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IN

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ITS ORIGIN, DEVELOPMENT, AND PRACTICAL ^{THE} OPERATION. ~~AND~~ SERVANTS OF I

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BY

SPENCER WALPOLE,

AUTHOR OF "A HISTORY OF ENGLAND FROM 1815."

VOL. II.

LONDON:

SAMPSON LOW, MARSTON & COMPANY

LIMITED,

St. Dunstan's House,

FETTER LANE, FLEET STREET, E. C.

1892.

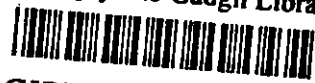
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LONDON:
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PARLIAMENTARY GOVERNMENT

IN

ENGLAND.

PART IV.

THE EXECUTIVE AND PARLIAMENT.

CHAPTER I.

THE FUNCTIONS OF THE CABINET.

THE cabinet council (like the office of premier) is a body unknown to the law and hitherto unrecognized by any Act of Parliament¹—that is to say, it has no corporate character; its decisions as such have no authority; it is merely a meeting of ministers to discuss important business.² Nevertheless, it is now universally recognized as an essential part of our national polity. It is, in the words of Lord Campbell, “in the practical working of the constitution—a separate defined body in whom, under the sovereign, the executive government of the country is vested,” and “without whom the monarchy could not now subsist.”³ The leading characteristics of the cabinet council are thus described by Lord Macaulay, whose personal experience as a politician and statesman gives peculiar emphasis to his words:

The cabinet council is unknown to the law.

¹ Hallam, *Const. Hist.* v. 3, p. 253; Macaulay, *Hist. of Eng.* v. 1, p. 211; see observations of C. J. Fox, and of Mr. Addington, in *Parl. Deb.* v. 1, pp. 508-514; *Hans. D.* v. 196, pp. 1177, 1193.

² Sir G. C. Lewis's *Letters*, p. 429.

³ Campbell, *Lives of the Chief Justices*, v. 3, pp. 187, 188.

“The ministry is, in fact, a committee of leading members of the two Houses. But this definition is partial and misleading. To consider her Majesty’s ministers as a mere committee of parliament is to overlook the important fact that they also represent the executive power of the crown and of the nation.¹ It is nominated by the crown, but it consists exclusively of statesmen whose opinions on the pressing questions of the time agree, in the main, with the opinions of the majority of the House of Commons. Among the members of this committee are distributed the great departments of the administration. Each minister conducts the ordinary business of his own office without reference to his colleagues. But the most important business of every office, and especially such business as is likely to be the subject of discussion in parliament, is brought under the consideration of the whole ministry” (or rather, it should be observed, of that section of the ministry which is known as the cabinet council). “In parliament the ministers are bound to act as one man on all questions relating to the executive government. If one of them dissents from the rest on a question too important to admit of compromise, it is his duty to retire. While the ministers retain the confidence of the parliamentary majority, that majority supports them against opposition and rejects every motion which reflects on them or is likely to embarrass them. If they forfeit that confidence; if the parliamentary majority is dissatisfied with the way in which patronage is distributed, with the way in which the prerogative of mercy is used, with the conduct of foreign affairs, with the conduct of a war, the remedy is simple. It is not necessary that the Commons should take on themselves the business of administration; that they should request the crown to make this man a bishop and that man a judge; to pardon one criminal and to execute another; to negotiate a treaty on a particular basis, or to send an expedition to a particular place. They have merely to declare that they have ceased to trust the ministry, and to ask for a ministry which they can trust.

“It is by means of ministries thus constituted and thus changed that the English government has long been conducted in general conformity with the deliberate sense of the House of Commons, and yet has been wonderfully free from the vices

¹ See *Hans. D.* v. 215, p. 232.

which are characteristic of governments administered by large, tumultuous, and divided assemblies. A few distinguished persons, agreeing in their general opinions, are the confidential advisers at once of the sovereign and of the estates of the realm. In the closet they speak with the authority of men who stand high in the estimation of the representatives of the people. In Parliament they speak with the authority of men versed in great affairs and acquainted with all the secrets of the state. Thus the cabinet has something of the popular character of a representative body, and the representative body has something of the gravity of a cabinet."¹

These eloquent paragraphs present an admirable summary of the present position of the cabinet council in the British constitution. They generalize upon a variety of points which must necessarily receive careful consideration in the remaining sections of this treatise. Meanwhile it should be distinctly understood that while all important questions, which from time to time may occupy the attention of the government, and all plans of action, whether to be carried out by acts of legislation or of administration, are first proposed, considered, and agreed to by the cabinet, it is nevertheless a deliberative body only; and, whatever powers may belong to its members individually by virtue of their respective offices of state, it has no authority to act collectively, except through the instrumentality of the privy council, of which, technically considered, it must still be regarded as a committee.²

And not only is the existence of the cabinet council, as a governing body, unknown to the law, but the very names of the individuals who may comprise the same at any given period are never officially communicated to the public. The *London Gazette* announces that the queen has been pleased to appoint certain privy councillors to fill certain high offices of state, but the fact of their having been called to seats in the cabinet council is not formally promulgated. Until the principle of collective ministerial responsibility was fully established, this circumstance occasioned frequent impediments in the exercise of the inquisitorial powers

¹ Macaulay's *Hist. of Eng.* v. 4, pp. 435, 436; and see Grey on *Parl. Govt.* new ed. p. 23.

² See Rep. Lords Com^o. on Appellate Jurisdiction, *Com. Pap.* 1872, v. 7, p. 193.

of parliament. There was no method of ascertaining upon whom to affix the responsibility of any obnoxious measure, and parliament had no alternative but either to assume that the responsibility rested upon certain individuals holding prominent official rank, or to address the crown to be informed by whom such measures had been advised.¹ It was not until after the year 1800 that regular lists of the ministry for the time being began to be inserted in the *Annual Register*. So recently as the middle of the last century, Lord Mansfield, when chief justice of the Court of King's Bench, had a seat in the cabinet during more than one administration, and the fact was not certainly known to parliament and to the country until several years afterwards.² But it is impossible that such a circumstance could now occur, because of the publicity attending all ministerial changes, and the full recognition of the doctrine of collective ministerial responsibility for every administrative act.

A meeting of the cabinet council is ordinarily held once a week for the purpose of deliberating upon state Meetings of cabinet. affairs; but, when occasion requires, they assemble much oftener. It forms "no part of the duty of government to hold meetings of the cabinet at any stated times, but only according to the necessities of the public service. Any minister may summon a cabinet whenever he pleases and for any object, either connected with his own department or for anything else. But, instead of sending at once, and ordