually filled with that party's nominees, who have incurred the discredit and contempt which must always attach to a partisan politician in a position from which public opinion cannot dislodge him. Life appointments should never be party appointments, if pure theory could be followed, for the only alleviation to the sting of an opponent's power is the knowledge that public opinion may some day remove him. The ideal impartial senator would be the best of all subjects for life appointments, since no wave of popular passion would affect his position; but life appointments are not always suitable for those whom popular passion has borne into power.

Mr. Goldwin Smith, a severe critic of the Senate, writes: "Of the seventy-six senators" (as there were at the time he wrote) "all but nine have now been nominated by a single party leader who has exercised his power for a party purpose, if for no narrower object. . . . Money spent for the party in election contests and faithful adherence to the person of its chief, especially when he most needs support against the moral sentiments of the public, are believed to be the surest titles to a seat in the Canadian House of Lords."

Sir John Macdonald, for many years Conservative Prime Minister, only appointed one Liberal to the Senate. Sir Wilfrid Laurier, the Liberal

Prime Minister who held office from 1897 till 1911, did not appoint one Conservative.

Conflicts between the Houses in Canada are of very rare occurrence; they have never been serious, and they have excited comparatively little interest in Canada. It seems, indeed, as if the Senate at no time bulks very large in the Canadian imagination. But if this be so, if the Canadian Senate is to be regarded as one of the weakest and least effective and least respected of second chambers, there is a plain lesson to be drawn. That Senate expresses no clear principle in the national life. It does not, like the House of Lords, stand for a distinct element in the life of the people, intelligible alike to its friends and its foes, and buttressed by the traditions of a thousand years. It does not, like the American Senate, express the still living idea of State rights. It does not, like the French Senate, express in a refined and dignified form the more considerate choice of the democracy. Nor is it, as its own principles would have it be, an assembly of specially distinguished Canadians. So it stands to show that a second chamber is not to be constructed with a light heart; but, to be successful, must embody some principle which is understood, respected, and permanent in the ideas of the people it is to serve.

Australia.—The political history of Australia begins in what is now the State of New South Wales, which was settled as a penal Colony in

1787. After 1821 a free population was gradually admitted to dwell side by side with the convicts, until, with the growth of the numbers of the free and with the natural growth of their prejudices, the supply of convicts was stopped, and New South Wales attained the dignity of a Colony such as Upper or Lower Canada. This was in 1840. Two years later the beginnings of representative institutions were set up. A Legislative Council was established, of which twelve members were nominated by the Governor and twenty-four were elected by the Colony. The result was the usual conflict that arises in all British communities where the executive and legislative powers are separated; disputes and mutual dissatisfaction arose between the Governor's Ministry and the partly-elective Council which had no control over it. In 1850, therefore, an Act of the Imperial Parliament gave power to New South Wales and the other Colonies which had spread over Australia as offshoots of New South Wales, to frame constitutions for themselves. This implied, of course, the gift of responsible government by Cabinets controlled in the English way by legislative chambers. As has been explained, the gift was accompanied by advice. The Colonies were advised not to attempt the difficult task of establishing second chambers, and in every case they ignored the advice and adhered to the traditions of the British Constitution.

In New South Wales the second chamber or Legislative Council consists of a number, not less than twenty-one, of persons nominated by the Governor on the advice of the Cabinet. Unlike most other British Colonies, there is no limit to the number of appointments that may be made. The swamping of majorities, accordingly, is a weapon in the hands of the Minister who controls the nominations. At one time when this formidable power was exercised it was followed by a rebuke from the Home Government; but in latter years the practice came to be recognised as a proper expedient in case of serious differences between the two chambers.

Queensland possesses a second chamber on the model of that of New South Wales, nominated and unlimited in numbers. In South Australia the second chamber consists of a limited number of eighteen members elected for six years by voters who have a fairly high property qualification. Half the members retire every three years and cannot be re-elected. In Tasmania the composition of the second chamber somewhat resembles that of South Australia; so also does that of Western Australia, though here the membership numbers thirty. In Victoria the second chamber consists of thirty-four elected members, of whom half retire every three years, and whose election depends upon voters with a property qualification of £10 a year in freehold land or £15 in leasehold,

or with a university degree or one of some few other personal qualifications.

In the period between 1890 and 1900 the statesmen of the Australian Colonies were engaged upon the problem of federation. Their task was to devise a federal Constitution which should satisfy two requirements; it was to be a Constitution workable and durable in itself; it was also to be a Constitution which each of the six Colonies would accept. The result of their labours appeared in the Act of the Imperial Parliament, constituting the federated Commonwealth of Australia. This received the assent of Queen Victoria, in one of the last working days of her life, accompanied by the prayer that "the inauguration of the Commonwealth may ensure the increased prosperity and well-being of my loyal and beloved subjects in Australia." For our present purposes the most notable feature of the Commonwealth Constitution is the Senate which it set up. Between the upper and lower houses of the Colonial Legislatures of Australia, the disputes and friction had been frequent. In the minds of those who framed the Constitution, themselves the champions of many a conflict against Colonial second chambers, imbued also with more advanced democratic ideas than the framers of any other Constitution save those of the French Revolution, the value and necessity of a second chamber in the federal Parliament appears nevertheless to have assumed the

first rank of importance. It has already been observed that Colonial statesmen have been actuated by very practical ideas in their constitution-making. The theories of democracy have not led them out of the path of business, and, even in the atmosphere of advanced democracy in Australia, the Senate of the federal Constitution was devised with peculiar care and invested with remarkable authority.

One thing favoured the Australian Senate from the outset; it was plainly invested with the attributes of a federal House. Like the States of the American Union, and unlike the Provinces of Canada, the States of Australia remained sovereign, except for the rights and powers which were specially conferred on the Federal Government. The greatest care was taken to preserve their independent and separate existence. In Canada, for instance, the Provinces are so far submerged below the central government that their Governors are appointed by it. But in Australia the State Governors are appointed from England. The dignity and authority of the States was guarded by every available means, and, with this intention before them, it was easy for the Australian statesmen to find an intelligible and permanent principle upon which to found their Senate.

The Senate represents the States. It consists of thirty-six members, six from each of the six States of the Commonwealth. It is provided in the Con-

stitution that this number may be increased or diminished, but always so that the equal representation of the six original States shall be maintained, and so that no original State shall have fewer than six senators. It is also provided, not only for the Senate but for the lower house as well, that no alteration diminishing the proportionate representation of any State shall become law unless approved by the majority of the electors voting in that State. So the Senate stands as a guarantee of the bargain between the federating States, great and small, a perpetual safeguard of the lesser States against the greater and more populous. Here is a principle that cannot fail to be understood and treated with reverence.

Senators are elected for six years, half their number retiring every three years. They are, as the Constitution says, "directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate." This provision is peculiar and important. It means that every voter has as many votes as there are vacancies to be filled, and a bare majority of the voters can return the whole batch of the senators for their State.

Since they are the same persons as those who vote for the lower house, and since anyone eligible for membership of one house is eligible also for the other, the result has been unusual. The Senate has come to represent in overwhelm-

ing majorities what the people may feel only in small majorities. One State, voting by constituencies, may return to the lower house a number of members of various parties. But the same State, voting as a single constituency for the Senate, usually returns none but members of the party which has a majority in the State as a whole. The consequence of this system has not infrequently been that the Senate is less conservative than the lower house. In the United Kingdom a similar arrangement might result in a Senate composed of twenty-five English Unionists, twenty-five Scottish Liberals, twenty-five Welsh Liberals, and twenty-five Irish Nationalists.

The importance which Australians attach to the composition of the Senate may be seen in the elaborate arrangements made for the filling of accidental vacancies. Should one of these occur while the State Parliament is sitting, the Houses of Parliament of the State "shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor, whichever shall first happen." If the State Parliament is not in session, "the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold a place until fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens. At the next election of

members of the House of Representatives or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term."

These minute provisions for all conceivable contingencies are most instructive. They bear witness to the extreme importance of the second chamber in the eyes of the framers of the Constitution, but they do more. It cannot be imagined that such care would be taken with regard to vacancies in the Canadian Senate. Even if we suppose some circumstance under which the new appointment in Canada was seriously delayed, it cannot be thought that anyone would be greatly perturbed. The reason is in the unfortunate artificiality of the Canadian Senate, which stands for no clear principle. Take away a single member from the Senate of Australia, and, at the very next division in the lobbies of that House, you have infringed the great principle of State equality. There is some State with only five representatives against the six who represent each of the other States. This is a serious matter. It is as *the expression of a serious principle* that the Australian Senate has achieved that authority which the framers of the Constitution desired to confer upon it.

New Zealand has a second chamber—the Legislative Council—of members nominated for seven

years (excepting those summoned before 1891, who are life-members). The number is not limited. A majority can be swamped by fresh appointments at the will of the Executive Government.

South Africa.—Before the unification of South Africa in 1910, there were four Colonies with separate governments, and in each there was a second chamber. These have been swept away by the Union. The old Colonies have been reduced to a position far lower than that of the Australian States, lower also than that of the Canadian Provinces, and retain little more of their old authority than belongs, in England, to a county council. Nevertheless, it is well to recall the fact that, in their days of independence, they were no exceptions to the double-chamber rule.

Cape Colony had a second chamber of twenty-six members elected for seven years by the voters who elected the lower house. The Chief Justice of the Colony presided over it. Natal had a nominated second chamber of thirteen members, sitting for ten years. Both the Transvaal and Orange River Colony had second chambers, the former of fifteen and the latter of eleven members, who were nominated for a period of five years. It was provided that nomination should ultimately be superseded by election, but the change did not take place, for the Union entirely de-

stroyed all the constitutions of the four Colonies and started South Africa on a new course.

Neither the Canadian nor the Australian Senate was copied in South Africa, but, as it would at first sight appear, the American. Eight senators are elected by the Legislatures of each of the four Provinces. To these are added eight nominees of the Central Executive, of whom four are to be selected "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa." This provision has, of course, a purely local significance. The peculiarity of the South African Senate as a whole is that it is no more than a temporary makeshift. The members elected from the Provinces were elected, not by the Provincial Councils set up under the Constitution, but by the old Legislatures of the old Colonies that were swept away. They will sit for ten years, at the end of which time there will be no person or persons entitled to choose their successors. This curious arrangement was no accident. The creation of the new Senate to replace that which expires after ten years was left, by the Constitution, to the South African Parliament itself. It may devise any kind of Senate that it likes. It may, if it prefers, perpetuate the existing arrangement, in which case the Provincial Councils are to elect senators. Here is a plain indication that the

federal element in the South African Constitution, such as it is, is not intended to be permanent. It is embodied in the Senate for ten years only, and may afterwards be abandoned. The Union Parliament has the right to set up whatever Senate it pleases, but it does not appear that it was given or that it desired the right to dispense with a Senate altogether.

One of the most interesting points in connection with South African Senates is that in two cases, in the cases of the now abolished constitutions of the Transvaal and the Orange River Colony, the second chambers were the handiwork of that party in British politics which does not show devotion to the double-chamber principle in the United Kingdom. In drafting a workable constitution for two colonies, however, they set up second chambers with no inconsiderable powers.

As expressed in the House of Lords. Most Liberals only wish to reform the Second Chamber, not to abolish it.

CHAPTER V

THE POWERS OF SECOND CHAMBERS AND THE PROVISIONS FOR AVOIDING PARLIAMENTARY DEADLOCKS

Up to the time of the passing of the Parliament Act of 1911, the legal powers of the two chambers of the British Parliament were, with one exception, the same. In strict accuracy it would be necessary to admit that a number of minor distinctions existed between the two Houses, of which some were in favour of the authority of the Commons, some in favour of the upper chamber. Thus, while the Commons may commit a person to prison until the end of the session, the Lords may commit for an indefinite period. Bills affecting the peerage, to take another instance, must originate in the House of Lords. But these and other points were of minor importance. They did not affect the broad legal equality of the two chambers. The one exception of real consequence was in respect of the power of the Houses over Money Bills, which

must originate in the Commons and might be rejected, but not amended, in the Lords.

For the settlement of differences between the two Houses the provision was meagre. It consisted of certain customs, mostly ceremonial in character, to regulate the conduct of Conferences between delegates appointed by each House. Two hundred years ago these Conferences were of frequent occurrence and often fruitful of result, but of late years they had been superseded by an informal system of private negotiation between the leaders of parties in the two Houses, and by a complete change in the practical view taken by each House as to its own powers.

The law of the Constitution had not changed, but the custom had changed profoundly. The two Houses, theoretically equal, had accommodated themselves to the advance of democratic ideas. The Commons had waxed and the Lords had waned. The Commons had won complete control over the Executive, so that their hostile vote came to be regarded as the death-warrant of ministries, and their decision, after a general election, as the unquestioned and unquestionable pronouncement of the will of the people upon such matters as had been before the country in the election. Here, in fact, we see the constitutional method of settling differences between the two Houses. To the decision of a newly-elected House of Commons, the House of Lords offered

no resistance in respect of a Bill which they had previously rejected, but which the country in the election had approved.

There are cases of both sorts. In 1893 the House of Lords rejected the second Home Rule Bill. The Commons had passed it. A difference therefore existed between the two Houses, and it was settled by the general election of 1895, in which the country returned a new House of Commons opposed to the Bill. So the Houses were again in agreement on the question, both being hostile to the Bill, and the deadlock, if such it can be called, was settled by the decision of the electorate. Again, in 1909, the House of Lords rejected the Budget which the Commons had passed. In the general election that followed the country again returned a House of Commons that supported the Budget. The Lords therefore yielded, and the deadlock was removed again. In this case it should be noted that the terms in which the Lords had refused to pass the Budget expressly defined the method of settlement which they foresaw, desired, and were ready to accept. They refused to pass the Budget until it had been "referred to the judgment of the country."

The Parliament Act of 1911 greatly altered these parts of our Constitution. It removed from the House of Lords the power to reject Money Bills. It transferred from the electorate to the House of Commons the right of deciding upon

the differences between the two Houses. Where the Houses differ, the will of the Commons would prevail after an interval of two years, and no provision was left either in law or in practical necessity for a reference to the electorate in any shape or form. Thus the second chamber might amend or reject any legislation except Money Bills; and for the settlement of the differences of the Houses an automatic process was introduced by which the voice of the Commons would prevail after an interval of two years. It need scarcely be added that the voice of the Commons was not to prevail if its opinion should change during the interval; nor was the interval to be so long as two years if the Lords should surrender in the meantime.

The wisdom or unwisdom of this arrangement will not be discussed in this chapter, which will be merely descriptive of fact. But the reader will bear in mind these provisions while he proceeds to consider the arrangements which other countries and colonies have adopted in respect of similar eventualities.

It will be found that there are three general methods of settling the differences between two chambers. These are:

(1) The method known as "swamping";
(2) A joint sitting of the two chambers;
(3) A reference to the electorate.

Of these three, the first sets up those already in

office as judges between the two chambers, the second gives the victory to the preponderating opinion within the Parliament itself, and the third is an appeal from Parliament to people. With regard to swamping, which signifies the conversion of the minority in the second chamber into a majority, by Government action, we should observe that this has always been a physical possibility in the case of the House of Lords.

On one occasion it was actually employed. This was in the reign of Queen Anne, at a time when the failure of the Queen's progeny had made it obvious that her death would shortly bring about a serious crisis. The Crown would either pass to the House of Hanover or revert to the heirs of the Stuart kings. It was not only a dynastic crisis, but a parting of the ways for British policy as a whole. Each dynasty represented a body of opinion and policy that affected the whole area of national life. The success of either would have been a kind of revolution. The times should, therefore, be considered as distinctly revolutionary and abnormal, and the methods used by the party that favoured the House of Stuart were extra-constitutional in more ways than one. In the course of their endeavours they were planning to act in disobedience to the Act of Parliament which had already conferred the succession to the Crown on the House of Hanover.

Statesmen who were ready for so bold a step were

not likely to hesitate before another. They had no majority in the House of Lords. The welfare of their general projects and their dangerous schemes made such a convenience very desirable for them, and, to the scandalisation of their opponents they furnished it for themselves. On the 31st December 1711 they induced the Queen to create twelve peers to "swamp" the existing majority of the House of Lords. This, at the time, was regarded as unconstitutional, and an attempt was shortly made to ensure by legislation that it should never occur again. By this time, however, the condition of public affairs was quieter, the fear of revolutionary methods was less acute, and the Bill for preventing the sudden creation of batches of peers did not pass through Parliament.

Swamping remained a legal possibility. It was threatened at the time of the Reform Bill of 1832 by Lord Grey, though his colleague, Lord Brougham, subsequently stated that the threat would not have been carried into effect. It may be observed that the unconstitutionality of swamping has come, at different epochs, from different principles. In the time of Queen Anne the swamping was unconstitutional because the two Houses were really supposed to have an equal and supreme authority. To overrule the majority of either House was an act of violence by the Executive against the Legislature. By the end of the reign of Queen Victoria a different principle was estab-

lished. A serious difference between the two Houses, by that time, was held to necessitate a decision by a general election. So swamping became an act of violence not so much against Parliament as against the electorate, for it settled the question without giving the electorate a voice.

With regard to the joint sittings which are used in some cases to settle the differences of two chambers, it should be noted that their significance depends very much on the relative size of the two chambers in question. Where a lower chamber is much larger than an upper chamber, a joint sitting gives it an advantage, for its majority will usually tend to be a larger body than the majority of the smaller chamber. It is, however, a rough and ready, easy, and very speedy method of settlement.

References to the electorate take various forms. They may proceed by dissolution of one or other of the chambers at variance, or, indeed, by the simultaneous dissolution of both. A general election is a reference by dissolution of the lower chamber. A further and very notable method of settlement is by the direct submission of the question of difference to be decided on voting papers by the electorate over the heads of both chambers. This method, the Referendum, or Poll of the People, as adopted in Switzerland, Australia, and elsewhere, will be dealt with in another chapter.

The following is a list of countries in which the majority of the second chamber can be swamped.

Italy.—The Italian Constitution gives to the Senate equal legislative powers with the lower chamber. Either chamber may initiate legislation. Money Bills must originate in the lower chamber, but the Senate has the right to amend or to reject them. All legislation requires the consent of the Senate as well as of the lower house. By decree of the King the Senate may be constituted a High Court of Justice to try crimes of high treason and attempts upon the safety of the State, and to try Ministers impeached by the lower chamber. The Senate is nominated by the Executive, and, upon occasion, the Executive can and does create a majority for itself and for the lower chamber by means of a batch of new nominations.

Hungary.—All Bills, including Money Bills, must pass the second chamber. The second chamber has power to reject or amend all Bills, including Money Bills. It may initiate legislation, but in practice it does not make use of this power. Practice also has modified its rights in respect of Money Bills, the imitation of England having led to a general belief that interference with a Money Bill by the second chamber would be unparliamentary. Though largely composed of hereditary members it has a nominated element, and the

Government, by fresh nominations, could, and has, threatened to swamp the majority.

Prussia.—The consent of the second chamber is necessary to all legislation. The second chamber may initiate all legislation except Money Bills. It can reject, but not amend, Money Bills. But in practice these powers are useless, not against the lower house, but against the King who dominates both houses. Ministers are not responsible to the lower house, but to the King, in practice as well as in theory. The importance of the Parliament is, therefore, not very great. In certain cases, the King has swamped the second chamber by an increase in the nominated element.

New South Wales.—The second chamber, which is nominated by the Government, cannot initiate or amend Money Bills, but may reject them. In the case of other legislation it may initiate any Bill, and all Bills require its consent. It may be, and has been, swamped by fresh nominations by the Government of the day.

New Zealand.—All Bills must pass the second chamber, but the Home Government has expressed the legal opinion that its powers in respect of Money Bills are not on an equality with those of the lower chamber. In cases of difference with the House of Representatives, the Executive can and does swamp the majority of the Legislative Council, which is a nominated body, by means of fresh nominations. In this case, as in other cases

where the swamping of Colonial second chambers is possible, regard should be had to an opinion expressed by Lord Carnarvon as Secretary of State for the Colonies in 1874. It is an opinion likely to weigh with any Governor when approached by his ministers with a request for a batch of swamping nominations. Lord Carnarvon wrote:

"In a colony such as . . . the tendency to introduce a large addition to the number of the Legislative Council (the second chamber) will from time to time make itself felt. But if the balance of constitutional power is not to be more than a mere theory, it is clear that such a tendency cannot be encouraged to take its full course. It is prudent to avoid such an increase in the number of the Legislative Council as may give a temporary advantage to one party, thereby altering the constitutional character and functions of the legislative body, weakening its general influence, and possibly, if not provoking reprisals at some future day, at least encouraging a practice which, the more it is indulged, the less easy will it be to restrain."

The following is a list of countries in which differences between the two chambers are settled by joint sittings.

South Africa.—The second chamber of the South African Union has power to reject or amend all Bills except Money Bills. It can reject Money

Bills, but cannot initiate or amend them. All Bills must be submitted to the second chamber. In case of disagreement between the two chambers, if the Bill is a Money Bill, a joint sitting of the two chambers is held at once and a vote is taken. This vote decides the question. In case of disagreement, where the Bill is not a Money Bill, the joint sitting is not held until the Bill has been twice passed by the lower chamber.

Kingdom of Würtemberg.—The second chamber has equal powers with the lower chamber. In respect of Money Bills, a disagreement is settled, not actually by a joint sitting, but by an addition of the votes cast for and against in the two chambers. This provides a solution, but has not the advantages of the joint sitting, for there is no opportunity for debate and concessions between the two chambers.

Grand Duchy of Baden.—The second chamber has the same powers as in Würtemberg. Differences upon Money Bills are settled in the same manner.

The following is a list of countries in which, in one form or another, the settlement of differences between the two chambers is entrusted to the electorate; or, alternatively, in which the electorate is given a chance of deciding before the decision is reached over their heads.

Australian Commonwealth.—The second cham-

ber has equal powers with the lower chamber in all cases except those of Money Bills. By a special provision of the Constitution the second chamber is disabled from amending any Bill (not only Money Bills), so as to "increase any proposed charge or burden on the people." Though the second chamber cannot amend a Money Bill, it can reject it. It can do more than is usual, however, in other countries where the same rule prevails. For it may return a Money Bill to the lower chamber with the request that an amendment be made. So, in practice, it has the right to propose, but not to insist upon, the amendment of a Money Bill. It is to be noted that the Constitution gives the second chamber the right to insist that Money Bills should be presented to it separately and in order, so that it may pass those it likes and reject those it dislikes. The Constitution also expressly forbids the tacking of non-financial matter on to a Money Bill, by which the attempt might be made to secure the second chamber's consent to, or abstention from amendments of, proposals which otherwise it might have rejected or seconded.

The provisions for settlement of disagreement between the two chambers are elaborately defined by the Constitution. If a Bill is passed by the lower chamber and rejected or ignored by the second chamber, an interval of three months ensues. If the same Bill be again passed by the

lower house, and if the disagreement still continues, the Governor-General may dissolve both chambers simultaneously. If, after the dissolution and election of new chambers, the same bill be passed by the lower chamber and rejected by the second chamber, a joint sitting is held. The result of the voting at the joint sitting settles the question. If the majority of the two chambers sitting together is adverse to the Bill, it drops, and on its reappearance the whole process would have to begin over again. If the majority is favourable to the Bill it is forthwith presented to the Governor-General for the royal assent.

All of these provisions are characteristic of the extreme care shown by the framers of the Australian Constitution in regard to the second chamber and all that concerns it. Though the final possible stage of disagreement is settled by the method of joint sitting, it should be noted that this does not occur until the electorate has had the opportunity of pronouncing upon the disputed Bill by means of a general election to both the disagreeing chambers. It is the same electorate which returns them both, though voting in constituencies of different size. This sharply distinguishes the method of settlement from that provided by the Constitution of South Africa, where a joint sitting settles the dispute without any reference to the electorate.

Victoria.—The second chamber has equal powers

with the lower chamber except in respect of Money Bills. There was much controversy before the powers of the second chamber in respect of Money Bills was settled. In 1866 it rejected a Bill for the introduction of high tariff duties, which, in the lower chamber, had been incorporated in the Appropriation Bill. The lower chamber then induced the Governor to permit the levy of the duties merely on the strength of a resolution of its own. The Governor consented, and was rebuked by the Home Government. Thereupon the lower chamber voted £20,000 as a gratuity to the Governor's wife. The Bill in which this vote was incorporated was rejected by the second chamber. The dispute continued to rage round this point until the Governor intimated that he would prefer not to accept the money. Again in 1894 the question became acute. The second chamber rejected the annual Budget on the ground that it contained clauses for the levying of a tax upon unimproved land values which should have been submitted to the electorate before becoming law. Simultaneously there occurred a disagreement about Bills which were not Money Bills, for the second chamber rejected a measure for the abolition of plural voting and the enfranchisement of women. Nine years later, in 1903, a method of solution was adopted. The second chamber obtained the right to suggest amendments to Money Bills, and provision was made for its dis-

solution and re-election in the event of an insurmountable disagreement with the lower chamber. Once more it should be noticed that this second chamber is an elected one; and, in fact, the serious character of its quarrels with the lower chamber has been due to its consciousness of its strength as a body representing the people.

South Australia.—Here again the second chamber is elected. Differences between the two chambers have been mainly in respect of Money Bills. But the Governors have taken the side of the second chamber, in the most notable cases, and have insisted on Money Bills receiving the assent of both chambers. In 1881 a device for settling differences was adopted. If a Bill is twice passed by the lower chamber and twice rejected by the second chamber, or amended in a way which the lower chamber will not accept, the Governor has a choice of two methods of obtaining the decision of the electorate. He may either dissolve both chambers at once, or he may call up by election to the second chamber a number of additional members not exceeding nine. Since the second chamber normally consists of only eighteen members, the addition is considerable, and should suffice to turn the scale on ordinary occasions if the electorate is anxious to support the view of the lower chamber. Should the disagreement continue after this operation, or after the simultaneous dissolution of both chambers, it

would seem that there is no further way of arriving at a settlement. There is no provision, as in the Commonwealth Constitution, for a joint sitting.

The Transvaal and Orange River Colony.—Though these Colonies are now merged in the Union of South Africa, and have lost their old constitutions, their history is interesting because the constitutions were framed by a British Liberal Government which was refusing to accept the right of the House of Lords to reject Money Bills or to cause an appeal to the country upon occasions. To these two second chambers in South Africa was accorded the right to reject, but not to amend, Money Bills. In case of agreement on Money Bills or other Bills, the Governor was to convene a joint sitting. The members of both chambers were to deliberate and vote together, and might together amend the Bill at their joint sitting. The way was therefore left open for possible compromise up to the last moment. The decision of a majority of the members of the two chambers sitting together, was to be final. But, alternatively to this course, it was provided that the Governor might dissolve either the lower chamber alone or both chambers together. Thus there was provision both for a review of Money Bills by the second chamber and for an appeal to the electors.

Sweden.—The second chamber has the usual powers of an equal branch of the Legislature.

Keen conflicts have occurred as to its rights in respect of Money Bills. It is now provided that, in case of disputes of this particular kind, there should be a joint sitting, and the decision depends upon the majority of the votes of the two chambers sitting together. In the case of disputes of this kind, however, and in the case of disputes of any other kind, it is possible for the Government to dissolve both chambers simultaneously, and thus, since both are elected, to give the voters the opportunity of settling the matter themselves.

Norway.—The second chamber, which is nominated by the lower chamber (an unique arrangement), is by no means powerful in practice. In matters of finance the two chambers sit as one. In all cases of disagreement there is provision for a joint sitting in which a majority of two-thirds is required to pass a Bill. Any dissolution of either chamber involves the dissolution of the other. But the fact that the lower chamber appoints the second chamber, renders Norway a constitutional curiosity. There was, when the constitution was framed, a tendency towards the single-chamber system. Yet the need for a checking and delaying chamber was recognised, and this compromise was adopted in order to secure some of the practical advantages of the double-chamber system, while paying some reverence to the theory of the other.

Denmark.—In ordinary legislation the second

chamber has a legal right to reject or amend, and exercises it with considerable freedom. In Money Bills its action has been weak. It might reject, legally, but is not expected to do so. There is a provision for the sitting of joint committees, in case of disagreement, but these committees sit only to confer, not to vote. A simultaneous dissolution of both chambers is possible.

Holland.—The second chamber cannot initiate any legislation, nor amend a Money Bill, but it can and does reject any Bill, Money or other. A simultaneous dissolution of both chambers is possible.

Belgium.—The second chamber can initiate any Bill except Money Bills, and has the ordinary powers of an equal branch of the Legislature. It may reject or amend a Money Bill. A simultaneous dissolution is possible.

Spain.—The second chamber has equal powers, but may not initiate a Money Bill. Its consent is necessary to all legislation. It may amend or reject a Money Bill. In case of disagreement it is usual to dissolve the lower chamber and, simultaneously, the elected half of the upper chamber.

Queensland.—The second chamber, which is nominated for life by the Government, has the ordinary powers, and has claimed, in addition, the right to amend Money Bills. On this point a legal opinion was obtained from the British Privy Council in 1885. The opinion was that the second

chamber of Queensland was in a position like that of the House of Lords, and that it must not amend Money Bills. Like the House of Lords, however, it was held to be entitled to reject them as a whole. In 1907 a disagreement occurred between the two houses. The Prime Minister asked the Governor to allow him to appeal to the country. The Governor refused, and the Prime Minister resigned, and the Opposition took office. Thereupon the lower chamber refused to vote supplies, and the Governor dissolved it. The country returned the same majority to power, and negotiations were commenced for a method of settling such constitutional troubles in the future. It was provided that where a Bill has passed the lower chamber and been rejected by the second chamber, and again passed and rejected in a subsequent session, it may be submitted to the country in a Referendum. A simple majority of the voters who actually vote on the Referendum is enough to pass the Bill into law.

The following is a list of countries whose constitutions provide no method of settling differences between the two chambers.

France.—The second chamber, or Senate, of France is an elected body. It is elected by the Departments and Colonies of France, by universal suffrage, but by indirect election. It possesses legislative equality with the lower chamber; it

can initiate, amend, or reject all Bills except Money Bills. In regard to these the right of initiative belongs to the lower chamber, but the Senate may reject. In the amendment of Money Bills, the rights of the Senate are not perfectly clear. It has claimed and exercised the right to amend, but it has not done so without protest from the lower chamber. One French writer, entitled to an opinion, says that the Senate may "view, control, and examine" a Money Bill. M. Loubet, who was President of the Budget Committee of the Senate in 1895, said:

"We have the right of examining the Budget law, and we do so each year with scrupulous attention. We can introduce amendments in it, but it is impossible for us to entertain a complete new set of Budget proposals; these must first be passed by the Chamber of Deputies before they are submitted to the Senate."

Gambetta, much less inclined to take a wide view of the Senate's authority, said:

"The Senate has the right of making remonstrances to the Chamber, to point out that this or that tax, this or that credit or suppression of credit, is unjust or inopportune, or to suggest a modification of the whole of the Budget."

On either of these statements of the case the financial authority of the Senate must appear to be far greater than that of our House of Lords.

The Senate has other very remarkable powers. Treaties of peace or commerce may not be ratified by the Government until both chambers have voted their approval. The chambers perform this function separately, of course, so that the second chamber obtains a right of veto in respect of these treaties. Here, again, it is superior to the House of Lords, and to the House of Commons also, for the British Government can ratify treaties without the consent of Parliament. Another provision of the French Constitution gives the Senate a power even more remarkable. Its consent is necessary before the President may dissolve the Chamber of Deputies. In England, France, the British Colonies, and all other countries that have parliamentary as distinct from presidential government, the power of the Executive to dissolve or threaten the dissolution of the lower chamber, on which the Executive itself depends, is one of the most formidable and important of all the engines of authority. It is the one check possessed by the Executive for use against the lower chamber. And in France this check can only be used with the consent of the Senate. Had such a provision existed with us, it is doubtful if we should have had a dissolution or general election in December 1910. That dissolution was an appeal to the country before the real matter at issue and its evident consequences had been made plain. The French Constitution would have

given the House of Lords the right to prohibit the dissolution.

The French Constitution provides no method of settling the differences of the chambers, except in so far as both chambers are automatically sent to the country for re-election at intervals, the lower chamber as a whole, the Senate in divisions of one-third of its numbers which retire every three years. Thus, until and unless its composition is changed by re-election, the Senate can raise an insurmountable obstacle to legislation, even to Money Bills.

United States.—The second chamber, or Senate, of the United States is remarkable not so much because it has the usual powers of an equal branch of the Legislature, as because of the frequency and cool assurance with which it makes use of them. Its rights of amendment and rejection are exercised with a freedom unknown in any European country. In respect of Money Bills it may do everything but initiate. It may, and does, both amend and reject them. Its consent is necessary to all treaties, though, unlike the French practice, the consent of the lower house is not required. Its consent is also necessary for all appointments under the United States Government. The enormous power of checking the Executive which flows from this last provision is self-evident, for we have only to picture our own upper chamber invested with such rights when its majority is not of the

same party as the ministers in power. With a veto on all legislation, a veto on all appointments, and a veto on all treaties, the Senate securely controls the whole field of government.

It has also a judicial function. The public officers of the United States Government, from the President downwards, may be impeached for misconduct. The sole power of impeachment is vested in the lower chamber, and the sole power to try impeachments is vested in the Senate. Differences between the two chambers can only be settled, as in France, by the automatic changes brought about in either chamber by periodic re-elections. There is a practice of holding conferences of persons appointed by the two disagreeing chambers, however, and the recommendation of the conference is commonly accepted by both. But this is only a custom having no legal force. In the last resort the veto of either chamber on the proposals of the other is absolute, and only to be removed by the chamber itself before or after its re-election.

Canada.—The second chamber has equal rights with the lower chamber, except in the case of Money Bills. These it may reject, but cannot initiate or amend. In case of difference between the chambers, the Government may nominate six new members to the second chamber. As it consists of eighty-seven members, this amount of swamping is seldom likely to be effective. Since

the second chamber is nominated for life, and not subject to re-election, there is no way of bringing its will into conformity with that of the lower chamber.

German Empire.—The second chamber, which consists of members nominated by the Governments of the States composing the Empire, has rather more than equal legislative powers with the lower chamber. Most Bills, including Money Bills, are initiated by it. It can initiate, amend, or reject all Bills whatsoever. Its consent is necessary to a dissolution of the lower chamber. It has important administrative functions. Its assent is required, together with that of the lower chamber, to all treaties that relate to matters regulated by Imperial legislation. It is a Court of Appeal from the State Courts. There is no provision at all for settling its differences with the lower chamber.

Austria.—The second chamber has equal powers with the lower chamber in all ways except that Money Bills must be initiated by the latter. It may initiate any other Bill, and amend or reject Bills of every kind. In cases of disagreement, there is provision for joint committees of the two chambers to deliberate and recommend a solution. But there is no method by which either chamber can be forced into agreement with the other. As with us before the Parliament Act, the only course open to the Government in cases of disagreement is to dissolve the lower chamber.

The most noticeable conclusion to be drawn from the foregoing facts, is that almost all the countries that have adopted representative government accord to their second chambers a measure of power greater than any that has been claimed by or for our House of Lords; that the power of an Executive to swamp the majority of a second chamber is comparatively rarely found; and that there is a tendency among newer constitutions to give great strength to the second chamber, but to seek the final decision from the electorate.

CHAPTER VI

GENERAL RECOGNITION OF THE VALUE OF THE DOUBLE-CHAMBER SYSTEM

It is safer to seek men's opinions in their deeds than in their words. The world's testimony to the value and necessity of a double-chamber system is to be found rather in what the world has done, than in what it has said; and there is no language so eloquent as the fact that wherever representative institutions have been set up, with a few exceptions notable solely for their lack of importance, the system adopted has been that of double-chamber Parliaments.

In our own country we may be said to have acquired a second chamber by inheritance. We did not invent it, nor desire it, nor adopt it upon any principle or theory. It was in existence at the beginning of the history of our Parliaments, and was ancient even then. But this has not been the case with foreign lands or with the British dominions. Their Parliaments did not grow but were made. They were invented and erected, and they date, in most instances, from

periods when the democratic and revolutionary spirit has been at the height of its influence. Yet the double-chamber system has been adopted in all cases of importance. In this respect the tribute of foreign countries to the importance of second chambers has been such as our country has never had the chance of paying.

For this reason we shall find most interest in what foreigners have done and what Britons have said. The testimony of foreigners has been in their actions, in the constitutions they have framed with the best wisdom at their command, and in the tribute these constitutions pay to the lessons of history. In Britain we have never made a constitution. We have worked one, however, for six hundred years, and our testimony is to be found in the opinions of statesmen who have worked it.

The constitutions of the world have been framed under two distinct sets of conditions. They have been framed either to provide for the government of a new community, or, alternatively, under the influence of a revolution. To take the briefest survey we see, first, the revolutionary constitutions of England at the time of Cromwell. Then we see the constitution which the Americans invented to meet the needs of their federal union. Next come the constitutions of the French Revolution. Later comes the group of constitutions granted by most of the sovereigns of Europe in

the second third of the nineteenth century. Lastly, we have the constitutions provided for British Dominions as and when their development made it possible for them to govern themselves. There runs through the whole list a clearly traceable line of practical experience.

The deplorable failure of single-chamber government in England at the time of Cromwell gave the world its first lesson in the subject, and the political writers of the next hundred years, who were mostly French or English, never tired of demonstrating that stable and moderate government cannot be expected of a single popular chamber. Under the influence of this opinion the Americans acted when they drew up the Constitution of the United States. Meanwhile, however, an opposing doctrine had grown into fashion in France. This reached its climax in the French Revolution, when, as was confidently hoped, the pure theory of freedom was going to work much better than it had worked in England under Cromwell. The doctrine of the exclusive right of the people's representatives to the exercise of the whole power of the State seized the imagination of French theorists as it had gripped the minds of the English Puritans, and the world was given the benefit of another illustration of the working of the single-chamber system. Once again that system led direct to tyranny, confusion, and the extinction of personal freedom. The

single-chamber constitutions of France, born in revolution, broke down in a steady succession of failures.

The lesson was learned, and by the time that the next period of revolution overspread Europe the erection of single-chamber government found no more support than the abolition of monarchy. Parliaments were everywhere set up; everywhere the right of representation was given to the people; but the precaution of a second chamber was not omitted. Seldom indeed has stability attached to constitutions established in the throes of revolution. But the double-chamber systems set up in Europe in the tumultuous years of the middle of the last century have justified the prudence which the experience of France had taught the world. Not one of the double-chamber Parliaments of Europe, if France be excepted, has ever been overthrown.

French history, since the Revolution, is a museum of constitutional experiments. Having suffered more sharply than any other country from the single-chamber system in the earlier stages of the Revolution, the French statesmen tried conscientiously to erect a second chamber when it was too late. By the time they had called their second chamber into existence the country was half way down the slope into despotism, and the Empire of Napoleon supervened to deprive all constitutional experiments of their importance. Upon the fall

of the Empire, constitutionalism was tried again, and a second chamber was provided. It endured, through two revolutions, until the spirit of anarchy overspread Europe in 1848. Then the French people tried the single-chamber experiment once again. After four years of disaster they relapsed thankfully into the arms of a despot once more, and the nature of the constitution ceased to matter.

Again, in 1870, when the second Napoleonic Empire was overthrown, the experiment of constitutional government had to be tried. A parliamentary Republic was set up, and, after a few years of uncertainty, a constitution was definitely established. From the pen of an English barrister, Sir William Charley, we have an interesting record of the time when this latest of French constitutions was in process of being made. "I was staying at Trouville," he writes, "and I left my card on M. Thiers who was then President of the French Republic. . . . I accepted an invitation. . . . and had a long conversation with M. Thiers on the subject of the formation of a second chamber. I was deeply interested in M. Thiers's preference for the bi-cameral system. Shortly after my return to England I found from the papers that M. Thiers had adopted the bi-cameral system which has held its own in France ever since."

The truth was that M. Thiers had established

one of the strongest second chambers in the world, which has endured for forty years in the land of revolutions without a challenge to its authority. France had learned the lesson of her own experience. In the eighty years before 1870 she had seen eleven constitutions collapse, and she has now lived for forty-two years under a constitution that has hardly been threatened. There is no doubt whatever that this unwonted stability has been due to nothing so much as to the Senate which M. Thiers established.

From America we may read the words of two political thinkers of high standing, one of them being a statesman whose name will never be forgotten, the other a political philosopher of considerable distinction. The first is Alexander Hamilton, a man of genius, who not only did more than any other towards framing the American Constitution, but also did more than any other to make that Constitution work. "Give all power to the many," said Hamilton, "and they will oppress the few. Give all power to the few, and they will oppress the many. Both, therefore, ought to have the power that each may defend itself against the other. To the want of this check we owe our paper money, instalment laws, &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, by means of their

property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or the Commons. No temporary Senate will have firmness enough to answer that purpose."

The second American authority is Professor Lieber, who writes as follows in his book on *Civil Liberty and Self-Government:* "Practical knowledge alone can show the whole advantage of this Anglican principle, according to which we equally disregard the idea of three or four Houses and of one House only, Both are equally and essentially non-Anglican. Although, however, practice alone can show the whole advantage that may be derived from the system of two Houses, it must be a striking fact to every inquirer in distant countries that not only has the system of two Houses historically developed itself in England, but it has been absorbed by the United States in all the forty-four States and by all the British colonies where local legislatures exist. We may mention even the African State of Liberia. The bi-cameral system accompanies the English race like the Common Law, while no one attempt at introducing the uni-cameral system in larger countries has succeeded. The idea of one House flows from that of the unity of power, so popular in France. The bi-cameral system is called by the advocates of democratic unity an aristocratic institution. In reality it is a

truly popular principle to insist on the protection of a legislature divided into two Houses."

Let us now see the views of an English philosopher, John Stuart Mill, who had certainly no love for "aristocratic institutions." He had one of the coldest minds that ever thought, and we shall not find his words to contain the enthusiasm of the Americans. His praise is grudging, but it is not less valuable for that reason. He condemns the single chamber because it causes the members of such chambers to incur "the evil effects of having only themselves to consult."

"It is important," he adds, "that no set of persons should in great affairs be able, even temporarily, to make their 'I will' prevail without asking anyone for his consent. A majority in a single assembly, when it has assumed a paramount character, when composed of the same persons habitually voting together and always assured of victory in their own House, easily becomes despotic and overweening if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers, that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year. One of the most indispensable requisites in the practical conduct of politics, especially in the management

of free institutions, is conciliation, a readiness to compromise, a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views, and of this salutary habit the mental give and take between two Houses is a perpetual school, useful as such even now, and its usefulness would probably be even more felt in a more democratic constitution of legislature."

From the opinions of philosophers we will turn to the words of some of those who have been responsible for the working of the British Constitution. In 1870, in the House of Commons, Mr. Gladstone said: "It may be that my hon. friend, . . . aware that the House of Commons is the chamber in which, in the main, the great work of national legislation must be conducted and the business of the country done, thinks that by means of a single instead of a double chamber we should simplify the work of our constitution, and more speedily and satisfactorily settle great public questions. Sir, that would be a very grave conclusion to adopt. I do not think it is the belief of the majority of this House, on the one side or the other, and I am perfectly convinced it is not the belief of the country."

Again, in 1893, Mr. Gladstone told the House of Commons that "the first effect of a second chamber is to present an undoubted and unquestionable security against hasty legislation. It interposes a

certain period of time, it interposes reflection, apart from the possible heat of popular discussion; it interposes an opportunity for allowing full consideration of the modes by which an approximation may be effected between the opposing parties by some accommodation of their differences. . . . The mere fact of its causing an interposition of time before a final decision is made is a very great recommendation."

In the same year, a year of conflict between the House of Lords and the House of Commons, the following remarkable words were spoken by Lord Herschell, the Lord Chancellor in Mr. Gladstone's Government: "The misfortune of the House of Lords," he said, "has been this—that the utmost attention has been excited by its work whenever its work has been of a particularly controversial character, and one which excites angry political feeling; and the quiet work which the House of Lord does, which is none the less effective and real, is work of which hardly anybody ever hears and for which the House of Lords never gets the slightest praise. . . . If the House of Lords is able to supply some of the defects left in measures by the House of Commons, I maintain it does useful work, and that work it has certainly performed on many occasions, although its achievements have been little observed."

The personal note which sounds in these words

may be due to the fact that the speaker himself was a member of the second chamber which he defended, and had good means of knowing the nature and value of its work. Yet he was a prominent member of the party whose chief measure the House of Lords had just rejected.

Of conflicts between legislative chambers the following remarks were made by Mr. Bryce, who was in the Liberal Cabinet in 1892, 1894, and 1906; was British Ambassador at Washington; and is the author of an important work on the constitution and politics of America. He, too, was speaking at a time of difference between the two chambers in England. He said: "It is said that two chambers work harmoniously together. My observation on that is that the object of having two chambers is to secure, not that things shall always work smoothly between them, but that they shall frequently differ, and provide a means of correcting such errors as either may commit."

The stream of testimony from British statesmen is continuous. If that which is quoted here is from men who have belonged to the Liberal party, it is only because the attack of the Liberals on the second chamber gives additional value to the words of some of the wisest of their members. The case for a second chamber was never more tersely expressed than by Lord Rosebery, speaking in the House of Lords in 1888, and quoting some words

which will be familiar to those who have read this and other chapters of the present book, and which cannot be too frequently reiterated. Lord Rosebery said:

> "There are three arguments which I have always thought conclusive as showing the necessity of a second chamber. When the ablest men that America ever knew, a century ago, framed their Constitution, though fettered by no rules and traditions, and having a clean slate before them, they thought it necessary to construct the strongest second chamber that the world has ever known. Then, let us call to mind the opinion of one who was not an aristocrat by party or profession—Cromwell—who abolished the House of Lords, and also found it necessary to restore the House of Lords. The last words he addressed to Parliament were these: 'I did tell you that I would not undertake such a government as this unless there might be some other persons that might interpose between me and the House of Commons, who had the power to prevent tumultuary and popular spirits.' Cromwell was not an aristocrat, and his Executive was not characterised by weakness; and the fact that he found it necessary to restore a second chamber speaks volumes as to the necessity of a second cham-

ber. The third reason in favour of a second chamber was given by a great philosopher, John Stuart Mill, who sums up the argument in a single sentence. He says: 'The same reasons that induced the Romans to have two consuls make it desirable that there should be two chambers, so that neither of them may be exposed to the corrupting influence of undisputed power, even for a single year.' The recent changes in the procedure of the House of Commons (changes in the direction of hurried legislation) also, I think, immeasurably strengthen the arguments for a second chamber."

As has been observed, what Englishmen have expressed in words, foreigners have expressed in action. Foreigners have set up the system which our statesmen have advocated and defended. The extraordinary thing is that the argumentative defence of the double-chamber system is, for the most part, a monopoly of the Anglo-Saxon race. The statesmen and thinkers of foreign countries have accepted the system almost without question. They have established second chambers which have scarcely been attacked or defended at all, for the very idea of the alternative system has hardly ever been seriously entertained outside the revolutionary periods of English and French history. To the recollection of those periods we owe

the striking words spoken by our statesmen in praise of second chambers. From foreigners such praises are seldom heard, because there is seldom an attack to meet or a criticism to answer. So completely has the double-chamber system been accepted by the world at large.

CHAPTER VII

THE NATURE OF THE PERIL OF THE SINGLE-CHAMBER SYSTEM

FOUR hundred and twenty-seven years before Christ, the history of Athens gave an example of the working of the single-chamber system, which, partly by reason of the dramatic nature of the circumstances and partly because of the genius of the historian who relates them, will not easily be rivalled by the democracies of the modern world. The legislative body of Athens was a single chamber consisting of the whole number of its free citizens assembled within sound of the voice of the orator. Thus gathered, they controlled alike the legislative and executive power of the State, no veto being possible, no reference to any other authority being provided or permitted.

Athens was at war with Sparta. Athens had an empire of many colonies and islands, whose loyalty during the war was a matter of life and death to the Athenians. One day the news was brought to Athens that their island of Mytilene

had revolted and invited a force of Spartans to come to its assistance, but that the Spartan force had failed to effect a landing, and had sailed away.

The island was left at the mercy of the Athenian garrison. In the heat of their sudden rage, the Athenian people assembled, bitterly resentful at the conduct of the Mytilenæans, resolved that an example should be made to strike terror through the rest of their empire, and, after a hasty discussion, they voted that the whole male population of the island should be put to death, and the women and children sold into slavery. Here was the decree of a single chamber from which there was no appeal.

A ship was dispatched to Mytilene to convey the command to the garrison. Night fell at Athens, the sun went down upon the wrath of the Athenians, and on the next day they repented of their rashness. The assembly met again. One speaker passionately urged that the decree of yesterday should be maintained. Then, says the historian, Diodotus, the son of Eucrates, who in the former assembly spoke most strongly against putting the Mytilenæans to death, came forward and said as follows: "I neither blame those who have a second time proposed the discussion of the case of the Mytilenæans, nor commend those who object to repeated deliberation on the most important subjects; but I think that the two things most

opposed to good counsel are haste and passion, one of which is generally the companion of folly, and the other of coarseness and narrowness of mind. And whoever contends that measures should not be thoroughly discussed is either wanting in understanding or is acting for some selfish interest of his own."

He then appealed for mercy and moderation. He appealed so well that the Athenians reversed their former decree. Only then does it appear to have occurred to them that their system of hasty legislation had an inconvenient side, for the ship that carried their decree of yesterday was already on its way to the island. "They immediately dispatched another ship with all speed," says the historian, "that they might not find the city destroyed through the previous arrival of the first, which had the start by a day and a night. The Mytilenæan ambassadors having provided for the vessel wine and barley cakes, and promising a great reward if they should arrive first, there was such haste in their course that at the same time as they rowed, they ate cakes kneaded with oil and wine, and some slept in turns while others rowed, and as there happened to be no wind against them, and as the former vessel did not sail in any haste on so horrible a business, while this hurried on in the manner described, though the other arrived so much first that the commander had read the decree and was on the point of executing

the sentence, the second came to land after it in time to prevent the butchery. Into such imminent peril did the Mytilenæans come."

Into such peril also, we may say, did the Athenians come; for to die as the victims of such a decree is not more terrible than to live as its authors. Now it is clear that the exact circumstances of such a case as this could never be repeated in a modern country. Nations have grown so large that their powers as democracies are no longer exercised by themselves in a national market-place, but by elected representatives. Nor is there much danger, as we may feel, of a repetition of the particular crime that the Athenians so nearly committed. If there were no other kind of case in which intemperate and hasty legislation could do harm, the inquiry might drop; as also, if it were to be felt that the rashness of an assembly of common people was not likely to be imitated by their representatives in a Parliament. Unfortunately, it is only too easy to show that we can take refuge in no such consoling notions. The modern world gives plenty of scope for injudicious legislation; the modern legislative body is not relieved from the frailties of human nature.

Someone shrewdly observed that "the House of Commons has more sense than anyone in it." This saying truly expresses one of the virtues of a representative body, its capacity for overruling the suggestions of its most extreme and peculiar

members. But there is a counteracting truth which can also be expressed in epigrammatic form, namely, that few members of the House of Commons have as much sense as those who sent them there. Here, in fact, is one of the most extraordinary features of modern politics, and one of the most easy for any observer to prove for himself.

He has only to read the newspapers and talk with his neighbours. It must be supposed that the theory of representative government is that the members of a Parliament are elected by citizens less instructed, less prudent, less far-sighted, less moderate than themselves. The theory must be that the bulk of a constituency fix upon a person of superior wisdom to represent them in a chamber composed of other persons of superior wisdom, whose collective opinion will be the quintessence of the sober judgment of the country. As a matter of fact, in case after case and subject after subject, the reverse process can be seen. Members of Parliament are not less but more extreme than their constituents, not more but less prudent, not graver in reflection but quicker in impetuosity. They are more deeply interested in politics than any but a very few of those outside the walls of their House; they are more thoroughly convinced of the excellence of their own notions; they are more vehemently anxious to see those notions put into practice; and, what is most remarkable of all,

they are apt to lump all their notions together with the sure conviction that every single one of them should be carried into law with the least possible delay. In a word, they are a professional class.

Our most recent history is rich in warnings of the possible results of the unchecked enthusiasms of professional partisans. There have been exceptional times when the vast bulk of the population have passionately adopted one side in politics. At the death of King Edward VI the reaction against extreme Protestantism was so strong that the very army of Protestants that marched to capture Queen Mary threw up their caps and declared for her. Five years later the opposite feeling was so strong that all the bells in every town were set pealing for joy at the news that she was dead. But these periods of extreme feeling have been rare, and of very brief duration. The normal attitude of Englishmen towards party politics is slow, cautious, and extremely moderate. The excesses of his opponents he is inclined to take with patient grumbling. The excesses of his own party generally shock him. And so he remains, even while he reads a press which never ceases to goad him into a daily frenzy this way or that. Never was his attitude more characteristic than at the three General Elections held in 1906 and in January and November 1910.

In 1906, the election turned on two questions.

A moderate preponderance among the voters desired a change of Government because they were tired of the personalities of one party, and they desired to avert the risk of the rise in food prices which was feared as a consequence of Tariff Reform. And so it came about that more votes were cast for Liberal candidates than for Unionist candidates. The difference was not remarkable; but the result was electrifying. Cautious electors discovered to their surprise that they were being represented by an overwhelming majority of members of Parliament who held the most extreme views on all sorts of questions which had hardly entered the electors' heads during the period of the election. The House of Commons quickly passed an Education Bill of the most extreme character, intensely disliked by thousands who had voted Liberal at the election. The upper chamber amended that Bill. They altered it from an extreme Bill to a moderate Bill. In this form, in which it might perhaps have passed with no great irritation of public opinion, the Liberal majority in the Commons would have none of it. What would have satisfied public opinion did not satisfy the extremists.

In the next year another band of enthusiasts took the field. It was now the turn of the extreme teetotallers. The Government produced their Licensing Bill. In one bye-election after another they were warned by sweeping defeats

that this measure was intensely unpopular. But the warning availed nothing. The little band of enthusiasts who had now the ear of the Government continued to labour for the passing of the most unpopular Bill that ever came before Parliament. It passed the House of Commons, and would have become law but for the veto of the second chamber.

Then came the General Election of January 1910, which turned on the Budget and the action of the House of Lords in regard to it. It was of this election that Mr. Balfour said, with strange satire: "The country has pronounced. What it has pronounced I do not know, but it has pronounced." But Mr. Balfour was doubtless aware that he was perhaps overstating the matter, for the truth was that the country had not pronounced at all. The country was in a peculiarly undecided frame of mind. A hundred seats had turned from Liberalism to Unionism, an exceptional number of contests were very close, and the balance of opinion was obviously as narrow as could well be. The scale was only borne down by the accidental circumstance that the Irish vote, though hostile to the Budget, was cast for the Government in the hope of securing Home Rule.

Now let us particularly note, what no honest critic could possibly deny, that the House elected in January 1910 was the product of an undecided mood among the electorate. There had been no

strong leaning either way. There had been many victories for Tariff Reform, yet it cannot be claimed that the electors, even in England, had really pronounced for it. There had been many seats retained by advocates of the Budget, yet the most that Liberals could fairly assert was a slight preponderance of opinion in its favour. Really, this slight preponderance could be explained away. But we will assume that it existed.

What was the result? Within six months the House of Commons had passed a Bill to repeal the Constitution of England. A most important and violent measure of revolution had passed that chamber which was supposed to represent the very electorate which nobody can deny was in a highly moderate and dubious mood. There has hardly ever been an election so little indicative of extreme views in the country as that of January 1910. Yet there has hardly ever been a party in Parliament so extreme as that which claimed to express the mandate of that particular election.

The proposals of this House of Commons would have proceeded at once into law if they had not been checked by the fear of rejection in the second chamber. As will be remembered, they never reached the second chamber. The Parliament was dissolved in November 1910, and a fresh cycle of events began.

It is difficult to estimate the actual results of the General Election of December 1910, because

the issue on the constitutional question was not rightly stated by the Government. The country was asked whether it desired a change in the relations of the two Houses, together with a reform of the upper house; and its answer to this was treated as a mandate for the abolition of the veto of the House of Lords. This point, however, does not concern us at the moment. What is important is that the result of the election showed the feelings of the electorate to be quite as undecided as in the election of January. England returned a majority against the Government. Great Britain returned a slight preponderance of members in the Government's favour. Again, the majorities were unusually narrow. The votes of Irish Home Rulers completed the totals of an election which had shown the country to be anything but in an extremist frame of mind.

We know the result of the interpretation of their so-called mandate by enthusiastic party politicians. The constitution was torn up. A Home Rule Bill was introduced, though Home Rule had gone practically unmentioned by the Liberal party during the election—a Bill to do that which the electorate had twice explicitly and emphatically condemned, once in 1886 and once in 1895—a Bill to do what the electorate had no thought of encouraging or permitting.

Enough has been said by now to show that there is no safety in the hope that representatives will

be more cautious and moderate than those they represent. In every public-house there are ten moderate men for one who even approaches the extreme views embodied in partisan legislation. It is the same in every club and every home, for the ordinary man does not and cannot, fortunately, contract the political fevers that afflict those whose lives consist wholly of politics. Yet it is this ordinary man who is, in fact, the People with a capital P. More, he is the victim on whom the politician experiments and the sufferer from all rashness and error.

Broadly speaking; the single-chamber system exposes a country to two kinds of danger. The first is short and sharp, like a blow on the head; the second is gradual and chronic, like residence in unhealthy climates. The first is in the precipitate and enthusiastic action of a majority possibly quite small and possibly quite temporary, which passes laws upon the gravest subjects, not because they have any popular authority to do so, but because the professional extremists of their party find it convenient or congenial to make this use of an opportunity which may not recur.

The best and neatest instance is that of the second Home Rule Bill. It will be remembered that this Bill was passed by a House of Commons in which Mr. Gladstone had one of the smallest working majorities on record. It was thrown out by the House of Lords. It was passed by the

Commons in 1893, and, under the provisions of the Parliament Act of 1911, it would have become law in 1895. The House of Commons, which passed that Bill, continued to exist and support the Home Rule Government until 1895, and, if the Parliament Act had then been in force, it would have continued to support the Government a little longer than it did. Home Rule would have become law. Without spending one sentence upon the dangers and calamities which Home Rule would bring, it is enough to say that that momentous change would actually have taken place, under the system established by the Parliament Act, at the very moment when the country was voting its condemnation by immense majorities in the General Election of July 1895. In those days we had a double-chamber system, and it worked so as to give the country the opportunity of saving itself.

Such is the short and sharp danger of the single-chamber system. But there is another danger, the continuous and corrosive, of which we have an instance not less striking. What subject has ever seemed so dull as that of parliamentary procedure? At a time when the House of Commons does not enjoy the degree of reverence once accorded to it, the wrangles of its members over the closure and the time-table, the guillotine and the kangaroo, have wearied the minds even of people generally interested in politics. It would,

therefore, have been with some surprise that anyone who had been absent from England for a few months would have returned in the autumn of 1911 to find a group of bye-elections in which these dull subjects had suddenly acquired the greatest possible interest. Such was the transformation wrought by the National Insurance Bill.

The subject is really worthy of some attention. Very large numbers of people have been under the impression that, however fierce might be the strife of parties, however noisy and unruly an opposition in the House of Commons might become, such things could have no possible effect upon the private lives of ordinary people. Questions affecting the Constitution, in particular, have seemed to be very remote from daily life. The constitutional convulsion of July 1911 was taken by many people quite as calmly as an earthquake occurring in Martinique, though they could see how greatly it perturbed the politicians.

To take one minute instance for the sake of illustration only, there was a group of people in one English county whose livelihood depended largely on work in the glove trade, which, in small but welcome quantities, was handed out weekly to numbers of women and girls in the families of agricultural workfolk. Among these there was certainly very little thought that the dealings of the Government with the Constitution could pos-

sibly affect the even tenour of their days. But they suddenly awoke to the fact that a Bill was being hurried through Parliament, with hardly the semblance of discussion, which was going to deprive them forever of the work on which they had depended for as long as they could remember for everything except the barest subsistence. This Bill was the Insurance Bill, which was passing almost entirely undiscussed through the House of Commons.

It was passing, in effect, under a single-chamber system, for the upper chamber was given no time in which to discuss it; politicians were aware that the smallest attempt at revision by the Lords would immediately have been taken by one party as an attempt to wreck the Bill, and used as ammunition for an unscrupulous campaign of calumny; and thirdly, it was well understood that the Government were not going to allow the revising chamber to have any hand in this important measure.

The result was that a Bill of unexampled complexity, affecting the personal fortunes of the greater part of the population, was passed into law by a single chamber which had not time to consider more than a fraction of its clauses. This it was that roused the electors to an interest in parliamentary procedure. They had discovered that upon these dim and remote questions in London depended the livelihood of many of

themselves. They were taught how sharply their homes might feel the difference between a good and a bad Constitution.

We should see, therefore, that the second of the dangers of the single-chamber system is the danger of unrevised and hurried legislation. As it has been shown that this evil may have a direct personal bearing on the fortunes of anyone, so it is clear that it is an evil that must become more general with every year that passes. For good or ill the age in which we live is committed to a course of social legislation which increases in bulk each year, and touches ever more intimately our lives and doings. And so, at once, the work of legislation is becoming more copious, more important, and more difficult. The need for a chamber of revision becomes greater, and not less. There is no hope of good legislation unless the function of a second chamber is performed, and thoroughly performed, not only to check the excesses of excited politicians at times of crisis and fever, but also from year to year, from day to day, to revise and correct the work of the lower chamber, and to interpose delay in cases where revision will not suffice. It is hardly necessary to add that a mass of unwise legislation, in the long run, may prove not less fatal than a single swift calamity. In short, and passing over a multitude of little grievances and evils, it kills the confidence of the people in its rulers, it makes

little leaks in the ship of national prosperity, and works slowly the harm that a catastrophe completes quickly.

So far, our argument has dealt with that which might occur in any country that deprived itself of the advantages of a sane system of legislation. We have now to consider what may not have been expected, that the Constitution of the United Kingdom is such as to require a checking and revising chamber more urgently than would be the case in other lands. For this purpose, it will be necessary to make some comparisons which will probably be found to possess a good deal of interest. We shall take the United States of America as representing the presidential system of government, and France as representing a parliamentary system like our own.

The President of the United States is elected once in four years, and in power he remains till the four years are ended, no matter how thoroughly Congress ~~Parliament~~ and people may wish to get rid of him. He appoints his Ministers, he directs the executive government in peace and war, and there is no power that can control him. Similarly, once in two years the electors elect the lower chamber of the Parliament. This chamber also sits secure for its allotted period. No power can dissolve it; no power can direct its deliberations. The President and his Ministers do not and may not sit in it. There is no sort of interdependence

between the activities and existence of the Ministry and the Parliament.

With us, on the other hand, the first action of a newly-elected House of Commons is to see that the Ministry pleases it. If the House has a majority of one party and the Ministry is of the other party, that Ministry is dismissed at once. Before the House has come to work it is quite certain that the Ministry, sitting in its midst, will be a part of its majority, and in the closest relations with that majority, and dependent from day to day on that majority, and dependent also on any section of that majority which, by a timely revolt, might turn the majority into a minority. Such is parliamentary as distinct from presidential government.

Clearly this system must give to the sections of the majority a powerful hold over the Ministry. With this, however, we are not concerned. What matters to our inquiry is the hold which is won by sections of the majority, through the Ministry, over the chamber itself. In America the only influence that President and Ministry can bring to bear on ~~the Parliament~~ Congress is to send it a message requesting it to do this or that. There is no compelling it; there is no dissolving it. But in this country the Ministry directs almost everything that the Parliament does. It prepares the Bills, it allots the time, it guides and controls at every stage, and it can dissolve if its authority is questioned.

Notice the difference of the two systems. In Washington the Ministry and the Parliament pursue independent careers, and neither can destroy the other. In London the Ministry can destroy the Parliament, yet cannot endure for a day while the Parliament continues unless the majority supports it. The result is that the activities of the House of Commons are wholly controlled by the Ministry, which is itself controlled by any section on whose votes it may depend. Such a situation could never arise in the lower chamber of the United States. Nor yet does it arise in the lower chamber of France.

In the House of Representatives there is no Government through which a section may enforce its will. In the French Chamber there is a Government, and a Government depending, like our own, on the continuance of the chamber's support. But a very important difference may be observed. The fact is that while the defeat and fall of an Administration here is an event of the first magnitude, the defeat and fall of an Administration in France is a matter of little or no consequence to anyone except the Ministers and their wives and families. In France the event does not mean so much as a change of parties. The Cabinet, which is much smaller than in England, is replaced by another batch of statesmen holding roughly the same views as their predecessors, supported by an informal coalition of some of the many

party groups into which the chamber is divided; and thus, everything goes on as before for a period of some months, until another little upheaval of the groups throws out the Ministers again and chooses a fresh set with identical opinions. It is not easy to say why the French groups and sections should not be as formidable as ours. There is no reason why they should not become so in time. But, in fact, they have shown no such tendency. They confine themselves to the luxury of changing Ministries at frequent intervals, and do not seek to impose their legislative hobbies on the chamber as a whole.

Now it is of the essence of the idea of sections in this country that each has a pet policy on which its heart is set. From the nature of the case the policy is not likely to be one which commands much support in the country as a whole, or its advocacy would not be confined to a section. But the Constitution gives it, as we have seen, an artificial advantage. The section can impose it on the Government by the threat of withdrawing support. The Government can impose it on the chamber by the threat of dissolution.

This was the means by which the Irish Nationalists forced forward in 1912 the policy of Home Rule, which the Liberals never touched while they had an independent majority to make them their own masters. It was the means by which a small group of Welsh members, in the same year, forced

forward their attack on the Church of England. It is a ready weapon in the hands of any section numerically strong enough to give the Government a fright, and it makes not the slightest difference whether the section's policy is one that the Government, the House, and the country all dislike. Thus it is that the working of the British Constitution makes the need for a second chamber more urgent than it is in foreign countries. There is no other means by which the activities of groups and sections can be checked.

It remains to add a word about one incidental consequence of the Parliament Act of 1911. That Act not only exposed the country to the domination of any body of men with a handful of votes in the House of Commons, but it imposed upon the lower chamber the necessity of making great haste with any legislation of doubtful or definitely injurious character. The Act gave the House of Lords the power of interposing two years' delay between the date of a Bill's second reading in the Commons and the date of its automatically passing into law. If the Parliament should expire during the two years, the Bill would fail to pass. Hence the necessity for a Bill to be introduced early in the career of the Parliament, a necessity affecting not only this or that Bill, but every Bill of every sort which had to be passed in the teeth of opposition from the second chamber of the country.

By such an ingenious contrivance it was ensured that bad Bills should not only become law, but should be got through in a violent hurry. And any good Bill undertaken at the same time only increases the need for hasty treatment of itself as well as the others. It was for this reason that the Insurance Act was rushed through the House of Commons without an approach to adequate discussion, for it had to be cleared out of the way to leave time for the Irish and Welsh Bills.

All human institutions are liable to err, and each has its characteristic danger. A second chamber may sometimes reject a good Bill or pass a bad one. It may sometimes delay a Bill which should not have been delayed, and sometimes it may change it for the worse. But the rule of prudence is to weigh the evil against the good. The possible harm to be done by a second chamber is out of all proportion to the certain and grievous danger that attends the single-chamber system.

CHAPTER VIII

THE PARLIAMENT ACT AND THE SINGLE-CHAMBER SYSTEM.

THE further we penetrate into the region of stormy feeling the more necessary does it become that we should take care not to be carried away. A perfectly frank and avowed hostility does not often arouse resentment. A politician who should openly say that he desires to wreck the Constitution in order to bring the majority of Englishmen under the yoke of a small group of doctrinaires, and a league of little racial cliques, would be likely to shock our moral feeling but not to stir the bitterest sort of passion. It is when base actions are disguised under the hypocritical trappings of superhuman virtue that anger begins to stir in the minds of ordinary people. In all the transactions connected with the passing of the Parliament Act of 1911 there was unfortunately much of this virtuous draping of base motives and mean tricks, with the result that they left more bitterness than was necessary. But it is well to put such feelings aside, so far as possible,

in the attempt to reach a just appreciation of the state of our Constitution as that Act left it.

It will be remembered that from the accession of William IV until just before the first jubilee of Queen Victoria the Liberal party enjoyed a preponderating share of power. Only on two occasions were they decisively beaten, and on each of these their defeat was turned to victory within six years. The last and greatest of their triumphs was in 1880, and, after this, the character of the party system began to undergo a change. The Irish Nationalists emerged as an independent group, with the avowed intention of selling themselves to the highest bidder in English politics. Only one satisfactory bid was made. It was made by Mr. Gladstone in 1886, after he had been returned to power with a very small majority. With the support of Irish votes he saw the possibility of a prolonged tenure of office, which was otherwise impossible, and he offered a Home Rule Bill as the price of Irish support. The bargain was struck; the Liberal party was rent in two; and the country in a General Election dismissed the Gladstonian Liberals to impotence.

No party likes the prospect of being excluded from power for ever. This was what faced Mr. Gladstone and his faithful remnant in the years that followed 1886. They had tied themselves fast to a stone too heavy to roll up the electoral hill, the heavy stone of Home Rule. So the years

passed in gloom for the Liberal party, while the efflux of time was bringing another General Election nearer and nearer.

Shortly before the General Election of 1892 the Liberal leaders, from the midst of their embarrassments as the champions of the unpopular policy of Home Rule, hit on the idea which has occupied so considerable a place in the history of England from that time to this. Like other remarkable inventions, it was so simple, once stated, that the wonder is that it had not been thought of before. It was, briefly, to adopt the whims and fads of every little group of voters in the country and roll them up together and call them the policy of the Liberal party.

So doing, they could find a place for Home Rule, securing the Irish votes, though there would be so many other topics that it would hardly be necessary to mention Home Rule in any English constituency where it might not be popular. The convenience of the arrangement was obvious. Welsh Disestablishment was adopted to please the Welsh and the Nonconformists, and the licensing policy known as Local Veto was adopted to please the teetotallers. The payment of members of Parliament was adopted, together, with the cry of "One Man One Vote," to please the advanced Radicals. There was something for everybody, and, if everybody would hold together, there was the prospect of a majority for the Liberals in the

new Parliament. It was this device, this welding of policies to please everybody, that is known in history as the Newcastle Programme.

At the General Election in 1892 the Liberals were returned to power with one of the smallest majorities that ever a party had, and at once it was necessary for them to set about giving everyone that which the Newcastle Programme had promised. There was not a day to be lost, for the defection of any one of the little groups would have left the Government in a minority. So the Bills were produced one after another, the Bill for the Irish, and the Bill for the teetotallers, and the Bill for the Welsh and the Nonconformists, and each little group put its shoulders to the wheel and helped the other little groups in return for the help the other little groups were to give to it. With the result, for the most part, we need not concern ourselves. Bill after Bill was adopted in failure and discredit. It was the process, in fact, which Lord Rosebery afterwards called "ploughing the sands"—the miserable process of trying to force unpopular legislation on a restive and scornful country.

The Bills of the party were smothered, most of them, before they left the House of Commons. But there was one which the Commons were compelled to pass. This was the Bill which was demanded by the largest and most resolute of all the sections supporting the Government: it was

the Home Rule Bill. It was passed by the Commons and rejected by the Lords.

The lesson was never forgotten. The Newcastle Programme, though loyally carried out by the Government and the sections, had failed to give the Nationalists their desire of Home Rule. It had failed, because the action of the second chamber held up the Bill until the country had a chance of sweeping away both it and the Government that favoured it. Failure had befallen the whole plan of the co-operation of small groups to help one another to get what the general will of the country would refuse to give them. The failure, in the most conspicuous instance, was due to the action of the second chamber, and from that moment the Irish Nationalists decided that the second chamber must go. The same feeling affected the other disappointed sections in varying degrees.

After this came the period described by Sir Henry Campbell-Bannerman as ten years of Tory Government. It was followed by a period of four years of Liberal Government about which there was a very remarkable peculiarity. This was in the fact that the Liberal Government had such a good majority as to be able to send several of the sections about their business. They did not depend on Irish votes, having a majority over Unionists and Irish combined. So there was no talk of Home Rule. Other sections had indeed

sufficient influence to press their claims on the Government. There was a Licensing Bill, for instance, and a Welsh Disestablishment Bill; but, on the failure of these, whether through the action of the second chamber or for some other reason, no great outcry was raised. The reason was that the Government was too strong to fear any section. Their resentment against the House of Lords went no further than to make them give a few days of Parliamentary time to the passing of three resolutions in the House of Commons which, having no more legal force than moral force, did nobody any harm nor any good.

After the General Election of January 1910 the situation changed once more. Once again there was a Liberal Government that depended on its sections for the votes necessary to life. Once again the Irish Nationalists were in a position to induce the Government to compel the House of Commons to undertake a Home Rule Bill. But they had not forgotten the Home Rule Bill of 1893, nor the fate which overtook it. They remembered the lesson, and knew that it was waste of time to press for a Home Rule Bill until the double-chamber system was upset. That system had proved the rock on which their hopes were shattered in 1893, and until that rock was blown out of the water the time spent on another Bill would be wasted. And so, instead of using compulsion to make the Government take up a Home

Rule Bill, instigated a Bill for the removal of the power of the second chamber.

It is sometimes protested that the system established by the Parliament Act should not be called a single-chamber system. There still remains a body called the House of Lords, with power to delay a Bill for two years. But if the Parliament Act had not set up a single-chamber system it would never have satisfied the Irish Nationalists. The double-chamber system had baffled them once, and they were perfectly well aware that it would baffle them again if it endured long enough to cause the Home Rule Bill of 1912 to be referred to the judgment of the country, like the Bill of 1893. That system, therefore, had to go; nothing less than its effective removal would have been acceptable to the Irish Nationalist section.

Yet, even as the matter then stood, after the election of January 1910, the double-chamber system might have withstood the attacks of its enemies had it not been for the fact that from the highest Ministerial quarters no statement was made which could be proved to be literally and verbally untrue, and yet it was found possible, without literal lying, to obtain the advantages desired. An impression was spread abroad in the country that the step to be undertaken was not the abolition of the double-chamber system, but the alteration of the existing second chamber into a new and improved second chamber. A part of

the skilfulness of this device was due to the action taken by the Unionist party in admitting, of their own free will, that the existing second chamber was not perfect. "No," said the Liberals, "we agree with the Unionists: all are agreed on that; and we will set up a new second chamber which shall be thoroughly satisfactory."

By this ingenious plan the Liberal party obtained their narrow victory in the General Election of December 1910, and it was certainly the reward for uncommon political cleverness. Under the impression that the second chamber was to be reformed, the electorate accepted the preamble to the Parliament Act, 1911, as being the expression of a sincere intention. That preamble, the explanatory preface to the Act, announced and promised the establishment of a new and improved second chamber. The promise was accepted by the electorate, of which the less reflecting portion was also misled by the cry of "Peers *versus* People." This cry led to the belief that votes cast for Liberals were votes, not against the double-chamber system, but against individuals who were then in a phase of unpopularity with most persons of Liberal sympathies. The methods used to get the Crown to promise a creation of peers in the event of the Parliament Bill being thrown out by the House of Lords need not be enlarged upon here. It is enough to say that they bore a strong resemblance to those used in dealing with the electorate.

The Irish Nationalist section, however, had now triumphed. At the beginning of 1911 the new Parliament assembled and shortly afterwards proceeded to pass the Parliament Bill, by which the obstacle to Home Rule was to be removed. One clause of this entirely removed Money Bills from the purview of the second chamber, making it impossible for the second chamber either to amend or reject them. Then came the clause that dealt with legislation of other kinds. This must be given in full.

The Parliament Act. Clause II.

"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."

To any one who reads the clause slowly and carefully its meaning is perfectly plain. Its meaning is not plain at all if it be read together with the promises contained in the preamble to the Bill, but its object was that a Bill thrice passed by the House of Commons should become law without the assent of the second chamber or the people. That is to say, a Bill thrice passed by a single chamber becomes law. It does not matter if the Bill be passed by a majority of one vote: the effect is the same. It does not matter that in every month of the two years a Government may lose a bye-election: the effect is the same. It does not matter that the Bill may be the most revolutionary, the most iniquitous, or the most unpopular: the effect is the same. It does not matter that the Bill may be one which the Commons themselves dislike, such as a Home Rule Bill, which they pass only because a section is able to intimidate the Government into compelling the House to pass it: the Parliament Act will still turn that Bill into law in the single chamber.

These considerations were clearly revealed in

the course of the passing of the Parliament Act, by reason of the amendments which the House of Lords sought to introduce into it. A part of the adroitness of the Liberal Government in their dealings with the Bill in the country was that they caused the General Election to be held before, and not after, the amendments of the second chamber had thrown light on their intentions. The constitutional practice had been for a Government to appeal to the country after a Bill had been rejected by the Lords, or, after the agreement of the two Houses had been shown to be impossible. By this means the country could judge between the Houses; it had heard the case of each, and was in a position to make a decision. In the case of the Parliament Act the country was called upon to decide before the House of Lords had even received the Bill. The prudence of the course, from the Government's point of view, was manifest. For the amendments of the Lords were such as to bring the meaning of the single-chamber system vividly to light. The amendments were not accepted, and did not become a part of the Bill. But, because of the tale they tell, or because of the tale told by their rejection in the Commons, they must be dwelt upon.

The amendments were mostly of the same character. They did not represent the views of the House of Lords or of the Unionist Party as to the final settlement of the Constitutional ques-

tion, but they were an attempt to lessen the more serious evils of the system which the Liberal Government was setting up. They were attempts to ensure that though a single-chamber system was being instituted for ordinary legislation the double-chamber system should be retained in certain cases where the action of a narrow and sectional majority in the House of Commons might imperil the gravest national concerns.

Thus, the Lords proposed to retain the old system in the case of any Bill which would "affect the existence of the Crown or the Protestant Succession thereto." Of this the Government would not hear. Not even to safeguard the Crown and the Protestant Succession would they make an exception to the single-chamber system they were setting up. Again the Lords proposed to make an exception of any Bill which "establishes a National Parliament or Assembly or a National Council in Ireland, Scotland, Wales, or England, with legislative powers therein." We can hardly wonder at the Government refusing to entertain this suggestion, for, had they done so, the Irish Nationalists would have ejected them from power immediately, This amendment would have given the electorate a voice in the question of Home Rule, and therefore could not be allowed. It was again proposed by the Lords that the double-chamber system should be retained in case of any Bill to prolong the legal period of the existence

of Parliament. For a House of Commons to make a law prolonging its own existence would be to establish a despotism. It would be a step of the most extreme description. It could be used so as to deprive the country permanently of any lawful method of expressing its will at any time. On this point the action of the Government was peculiar. They accepted the amendment, but kept open a way for making it mean nothing. For they retained for the single chamber, the right within two years, by its own authority, to abolish either the House of Lords itself, or the very restriction which the amendment established. By either method the single chamber could make itself perpetual. This result the Government secured by refusing an amendment which proposed to make an exception of a Bill which, in the opinion of an impartial committee, should "raise an issue of great gravity upon which the judgment of the country has not been sufficiently ascertained."

What does this amount to? It means that those who passed the Parliament Act were so determined to establish the rule of a single chamber that they would make no exception even in cases of greatest magnitude, where a rash change might effect the most extensive damage. But it should be particularly observed that their careful defence of the single-chamber system was not a defence against the claims of a second chamber, but, literally, a defence against the pos-

sible disapproval of the country. For the effect of the Lords' amendments, had they been carried, would not have been to leave the excepted Bills to the absolute veto of a second chamber. No such claim was put forward at that stage of the controversy, except in the one case of the Bill to prolong the existence of a Parliament; no such claim was made even as against a Home Rule Bill, or a Bill of "great gravity." The claim was that an excepted Bill should not become law "until it had been submitted to and approved by the electors in manner to be hereafter provided by Act of Parliament."

If we were to forget the pressure exercised by the Irish on the Government, it would be almost impossible to believe that this alteration of the Parliament Act could be refused. The House of Lords were not asking to be allowed to retain their right of rejection. They were not even asking for it in the most important cases. They were asking only that great and dangerous changes should not be introduced until the electors had expressed an opinion; yet this was refused. A blank refusal was given to the request for even the most slender safeguard for the country against the power of the single chamber; and the country was explicitly refused a voice in any matter whatsoever.

The control of the people over taxation hereby disappeared. In the case of other Bills the right

of delay remained for two years, but the opinion of the country would have no more effect upon such matters than the opinion of the Isle of Wight upon the Emperor of Japan. It would not matter what the second chamber thought; it would not matter what the country thought; nor did it matter what the country came to think in the future, nor how earnestly it thought it. Any Bill would become law, and the only way of preventing it was by armed rebellion. This is the single-chamber system. There is nothing to prevent the single chamber from abolishing even the two years' delay which stands between it and its desires.

It remains only to mention the theory—the political philosophy—which was created to justify this state of affairs. The Government of the day had to discover a plausible principle which they found in the last place anyone would have expected—in the "Will of the People." This theory is that the House of Commons' majority, though it be never so small, must be identical at any and every moment, not merely with a passing feeling in the mind of the nation, but with the nation's considered and permanent judgment. If this be true the people must in 1895 have set their hearts upon Home Rule, Local Veto, payment of Members and Welsh Disestablishment up to the very moment when a most unexpected division in the Commons suddenly put the Government in a

minority. Then the people changed their minds abruptly and voted heartily against everything they had so lately desired, for the new Parliament was strongly Conservative. And there are other instances of changes no less sudden and miraculous. The truth is, of course, that there is no necessary correspondence between the will of an elected assembly and the will of those who elected it a few months or years before. Further, there is no correspondence between the will of an ordinary elector, and that of either of the two or three professional politicians between whom he must choose at the polls. If his true will is to be carried out, it can only be by a system of legislation which ensures moderation, reflection, and a reasonable spirit.

That the will of the people is always a sure index of desirable legislation may be a questionable rule. But there are the gravest reasons for preferring at any moment the judgment of the people as a whole to that of an excited assembly of professional politicians with a majority composed of small bargaining groups. To this end the power of revision and rejection is vested in second chambers, not that the people may be thwarted, but that they may finally decide. And for this reason have political thinkers condemned and avoided the single-chamber system.

CHAPTER IX

THE ABSENCE OF CONSTITUTIONAL SAFEGUARDS

It is possible to ask the question why human societies ever established laws. Often enough the operation of a law seems harsh, and general opinion must often incline to the view that the arbitrary decision of a wise and well-meaning person might have produced better results. But the utility of laws is not so much in their universal and unvarying wisdom, not in any certainty that they will always work well in every case. Their utility is rather in the fact that they do not vary.

Laws of primogeniture do not depend upon a theory that the eldest son is fittest to succeed, but upon the utility of one son being marked from the first as destined to succeed if he should live. The tax of seven-and-sixpence on the owner of a dog is not imposed on any principle of calculated justice, but because a certain revenue is wanted and it is best for every man to know the exact sum which will be asked of him under certain circumstances. The law introduces into life a

regularity and uniformity by which men are enabled to foresee the consequences of their actions and to rely with a measure of certainty on the realisation of their expectations.

It acts also as a check upon self-interest and a safeguard against those disturbances which will occur where men are free to consult their own interests alone. The law of contract, for instance, is a check upon persons whose interests would conflict if all might seek what they could get. The law interposes to tell each one how much he may expect to gain or lose, and thus, in ordinary circumstances, to remove the causes of dispute between men of common honesty.

The law aims at certainty; yet, as conditions change and public feeling develops, the law must be modified. The expectations of a woman with regard to her property on marriage were one thing in 1881, but had become different in 1882. A change of public feeling had required a change in the law, and the legislature had performed its functions by passing an Act to establish the change required. It is because the desirability of occasional change was recognised in Europe that legislatures have been set up.

It is because the change, the alteration of established certainty, the loosing of conflicting interests and ambitions, was best performed when performed with the utmost care and caution, that legislatures have been required to pause upon their

doings; they have been required to read Bills three times, for instance, and to take each clause in committee, and to secure the assent of a second chamber and a sovereign. All this was required lest the certainty and regularity of life should be changed too often or too rashly; lest the ambitions of some people should range too freely, and lest others should lose their sense of security in the established order of things.

Now the greatest weight of opinion all over the world has set up the principle that the most important public affairs should be changed less often and with greater care than such private matters as the rights of a married woman in her property, or the rules of contract, or the tax upon a dog, or other ordinary laws. The wisdom of nations has inclined towards making distinctions between those regions of law in which certainty of conditions is more important and those regions in which it is less important. To take an instance: many continental countries have imparted a special sanctity to the right of free speech and the right of public meeting. They have held the view that these rights were so important, so essential to the well-being of the State, that they should be placed on a different level from laws of less importance; that it should be made especially hard, or morally impossible, for any power in the land to restrict or change them. The British reader will begin to see that here is an idea unknown to ourselves.

The British "right to free speech" depends on nothing more than the absence of any law (outside its laws of slander, &c.) to prevent a man saying what he likes and when and where he likes to say it. About this there is no special sanctity. It could be changed any day by an Act of Parliament as easily as the dog tax could be raised to eight shillings. But in many continental countries it is not so. The dog tax could there be raised by ordinary legislative process. But the right of free speech could not be curtailed except by a special and elaborate process.

This, then, is the tendency of foreign jurisprudence; it lays some special stress on such laws as it desires to preserve from rash change. It finds some way of making these laws stable and enduring beyond all other laws, and especially difficult to alter. Nowhere has this tendency been so noticeable as in the peculiar emphasis laid by foreign countries on the stability of the laws of their Constitutions.

It is not surprising. If fixity and regularity of laws is to be desired at all, how much the more are they to be desired in respect of those laws on which the stability of all other laws depends. If it is well for men to have confidence in the permanence and certainty of the rules that govern life, the rules which must govern all their calculations, how much the more necessary is it for them to trust the stability of the power that can

change laws at will by legislation or by biassed administration. No sooner has a country entered on a period of social or political disquiet, such a period as must visit every country now and then, and there is no security for law, no hope of stability, except what is derived from the governing powers. If the governing power is stable, there is hope. If the governing power is liable to change with the shock of every change in the direction of the storm outside, there is an end of all security whatsoever. Therefore, to ensure the stability of the governing power a mantle of sanctity has been thrown round the laws of Constitutions, and it has been provided that they shall be difficult and slow to change even when general opinion regards a change with favour.

Let us first consider the case of a country that has given to its Constitution a certain amount of special stability, though only a small amount. The two chambers of the French legislature can make or repeal ordinary laws in the same manner as the English Parliament. But when it is a question of an alteration of the Constitution, a special process is required. The Laws of the French Constitution are to be found written in documents of special sanctity which were drawn up in 1871 and 1875, and these, by ordinary process of legislation, are impossible to change. They cannot lawfully be changed any more than the directors of one of our railways could change the Acts of Parliament

under which that railway was built and is worked. The directors may make bye-laws. They may, within the authority conferred by the Acts of Parliament, change, repeal, or create any bye-laws that they like, as the French legislature may change, repeal, or create any ordinary law. But if the directors wish to change their Acts of Parliament, which are, we may say, their Constitution, then they must go through the special process of an application to Parliament. And the French legislature, if it wishes to change the Constitutional laws of France, must go through a special process too.

"The chambers shall have the right," says the French Constitution, "by separate resolutions taken in each chamber by a majority of votes, whether of their own accord or at the request of the President of the Republic, to declare that there is need of a revision of the Constitutional laws. After each of the two chambers shall have adopted this resolution, they shall meet in a joint sitting as a National Assembly to undertake the revision. The decision causing a revision of the Constitutional laws, in whole or in part, shall be taken by the absolute majority of the members of the National Assembly."

Now this is a case in which some care has been taken to safeguard the laws of the Constitution from change. But it is, as compared with others, a weak case. It is easy to imagine circumstances

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Peculiar safeguard! Two chamb for ordinary legislation one chamber

in which the change of the French Constitution might be effected rashly and hurriedly in the heat of the moment. Yet it shows that those who framed that Constitution were at any rate aware of that need for Constitutional stability which political thinkers in foreign lands have had so constantly in their minds.

Let us now consider a case where the precautions are rather stronger. The Constitution of Belgium is closely modelled on that of England. It is a written Constitution, but it is the result of a careful study of British laws and customs. Yet once the framers of the Constitution had arrived at a conclusion which they thought satisfactory, they proceeded to take care that their stability should be guarded. The two chambers of the Belgian legislature, as in France, can deal with ordinary laws as they please. But when they desire to alter the Constitution they must do as follows: Each chamber must declare that there is reason for changing a particular provision of the Constitution. Having declared this, the legislature is automatically dissolved. New elections are held, and the legislature thus elected has power to change that part of the Constitution which the late legislature declared to stand in need of change. Thus it is ensured that the Constitution should have at least the buttress of the people's will. It cannot be changed without the knowledge and express consent of the electorate.

In the Commonwealth of Australia there is a written Constitution, as in France and Belgium. Its stability is guarded yet more carefully. Every proposed law for the alteration of the Constitution must be passed by an absolute majority of each House of Parliament, and must then, after an interval of not less than two and not more than six months, be submitted in the form of a referendum to the electors in each of the six States of the Commonwealth. If it is to become law, it must be approved by a majority of the States, and also by a majority of the electors in the Commonwealth as a whole.

The stability of the Constitution of the United States is guaranteed by provisions even more strict. The fifth article of that famous document declares as follows: "The Congress (Parliament) whenever *two-thirds* of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of two-thirds of the legislatures 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 this 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."

It must be admitted that the case of Federal States such as Australia and America is excep-

tional. They have, as the reader has seen, provided elaborate methods of preserving the stability of their Constitutions, and they had exceptional need to do so. Their Constitutions were a sort of bargain between sovereign States, each jealous of its liberties, fearful for its future, and in dread of the power of the formidable central authority which was about to be set up. So it was necessary to take particular care that the bargain contained in the Constitution, the bargain by which each State was sacrificing a portion of its independence, should never be broken or varied without the largest measure of general agreement. Let us now glance at a case in which there were no such special reasons. Let us see how the stability of the Constitution is valued in the single State of New York.

"Any amendment or amendments to this Constitution," says the thirteenth article of the Constitution of New York, "may be proposed to the Senate and Assembly (the two Houses of Parliament), and, if the same be agreed to by a majority of the members elected to each of the two Houses (note, not merely a majority of those who may happen to vote), such amendment or amendments shall be entered on their journals with the Yeas and Nays taken thereon and referred to the legislature to be chosen at the next General Election, and shall be published for three months previous to the time of making such

choice; and if, in the legislature so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House there"—(we might suppose that the change would become law, but it is not so)—"then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of this Constitution."

Comment is not needed. But it should be observed that the State of New York is no exception in the extraordinary precautions it takes against rash or hurried changes of its Constitution. Such precautions are the general rule in the States of the Union; and, in some cases, they are even more complete than in New York.

Before we consider the amazing difference between British and foreign nations in respect of constitutional stability, it will be well to read some remarks made by Sir Henry Maine shortly after the constitutional crisis of 1884. In that year the House of Commons passed a Bill for the extension of the suffrage, and the House of Lords refused to pass it until the Commons should send up also a Bill for the redistribution of constituencies. Hence

arose a sharp conflict between the Houses, and Sir Henry Maine comments upon it, after having described some of the safeguards provided for the stability of Constitutions in America. He says:—

"Such are the securities against surprise and haste, in conducting the most important part of legislation, which American political sagacity has devised. They may well suggest to the English politician some serious reflections. What was most remarkable in the discussions of twelve months since was far less the violent and inflammatory language in which it was carried on than the extreme vagueness of the considerations on which it has turned. The House of Lords, for instance, was threatened with extinction or mutilation for a certain offence. Yet, when the offence is examined, it appears to have consisted in the violation of some rule, or understanding, never expressed in writing, at variance with strict law, and not perhaps construed in precisely the same way by any two thinking men in the country. Political history shows that men have at all times quarrelled more fiercely about phrases and formulas than even about material interests, and it would seem that the discussion of British constitutional legislation is distinguished from all other discussion by having no fixed points to turn upon and therefore by irrational violence."

Here is Sir Henry Maine offering a double

argument for fixity and certainty in the most important of all laws. In the first place, he pleads for some special safeguard against the "surprising and hasty" alteration of a constitution; in the second place, he pleads for definite and intelligible constitutional laws. He desires all men to know for certain under what laws they are living, and to feel secure against the risk of these laws being lightly changed.

Sir Henry Maine's advice has been followed, for the most part, by our admirers and imitators. In Europe, in America, and in the British Dominions the general practice has been to give extreme precision to constitutional laws, and to make their alteration depend on a process more solemn and prolonged than is the case with ordinary laws. But in England we remain without definite safeguards in our Constitution. The gravest of our constitutional laws can be altered as easily as the dog tax, while much of the Constitution is so uncertain and indefinite that there is the strongest temptation for politicians to change it at any moment of political excitement, or to force a new interpretation upon it, and to excite passion by a mere difference of opinion as to what is constitutional and what is not.

Early in the reign of Queen Victoria, Lord Palmerston, the Prime Minister, desired to bring a new element into the House of Lords. He had taken up the notion of a nominated second

chamber, to some extent, and he wished to introduce into the House of Lords an element of peers nominated for life. To this end he caused a writ of summons to the House of Lords to be addressed to a judge, Sir James Parke, together with letters patent creating him a peer for life. It was at once asserted that this action was illegal, and that Sir James Parke could not take his seat in the House of Lords. The question was whether the Crown could lawfully give a seat in the House of Lords to a peer who was only a peer for life. No one knew. Prolonged litigation followed, and considerable excitement was aroused. "The right of the Crown to create a life peerage by patent was practically undisputed," says Sir William Anson, "but it was admitted that for four hundred years there had been no instance of a commoner being sent, under a peerage for life, to sit and vote in the House of Lords, and it was contended that even before that time no such instance had been satisfactorily established."

Four hundred years! Upon a question that was arousing sharp political excitement it was necessary for learned judges to hunt the records of four hundred years and more in order to discover the lawful method of constituting our second chamber. To mark the difference between English and foreign practice in such matters, it is only necessary to read the words of the American Constitution, which lays down that: "The Senate of the

United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years."

The case of Sir James Parke was not, as it seems now, a matter of first-rate importance. It illustrates the constantly recurring indefiniteness of British constitutional law. We will now turn to an event of much greater moment, which illustrates not the indefiniteness of the Constitution, but its instability. It has occasionally happened that Parliament has attempted to throw a peculiar sanctity over some very important Act. This was done at the time of the Act of Union with Scotland. It was desired that the utmost measure of security should be accorded to the Scottish Established Church, among other things, so that Scotsmen joining the Union might feel assured that under no circumstances whatever would their Church be tampered with by the new Parliament of the Union of Great Britain. So the language of the Act of Union did all that language could do to ensure that the Scottish Church should stand for ever. It was enacted that every sovereign on his accession should swear an oath to maintain the Scottish Church inviolate. Here we see English lawyers and Parliaments straining and striving to establish "a constitutional law," such as those words mean on the Continent or in America, a law that can never be broken. They had some idea that the sovereign's oath would prevent his

ever being able to assent to a Bill directed against the Church he had sworn to defend. Exactly the same was done in 1800, when Great Britain and Ireland were joined together as the United Kingdom, and the English and Irish Churches were joined as the United Church of England and Ireland. The most emphatic language in the Act of Parliament declared the everlasting inviolability of this United Church. Each sovereign was to swear a solemn oath, on his accession, to preserve it. Everything was done which English ingenuity could devise to protect the United Church by a law which should never be broken. But in 1869 it was broken without the slightest difficulty by an ordinary Act of Parliament, and the Church in Ireland was disestablished and disendowed.

Suppose that the Irish Church had been guaranteed, not by a solemn Act of Parliament and a Royal oath, but by a clause in the Constitution of the United States. Then the Act of disestablishment and disendowment might indeed have passed through the American Congress; every member might have voted for it, and the President might have given it his assent. But the moment that anyone attempted to put the Act into force, the moment that a finger was laid upon the property of the Irish Church, that Church would have sought and obtained the protection of the Law Courts. The Courts would have pronounced the Act of Congress to be unconstitutional, and imme-

diately the Act would have become so much waste paper. There could be no better instance of the value of safeguards. What the American Constitution has safeguarded is safe against all comers, against the President, against the Congress, against the States, and against the Union, until with the assent of an overwhelming majority of the American people the Constitution itself, in the most deliberate, solemn, and conspicuous way, has been amended. What is safeguarded by the British Parliament, however solemnly, and by the oath of the British Sovereign, could be upset by a casual majority of the two Houses before 1911, and can now be upset by a casual majority of the single chamber.

Under our own Constitution there is a complete absence of any safeguard for anything, even for the Constitution itself, and the only rule that cannot be altered is the rule that Parliament can alter everything. With every year that intensifies the bitterness of feeling in politics, with every year that develops the art of co-operation among small sections in the House of Commons to force the particular desires of each section on the nation as a whole, the danger of the absence of safeguards must grow more acute. Since all is at the mercy of Parliament, it is clear that danger must vary in exact proportion with the amount of confidence that can be placed in Parliament itself. More obvious than anything is the increased gravity

which the danger has assumed since the Parliament Act gave to a single chamber of Parliament all the powers hitherto exercised only when two chambers agreed.

It may not be much that the Parliament Act has left to the authority of the second chamber; it is the power to delay legislation for two years. Were such a provision inserted in a Constitution like that of the United States, there would arise at any rate a confident certainty that no rash change could ever be introduced without a period in which the nation could at least plead with the single chamber against its own decision. But the provision is in fact no part of such a Constitution as that of the United States. It is a mere law of to-day, to be varied or abolished whenever the single chamber chooses to exercise its powers. There is no security about it. It has no more or less sanctity than the existing rate of the dog tax.

If we are to preserve our system of Parliamentary omnipotence, and if at the same time we are to have any security for the existence of our institutions as we know them, and if we are to be able to face troubled times with any confidence in our power to survive them as a national unit, the only hope lies in maintaining a strong second chamber within the omnipotent Parliament itself. In old times a revolutionary change in England required the concurrence of two Houses of Parliament and

of a sovereign who by no means always assented. In this there were safeguards. Later, a revolutionary change required the concurrence of the elected and the hereditary chambers. Here, also, there was a safeguard whose value was shown at least at the time of the second Home Rule Bill.

At present a revolutionary change requires no more than the concurrence of a bare majority of a single chamber whenever they can be cajoled or excited into holding together for a period of two years. Nor does this represent only the shrinking of three safeguards into one. Not one of the three parts of the old legislature ever willingly assented to a shrinkage of its own power or an increase in the power of the others. The legislature as a whole was self-checking. As in a watch, the main-spring neutralised the inertness of the hair-spring and the hair-spring neutralised the explosiveness of the main-spring. There was little probability of the organism as a whole ever doing a wild action, or even going utterly to sleep. But now the very conception of checking is lost. There is a single chamber with no rival to fear, and open to all the temptations that have beset every despot since the days when David numbered the children of Israel. It is a change from a legislature that was automatically moderate to a legislature which is inevitably rash, headstrong, and proud.

As if to give a foretaste of its future, the House

of Commons in 1911, when on the eve of becoming a single chamber, refused to consent to the provision of a checking process even in the most supremely important matters. It was proposed that some of the powers of a second chamber should be left to the House of Lords in case of a Bill to affect the existence of the Crown or the Protestant Succession, or to set up National Parliaments within the United Kingdom, or to do something of great gravity on which the people's will had not been ascertained. It was proposed that in such cases, as a safeguard, a reference to the electorate should precede the passing of the single chamber Bills into law. But it was not permitted. Even this safeguard, so limited in scope, was refused by the House of Commons when it saw its single chamber powers just coming into its hands.

CHAPTER X

THE REFERENDUM

THOSE who laid the foundations of representative government in England acted on the principle that what concerned all should be approved by all. The same principle, whether conceded by a government or extorted by a people, has been the inspiration of every attempt at representative government in the world. And yet it has a weakness. The seeds of failure lie in the words themselves, for that which concerns all is in fact approved only by a majority. Again, a country has to think itself happy if its majority is fairly represented. The other chapters of this book have dealt so largely with instances of the divergence between representative chambers and the people they represent, with the manifest failure of representative government at some of the most important crises, that it will not be necessary to enter again upon details.

It will be sufficient to say that experience has shown how easily the decision of a representative chamber may be the opposite of that which would

have been pronounced by the majority of the electorate for which the chamber speaks. For proof of this assertion we need only look to the fact that country after country has set itself to find some novel plan by which the failures of the representative system may be corrected. Again and again it has become necessary for statesmen to adopt, or at least to consider, the system of the Referendum or poll of the people.

Liberal writers and speakers in England have been under the necessity, for party purposes, of representing the Referendum as a great evil. One of the charges brought against it has been its alleged complicatedness; it has been held up as something so obscure and difficult that no good honest democratic Englishman could ever be expected to understand it. British intelligence was not expected to be equal to the effort of grasping the meaning of what the Swiss and Americans and Australians have understood with the greatest ease; nor did Liberal speakers condole with English voters on this intellectual inferiority, but praised it loudly.

In point of fact, the Referendum is the simplest device ever adopted by democracy. It is an idea more easy to grasp than the idea of representative government. It would be more easy to explain to a child what the Referendum was than to get him to understand the significance of the return of a member to the House of Commons. This is not

wonderful, for the Referendum originated among a people whose system of government is more simple and direct than any other in the world.

In some of the cantons, or states, which form the federation of Switzerland, it was the custom for the whole adult male population to assemble and act as their own Parliament. The arrangement, obviously, was only possible in a canton of small area; but, where the limits of time and space permit such a gathering, it is clear that the last word of democracy is being spoken. There could be no more thorough example of democratic government, and there could certainly be none more simple. The people are directly and immediately deciding upon all questions that arise.

It is easy to see how this system became impracticable with the growth of population and the increased complexity of life. The necessities of more convenience forced the Swiss cantons to adopt the representative system and get their legislation done by a Parliament after the manner of the larger countries. Yet the recollection of the older systems remained. It could not fail to influence the minds of the electors strongly on every occasion when the Parliament was not in close accord with popular sentiment. The desire for the older and simpler form of democracy increased under the working of the representative system, and, in 1831, a bold but very obvious step was taken in the single canton of St. Gallen. The

older system was reproduced in a form suited to modern conditions. The general assembly of the people was revived in the form of written instead of verbal voting.

This was and is the Referendum. It certainly presented no difficulties to the minds of those Swiss citizens who had knowledge of democratic government by assemblies of the whole people. In the assembly a proposal had been made, a proposal for a new law or for the repeal or amendment of an old law, and the decision was given by the voices of those present. In the Referendum the proposal was made, communicated to the voters by writing instead of by a speech, and the vote of each man was given in writing instead of by shouting or showing hands. Even in England we are not unfamiliar with the practice of showing hands at a public meeting. We should also be able to imagine that instead of a show of hands in favour of the resolution from the platform every person present might be given a piece of paper on which would be written: "Are you in favour of this resolution?" Each would write "Yes" or "No" on the paper given him. The papers would be collected and counted, and the result would be ascertained. The Referendum is nothing more or less than this.

In England it occasionally happens that a General Election is held in particular reference to a particular legislative proposal. With this we

are familiar. In 1886, after the first Home Rule Bill had been rejected by the House of Commons, Mr. Gladstone dissolved Parliament and appealed to the electors to return a new House of Commons in favour of the Bill, a House that would pass the Bill instead of rejecting it. He clearly and exclusively appealed to the voters on this ground. He "referred," in fact, the Home Rule Bill to the voters. The result was that the voters went to the poll and received voting papers on which were written the names of two persons, of whom one was known to be in favour of the Bill and the other was known to be opposed to it. It remained for the voter to mark his cross against the name of the person whose views he supported, and very well the voter understood what he was doing. He knew that he was voting for or against the Home Rule Bill. Such was the procedure at a General Election.

But is it so difficult to imagine the same results obtained by the other method—the Swiss method of the Referendum? In the same way the voter goes to the poll. In the same way he receives a voting paper. And then begins that which those who are opposed to the Referendum declare to be beyond human comprehension. Instead of finding the names of two persons written on the voting paper, the voters finds these words: "Are you in favour of the Home Rule Bill?" A space is provided on the paper, in which space the voter is

expected to write "Yes" or "No." The following forms put the two methods in a more simple way:—

Voting Paper in a General Election.

JONES, JOHN JOSEPH.	
SMITH, SAMUEL SIMON.	

Voting Paper in a Referendum.

Are you in favour of the Home Rule Bill?	Yes.	
	No.	

It has occasionally happened that a voter on entering the polling booth and receiving his voting paper has been seized with an attack of heart disease and has expired immediately. Whether it is feared that calamities of this sort would become more general when voters who are accustomed to the first of these voting forms are suddenly confronted with the second, must be left for opponents of the scheme to explain. But there can be no other ground for saying that the

Referendum is a thing beneath consideration. It is not difficult to understand. It is not difficult to arrange and organise. And it is quite definite and unmistakable in its results.

Without entering on a general argument for the Referendum it is well to lay stress on one point in which it is sharply distinguished from the present English way of arriving at the opinion of the electorate. In 1886 the General Election turned almost entirely on one issue. The politics of the last six months had rendered it inevitable that voters going to the poll should have hardly any other subject in their minds except the Home Rule Bill, and their decision was undoubtedly a decision on that Bill and on nothing else. But this state of affairs very seldom occurs. It usually happens that the two candidates in any election are supporters of parties that have large and varied programmes. It may be, and possibly it is usual, that each candidate whole-heartedly accepts the whole policy of his party. From their subsequent votes in the House the candidates are entitled to this assumption.

We may allow, for instance, and for the sake of argument, that all Liberal candidates in 1910, with three or four exceptions, were supporters of Home Rule, Welsh Disestablishment, the Single Chamber system, the Land Taxes of 1909, Free Imports, and the system of tenancy small-holdings as against proprietary small-holdings. We can

suppose also that they placed their views fully and unreservedly before the electors, which was not, in fact, the case. They were opposed by Unionists who differed from them in all the particulars mentioned. Now if the decision between each two candidates depended on the votes of electors whose general stock of opinions was always identical with that of one or other of them, the return of either would be an exact representation of the views of the majority at the moment. But the fact is that opinions are not to be classed so easily. A belief in Free Imports does not prove that the believer is also a single-chamber man. With professional politicians, as a general rule, the whole stock of opinions can be guessed from any one; but it is not so with the electors. The deciding factor in the mind of the ordinary citizen is either a traditional attachment to his party or a preference for the measures of one party on the whole, or a strong opinion on some single question among the many that fill the field of politics.

Then comes the theory of the mandate and makes nonsense of all that the electors have done. The Liberal Churchman who votes Conservative because of the Welsh Disestablishment Bill is taken to have given a mandate for Tariff Reform, for proprietary small-holdings, and all the rest of the Conservative programme. Indeed he has actually assisted these causes, for he has sent a man to Parliament who will labour to carry them

into effect. So also the Conservative Free Traders, in the days of their importance, were forced into the position of giving a mandate and a measure of practical help to every item in the programme of the Liberals. Of the two elections of 1910 it was utterly impossible for a man who wished to support the cause of Free Imports to avoid supporting also the attack on the second chamber, on the Church in Wales, and the Union of the Kingdom. However earnestly a man desired to see Home Rule in Ireland without also seeing a Church despoiled and disestablished, he was bound to vote against his own desires on one question or the other. If he voted for Jones he was pronouncing for the spoliation of the Church. If he voted for Smith he was pronouncing against what he thought the just claims of the Irish.

Considerations of this nature have led to many and many a proposal for improving the machinery of representation, most of which, unlike a poll of the people, are extremely hard to understand and apply. In the middle of the last century the philosopher John Stuart Mill, in conjunction with Thomas Hare, propounded a scheme that was to open the gates of a political paradise. Constituencies were to be abolished. Electors were no longer to be limited to a choice between two candidates in their own borough or county, but were to be free to choose whomsoever they might think the truest representative of their particular

variety of opinion. A Conservative Free Trader, for instance, would not have been confined to a choice between a Liberal and a Tariff Reformer. He could have chosen his own representative, and then, by his own vote, and by the votes of nine thousand, nine hundred and ninety-nine others from any part of the country, he could have sent his man to Parliament. There is no doubt that this system, once at work, would end the anomalies of the representative system as we know it. Electors would no longer be forced to vote for much they do not like. But the practical difficulties of working the scheme are terrible to contemplate. The formation of these voluntary constituencies of persons in complete agreement on every subject would require an amount of organisation quite beyond what is possible. The interest of the subject is therefore mostly in the fact that Mr. Mill was aware of the imperfections of the system we now use.

The Referendum is as nearly as possible an absolute cure for misrepresentation. In England it would enable a Liberal elector to vote Liberal because he wished to see a Liberal Government, yet to veto the Welsh Disestablishment Bill because that Bill was not a part of the work he desired the Liberal Government to undertake. Any ordinary combination of opinions could, under a poll of the people, be exactly expressed by every person with a vote.

It is not surprising, therefore, that the adoption of the Referendum, where it has been adopted, has been due in part to a desire to elicit the true will of the electorate on specific questions. For the rest it has been due to the wish for something not less important. It has been adopted as a final safeguard against the dangerous alteration of very important parts of the law of the land, especially against the alteration of Constitutions.

In Switzerland there are two varieties of the Referendum in use. These are known as the Compulsory and the Optional. The effect of the Compulsory Referendum is that all Bills which fall within a certain category—roughly, all Bills of any public importance—must be submitted to a Referendum after their passage through Parliament, and cannot pass into law until a majority of the votes cast in a poll of the people have been cast in their favour. The Optional Referendum is different. Under this system a Bill may become law on passing the Parliament unless a certain number of the electors demand a Referendum upon it. If this demand is made, a Referendum must be held, and the Bill can only pass on obtaining a majority of votes in its favour. Some of the Swiss cantons have adopted the one system, and some the other. In the Swiss Confederation, as a whole, there have been two periods in the history of the Referendum. Between 1848 and 1874 there was a Compulsory Referendum on all changes

in the Federal Constitution. After 1874 another Referendum was added. This was to be applied in the case of all new laws of any sort on the demand of 30,000 electors, or on the demand of eight of the cantons.

It is interesting to note that Conservative opinion in Switzerland was much alarmed by the introduction of the Referendum system, and that the alarm proved peculiarly false. No sooner was this extreme authority granted to the Swiss people than they fell into the habit of using it in a manner the very reverse of revolutionary. If we regard the Swiss electorate as a kind of second chamber, which indeed they are, they are the strongest and most cautious second chamber in the world. The testimony of observers goes to show that the consciousness of influence and authority has worked in the Swiss citizen so as to deepen and widen his interest in politics, while making him intensely cautious.

It may not be without interest to note some of the subjects upon which the Swiss electorate has been asked to pronounce by means of a poll of the people, and the decisions to which it has come. If the list does not appear very startling or sensational, that detracts nothing from the credit due to the stability and regularity of Swiss politics.

In 1875 the Parliament of the Confederation passed a Bill to change the voters' qualifications.

It was rejected on a Referendum by 207,263 votes to 202,583.

In the same year the Parliament passed a Bill to alter the law of marriage. The Bill abolished the cantonal regulations with regard to marriage, and made a civil ceremony of marriage compulsory throughout the Confederation. The voters accepted it by 213,199 votes to 205,669.

In 1876 the Parliament passed a law on the subject of bank notes. This was rejected by 193,253 to 120,068.

In the same year the Parliament passed a Bill fixing the indemnities to be paid to the Confederation by citizens who were dispensed from military service. This was rejected by 184,894 to 156,157.

In 1877 the same Bill was rejected by 181,363 to 170,223.

In 1879 the Parliament passed a Bill granting subsidies for railway construction in the Alps. This was accepted by 278,731 to 115,571.

In 1882 the Parliament, singularly misjudging the popular opinion, passed a Bill that laid down regulations for the prevention of certain epidemics. This was rejected by the large majority of 254,340 to 68,027.

In 1884 four Bills which had been passed by the Parliament were rejected by the people in a a single day. One was ensure the appointment of a new official in the Department of Justice.

Another to appoint a secretary to the Swiss Legation at Washington. Another was to exempt commercial travellers from certain taxes. Another was to remove certain criminal trials from the courts of the cantons to the courts of the Confederation.

Switzerland has pushed the principle of the Referendum to lengths beyond anything that other countries are likely to follow. It should be remembered, however, that in a small country small matters bulk large. It is not likely that any Englishman would advocate the Referendum for the appointment of a legation secretary. But none the less is Switzerland interesting as an instance of the intelligibility and practicability of the Referendum system, and of its potent value as a safeguard against the rash actions of a temporarily irresponsible Legislature.

In one form or another the Referendum has now been adopted by all but one of the States of the American Union.

In Oregon, where the system is well developed, some typical cases are the following. In 1907 the Legislature passed a law requiring the railways to grant free passes to State officials. This was rejected on a Referendum. In 1908, five measures were enacted by the Referendum. One provided for the "recall" or dismissal of public functionaries at popular demand. Another practically transferred the choice of Federal senators from the

Legislature to the electorate. Another introduced a form of proportional representation. Another was the Corrupt Practices Act. Another reformed the Grand Jury system.

The law of Oregon provides that the Government shall print a pamphlet on the occasion of each General Election, which means once in two years. This pamphlet contains the text of every measure passed by the Legislature within the last two years. It is sent at the cost of the Government to every elector fifty-five days before the date of the General Election about to be held. The electors are then supposed to read and consider the Bills. Each one has a title at its head, which is not the title given by the Legislature, but a special descriptive title drafted by the Attorney-General. When the election occurs the voting papers contain not only the names of the candidates for election, but also the special descriptive titles of all the Bills in the pamphlet against which the elector is expected to mark his Yes or No. Thus, while voting for the members of the new Legislature, the elector gives his assent or veto to the measures passed by the Legislature which has expired. Only the measures which survive this test are embodied in the law of the State. Those that do not secure a majority of votes are dropped. As many as thirty-two Bills have thus been referred to the electors of Oregon on a single voting paper.

The Referendum has been adopted in Queensland, in South Australia, and in the Commonwealth of Australia. In Queensland it is used to settle differences between the two Houses of Legislature. These, before the adoption of a poll of the people, were frequent and bitter; but such a reference to the electors has provided a perfect solution. In South Australia the question of denominational teaching in schools, the question that has agitated England for so long, was settled by reference to the electors. In the Commonwealth it has been adopted as a Constitutional safeguard. No change in the Constitution can be effected without recourse to this method of testing the will of the electorate, and there have already been notable instances of the value of the safeguard. One case was in 1911, when the Labour Ministry of the Commonwealth submitted two Constitutional amendments. The first would have transferred from the State Governments to the Commonwealth Government the control of all legislation affecting industry and commerce. The second was a proposal for the nationalisation of monopolies. Both of these were rejected by the electorate, and the numbers of votes cast on the question went to show that an electorate is not less willing to take the trouble of voting at a Referendum than at a General Election.

One generalisation can be made about the use of the Referendum, which is, without doubt, the

last that would have been expected by the Conservatives of the past. This powerful weapon of democracy has never been used in a Socialistic or predatory spirit. Not even in America, where the fight against corruption has excited such dangerous passions, has the newly-forged sword of the people been directed against the security of property. Proposals of that nature have been made, but have been rejected by the electorates. In Australia the doubtful ventures of a Labour Government have been checked. In Switzerland the Conservatism of the electors has been astonishing. The Referendum, therefore, may claim some part of the blessing pronounced by Disraeli upon those who are wise enough to trust the instincts of a people.

APPENDIX I

LEGISLATURES OF THE OVERSEA STATES

AUSTRALIA, COMMONWEALTH OF. — *Second Chamber:* 36 members, 6 for each State, directly elected by the people of each State for six years, one-half retiring every three years.

House of Representatives: 75 members (about), elected for three years. In cases of deadlocks on general legislation and finance a simultaneous dissolution of both Houses, followed by a joint sitting; in cases of disagreements on constitutional alterations, the Referendum.

New South Wales.—*Second Chamber:* 54 members (about), nominated by the Governor for life.

Legislative Assembly: 90 members elected for three years by men and women over 21, with residential qualification. No provision made for removing deadlocks, but the number of the second chamber is unlimited, and the Governor may add members to such extent as he thinks fit.

Victoria.—*Second Chamber:* 34 members elected for six years, half retiring every three years, by electors of both sexes having property, educational, medical, ecclesiastical, naval, or military, qualifications.

Legislative Assembly: 65 members elected for three years by universal suffrage. In case of deadlock the Governor may dissolve both chambers.

Queensland.—*Second Chamber:* Number not limited, usually between 40 and 50 members; in 1911 there were 42, summoned for life by the Governor.

Legislative Assembly: 72 members elected for three years by adult electors having residential qualification. In case of deadlock it is provided that the measure in dispute shall be submitted to a Referendum of the electors.

South Australia.—*Second Chamber:* 18 members elected for six years, 9 members retiring every three years; elected by adult British subjects of either sex having six months' residential, in addition to property, occupation, or official, qualification.

House of Assembly: 40 members elected for three years by electors of 21 having six months' residential qualification, male or female. In cases of deadlock the Governor may dissolve both Houses or he may issue writs for the election of 9 additional members to the second chamber.

Tasmania.—*Second Chamber:* 18 members elected for six years, one-sixth retiring every year, by adults of either sex possessing property, university, professional, or service, qualification.

House of Assembly: 30 members elected for three years by citizens, male or female, having one year's residential qualification. There is no provision made for removing deadlocks.

Western Australia.—*Second Chamber:* 30 members elected for six years, one-third retiring every two

years, by adult British subjects of either sex having a property and six months' residential qualification.

Legislative Assembly: 50 members elected for three years by electors over 21 having six months' residential qualification. Electors for both Houses may be male or female. No provision for removing deadlock.

CANADA, DOMINION OF.—*Second Chamber:* 87 members nominated by Governor-General for life.

House of Commons: 221 members elected by constituencies, voting by ballot, for five years; franchise varies in different provinces. No express provision is made for removing deadlocks, but six new members may be added to the second chamber.

The nine provinces of Canada have each a separate parliament and administration.

Nova Scotia.—*Second Chamber:* 21 members nominated for life by the Lieutenant-Governor.

Legislative Assembly: 38 members. No provision exists for the adjustment of differences between the two chambers.

Quebec.—*Second Chamber:* 24 members appointed for life by the Lieutenant-Governor.

Legislative Assembly: 74 members. No provision exists for the adjustment of differences between the two chambers.

New Brunswick.—*Single Chamber:* 46 members.

Ontario.—*Single Chamber:* 106 members.

Manitoba.—*Single Chamber:* 40 members.

British Columbia.—*Single Chamber:* 38 members.

Prince Edward Island.—*Single Chamber:* 30 members.

Alberta.—*Single Chamber:* 41 members.

Saskatchewan.—*Single Chamber:* 41 members.

Yukon.—*Executive Council:* 10 members elected by the people.

NEWFOUNDLAND.—*Second Chamber:* 20 members (about), appointed by the King, who remain members during his pleasure.

House of Assembly: 36 members. There is no provision for removing deadlocks, but there is no limit to the power of the Crown to add to the members of the second chamber.

NEW ZEALAND, DOMINION OF.—*Second Chamber:* 38 members summoned by the Governor for seven years (excepting those summoned before 1891, who are life members).

House of Representatives: 80 members elected for three years by the people: adult suffrage with residential qualification. There is no provision made for removing deadlocks, and there is no fixed limit to the number of members of the second chamber.

SOUTH AFRICA, UNION OF.—*Second Chamber:* 40 members, for ten years after establishment of Union, 8 nominated by Governor-General and 32 elected in the first instance by the Legislatures of each of the original provinces in joint assembly.

House of Assembly: 121 members elected for five years, electors to possess same qualification as before Act of Union. In case of deadlock, joint sitting of both Houses.

APPENDIX II

LEGISLATURES OF FOREIGN COUNTRIES

ABYSSINIA.—*State Council* consisting of most important *rases*, under whom for administrative purposes are governors of districts and provinces and chiefs of villages. A Council of Ministers has been constituted by the Emperor.

ARGENTINE REPUBLIC.—*Second Chamber:* 30 members, being two representatives from the capital elected by a special body of electors, and two from each province elected by provincial legislatures; one-third retire every third year.

House of Deputies: 120 members elected for four years, one-half retiring every two years.

Constitutional changes must be sanctioned by a Constituent Assembly especially elected for the purpose.

AUSTRIA.—*Second Chamber:* 248 to 268 members, varying according to number of life members; imperial princes; hereditary nobles who are landowners; 10 archbishops; 7 bishops; life members nominated by the Crown for distinguished services; maximum of life members, 170; minimum, 150. If the two Houses are unable to agree a Joint Committee is formed.

Abgeorductenhaus: 516 members elected by citizens over 24; one year's residential qualification.

BELGIUM.—*Second Chamber:* 110 members, who must be 40 years of age, own or occupy real estate valued at £480 per annum or pay £48 a year in direct taxes, elected for eight years, half retiring every four years; 83 by direct election by those electors, being over 30 years of age, who elect the Chamber of Representatives; and 27 by County Councils.

Chamber of Representatives: 166 members elected for four years, half retiring every two years; elected by citizens over 25 holding a year's residential qualification; supplementary votes given to citizens for property or educational special qualifications; no person to possess more than three votes; proportional representation for both chambers. Deadlocks evaded by the re-election every four years of one-half of the Senate and the possibility of a parliamentary dissolution.

BOLIVIA.—*Second Chamber:* 16 members, 2 for each Department, elected for six years, one-third retiring every two years.

Chamber of Deputies: 75 members elected for four years, one-half retiring every two years. Both chambers elected by direct vote of all who can read and write.

BRAZIL —*Second Chamber:* 63 members elected for nine years, one-third retiring every third year; three from each State elected by direct vote.

Chamber of Deputies: 212 members elected by direct vote, under universal suffrage, for three years.

BULGARIA.—*National Assembly:* 215 members elected

by universal manhood suffrage for four years. (Single chamber.)

Questions concerning the acquisition or cession of territory, constitutional changes, vacancy on the throne, or appointment of a regent, have to be decided by a Grand Sobranje elected for the special purpose.

CHILE.—*Second Chamber:* 37 members elected for six years by provinces, in proportion of one Senator to three Deputies.

Chamber of Deputies: 108 members elected for three years; proportional representation. Both bodies elected by same electors, who must be 21, and able to read and write.

CHINA.—Not completed since Revolution of 1911.

COLOMBIA.—*Second Chamber:* 35 members indirectly elected by electors specially chosen for the purpose; elected for four years.

House of Representatives: 92 members elected by people for four years; proportional representation.

COSTA RICA.—*Chamber of Representatives:* 43 members, being one representative to every 8000 inhabitants chosen in electoral assemblies, members of which are returned by suffrage of all able to support themselves. Elected for four years, half retiring every two years. (Single chamber.)

CRETE.—*Bulé:* 65 members elected for three years in proportion of one to every 5000 inhabitants. (Single chamber.)

CUBA.—*Second Chamber:* 24 members, four for each province.

House of Representatives: 83 members; proportional representation.

DENMARK.—*Second Chamber:* 66 members, 12 nominated by Crown for life; 54 elected for eight years by electoral bodies composed partly of largest tax-payers in country districts, partly of largest tax-payers in cities, and partly of deputies from the totality of citizens possessing the franchise, half retiring every four years. In the event of deadlocks a joint-committee is formed, the report of which is decided upon in each chamber separately; no finality is therefore ensured.

Folketing: 114 members, elected for three years by direct election; electors over 30 with one year's residential qualification.

ECUADOR.—*Second Chamber:* 32 members elected for four years, two for each province.

Chamber of Deputies: 48 members elected for two years; proportional representation. Both chambers elected by adults who can read and write.

FRANCE.—*Second Chamber:* 300 members, elected for nine years by an electoral college composed of delegates chosen by municipal council of each commune in proportion to population; of parliamentary deputies; and of departmental and district councillors. One-third retire every three years.

Chamber of Deputies: 597 members elected by universal suffrage. In cases of deadlock provision is made for appointment of a joint-committee to confer; for constitutional revisions each chamber separately declares the necessity, and both then meet as a National Assembly. When deadlock is absolute, second chamber cannot be dissolved, and appeal to

country can only be if second chamber consents to dissolution of Chamber of Deputies.

GERMAN EMPIRE.—*Second Chamber:* 61 members appointed by the Governments of the individual States for each Session.

The Reichstag: 397 members elected by universal suffrage and ballot for five years.

All laws for the Empire must receive the votes of an absolute majority of the Bundesrath and the Reichstag.

Bavaria (German State).—*Second Chamber:* 80 members (about); royal princes; nobles owning manorial estates; hereditary and life members nominated by the Crown; 4 ecclesiastical representatives. Life members not to exceed one-third of whole. Disputed matters sent backwards and forwards until disposed of.

Kammer der Abgeorducten: 163 members elected by men over 25; one year's residential qualification.

Prussia (German State).—*Second Chamber:* 365 members (about), but number unlimited; royal princes; hereditary members; life members nominated by Crown; civic, ecclesiastical, and territorial representatives.

Abgeorductenhaus: 443 members, elected by indirect electors of three classes according to amount paid in taxes. No provision for deadlocks.

Saxony, Kingdom of (German State).—*Second Chamber:* 46 members; royal princes; hereditary members; members nominated for life by the Crown; members elected for life by owners of nobiliar estates; official and ecclesiastical members and representatives.

Lower Chamber: 91 members, elected by citizens over 25 with small property qualification; supplementary votes given to citizens with special qualifications—age, property, or education. In case of deadlock matter referred to deputations of both chambers for consideration only.

Würtemburg (German State).—*Second Chamber:* 50 members (about); royal princes; hereditary nobles owning landed estates; life members nominated by the Crown; representatives of the lower nobility; elected representatives of industrial interests; ecclesiastical and educational representatives. Budget disputes settled by the majority of votes in both chambers when added together; if votes equal, president of lower chamber has casting vote.

Lower Chamber: 93 members.

Baden (German State).—*Second Chamber:* 40 members (about); princes of the ducal house; hereditary, ecclesiastical, and official members; members elected by landed nobility; educational and industrial representatives; and members nominated by Grand Duke.

Lower Chamber: 73 members elected for four years by citizens over 25. In case of Budget disputes votes cast in both chambers for and against added together. Constitutional changes dependent on majority of votes of both chambers.

Hesse Darmstadt (German State).—*Second Chamber:* 34 members (about); princes of the ducal house; hereditary members; life members nominated by the Grand Duke; and ecclesiastical and official members.

Lower Chamber: 58 members, elected by electors over 25 years of age paying direct taxes for six years; half retire every three years. Alterations and additions to the Constitution must have consent of both chambers.

Oldenburg (German State).—*Landtag:* 45 members elected for five years by the votes of tax-paying citizens. (Single chamber.)

Saxony (German State).—*Single Chamber;* 33 members, 10 chosen by landowners and others, with income of £150 per annum or more, 5 representing education and principal industries, and 23 by other inhabitants. All citizens over 25 have votes.

Anhalt (German State).—*Diet:* 36 members, 2 nominated by the reigning Duke, 8 representatives of landholders who pay highest taxes, 2 representatives of the mercantile and industrial classes, 14 representatives of towns, and 10 of the rural districts, the representatives being elected by indirect vote for six years. (Single chamber.)

Brunswick (German State).—*Single Chamber;* 48 members, 15 elected by towns, 15 by rural districts, 2 by Protestant clergy, 4 by landlords, 3 by industrial classes, 4 by scientific professions, and 5 by those highest taxed for income. Chamber meets every two years.

Saxe-Altenburg (German State).—*Single Chamber:* 32 members elected for three years, 9 chosen by highest taxed inhabitants, 11 by inhabitants of towns, and 12 by inhabitants of rural districts.

Saxe-Coburg & Gotha (German State).—*Single Chamber:* Coburg Chamber consists of 11, and Gotha

Chamber of 19 members, for common affairs. Chambers meet in common. Elected by indirect voting of every citizen over 25 years of age paying direct taxes. Elections every four years.

Saxe-Meiningen (German State).—*Single Chamber:* 24 members; 4 elected by payers of highest land and property tax, 4 by those paying income tax on £150 or more, 16 by all other inhabitants: elections every six years.

Lippe (German State).—*Diet:* 21 members elected in 3 divisions determined by scale of rates.

Schaumburg-Lippe (German State).—*Single Chamber:* 15 members, 2 appointed by the reigning Prince, 3 nominated by nobility, clergy, &c., rest elected by the people.

Schwarzburg-Rudolstadt (German State).—*Single Chamber:* 16 members, 4 elected by highest assessed inhabitants, rest elected by the people, all elected for three years.

Schwarzburg-Sondershausen (German State).—*Single Chamber:* 18 members, 6 appointed by the ruling Prince, 6 elected by certain highly taxed landowners and others, and 6 elected by people.

Bremen (German State).—*Second Chamber:* 16 members elected by itself and the Convent.

Convent: 150 members elected for six years by the votes of all the citizens, divided into classes.

Hamburg (German State).—*Second Chamber:* 18 members elected for life by the House of Burgesses.

House of Burgesses: 160 members, 80 of whom are elected by ballot by all tax-paying citizens, 40 chosen by ballot by house-property owners, and 40

by legislators, ex-legislators, and others. Elected for six years, half retiring every three years.

Lübeck (German State).—*Second Chamber:* 14 members elected for life.

Burgerschaft: 120 members chosen by all the citizens.

Alsace-Lorraine (German State).—*Second Chamber:* 40 members (about); ecclesiastical, legal, educational, civic, industrial, and agricultural representatives number 23, and a number nominated by the Emperor not to exceed this; elected for five years.

Lower Chamber: 60 members elected on general direct suffrage, by ballot, for five years.

GREECE.—*Council of State*, re-established in 1911 as a substitute for a second chamber.

Bulé: 173 members elected by manhood suffrage, for four years.

GUATEMALA.—*Second Chamber:* 13 members, forming a Council of State, partly elected by the National Assembly, and partly nominated by the President of the Republic.

National Assembly: 100 members (about), elected by universal suffrage for four years.

HAITI.—*Second Chamber:* 39 members elected for six years, one-third retiring every two years, by Chamber of Communes from list compiled partly by the President and partly by the electors.

Chamber of the Communes: 99 members elected for three years by direct popular vote.

HONDURAS.—*Chamber of Deputies:* 42 members elected for four years by direct popular vote. (Single chamber.)

HUNGARY.—*Second Chamber:* 384 members (about); hereditary members; life members; official and legal members; ecclesiastical members; and 3 members representing Croatia-Slavonia.

House of Representatives: 453 members elected by male citizens of 20 years of age who are direct taxpayers or have professional or educational qualifications.

ITALY.—*Second Chamber:* 380 members (about), but number unlimited; nominated, out of twenty-one different categories, by the King on the proposition of his Ministers.

Chamber of Deputies: 508 members elected by citizens over 21 having educational, property, taxable, occupational, or military service qualification. Bills in dispute passed backward and forward until agreement reached; no provision made for a definite settlement.

JAPAN.—*Second Chamber:* Males of the Imperial family, hereditary members, members of the nobility, elected by their respective orders, members nominated by the Emperor for services to the State or erudition, or as representing land, industry, or trade; membership, when not for life, for seven years.

House of Representatives: 379 members, elected by ballot by citizens of not less than 25, possessing one year's residential and small property qualifications.

LIBERIA.—*Second Chamber* elected for six years.

House of Representatives for four years. Electors must be of negro blood and owners of land.

LIECHTENSTEIN.—*Single Chamber:* 15 members appointed

for four years, 3 by the reigning Prince, 12 by indirect vote.

LUXEMBURG.—*Single Chamber of Deputies:* 53 members elected directly by cantons for six years, half retiring every three years.

MEXICO.—*Second Chamber:* 56 members elected for two years.

House of Representatives: 233 members elected for two years. Both chambers elected by votes of all respectable male resident adults of 25 years of age.

MONACO.—*National Council:* 21 members elected by universal suffrage and *scrutin de liste* for four years.

MONTENEGRO.—*Single Chamber:* 74 members, 62 elected by universal suffrage for four years, 12 *ex officio*, ecclesiastical, official, and military members.

NETHERLANDS.—*Second Chamber:* 50 members, by indirect election by Provincial States for nine years, one-third retiring every third year.

Lower Chamber: 100 members, elected by male citizens not under 25 having small property qualification. Sovereign may dissolve both chambers.

NICARAGUA.—*Single Chamber:* 36 members elected for six years by universal suffrage.

NORWAY.—*Second Chamber:* 30 members, elected by and from the lower chamber.

Lower Chamber: 123 members elected by male and female citizens over 25 with small property qualification. In case of disagreement, joint sitting; a two-thirds majority then necessary to enable Bills to become law.

PANAMA.—*Single Chamber of Deputies:* 32 members, meeting biennially.

PARAGUAY.—*Second Chamber:* 60 members (about).

Chamber of Deputies: 120 members (about). Both chambers elected directly by the people.

PERU.—*Second Chamber:* 62 members.

House of Representatives: 116 members. Members of both chambers are elected by direct vote; one-third of the members of each chamber retire every two years.

PORTUGAL.—*Second Chamber:* 71 members elected by municipal councils for three years, half retiring every three years.

National Council: 164 members elected by direct suffrage for three years.

ROUMANIA.—*Second Chamber:* 120 members elected for eight years by two colleges of electors, the first comprising citizens in receipt of £80 per annum or more, and the second of those in receipt of from £32 to £80 per annum.

Chamber of Deputies: 183 members elected for four years by three colleges of electors possessing different franchise qualifications.

RUSSIA.—*Second Chamber:* Equal number of elected members and members nominated by the Emperor; elected members sit for nine years, one-third retiring every three years.

Duma: Members elected indirectly by electoral bodies of chief towns of governments or provinces and of greatest cities, composed of delegates chosen by district or town elective assembly. Members elected for five years.

SALVADOR.—*Single Congress of Deputies:* 42 members elected for one year by universal suffrage.

SANTO DOMINGO.—*Second Chamber:* 12 members.

Chamber of Deputies: 24 members. Members of both chambers chosen by indirect selection for four years.

SERVIA.—*Single Chamber:* 160 members elected for four years by male citizens over 21, with small property qualification.

SIAM.—*Legislative Council:* 40 members, nominated by the King. (Single Chamber.)

SPAIN.—*Second Chamber:* 360 members; royal princes; hereditary members; members nominated for life by the Crown; members elected by the communal and provincial States, Church, universities, academies, &c., and by largest taxpayers; non-elected members not to exceed elected members. When lower chamber dissolves, elective portion of upper chamber dissolves.

Chamber of Deputies: 406 members, elected under system of compulsory voting by male electors over 25. Joint-committee confers and reports on a disputed Bill; if the report is accepted by both Houses the Bill is held to be passed.

SWEDEN.—*Second Chamber:* 150 members elected by the provincial and municipal councils for six years. Proportional representation.

Lower Chamber: 230 members elected for three years by citizens over 24. Proportional representation. Financial questions in dispute settled in joint session.

SWITZERLAND.—*Second Chamber:* 44 members elected by cantons, two members for each canton.

National Council: 167 members elected by citizens over 21. Joint-committee confers and reports, but consent of both chambers is indispensable for the passing of a measure.

UNITED STATES OF AMERICA.—*Upper Chamber:* 92 members elected for six years by State legislatures, each State electing two members; one-third renewed every two years. The biennial renewal coincides with the meeting of a newly-elected House of Representatives.

House of Representatives: 436 members elected for two years; electoral qualification very complicated owing to the different systems prevailing in different States. Both chambers possess equal legislative powers; differences referred to a joint Conference Committee to report; if disagreement continues, a measure becomes extinct at end of the Congress.

URUGUAY.—*Second Chamber:* 19 members chosen for six years by an electoral college whose members are elected by the people, one-third of the members retire every two years.

Chamber of Representatives: 75 members elected for three years by male adults who can read and write.

VENEZUELA.—*Second Chamber:* 40 members elected for four years.

Chamber of Deputies: Each State by direct election chooses for four years one deputy for every 35,000 inhabitants, and one more for an excess of 15,000.

APPENDIX III

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 the 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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Printed by BALLANTYNE, HANSON & Co.
at Paul's Work, Edinburgh

Colvin 20 Franklin quote U- Delay of Bills.

"The enormously increased legislative business of modern times is on the whole delayed, hampered & interrupted to an extent wholly disproportionate to any benefits derived by a second discussion conducted in a different assembly.

Amos in "Science of Politics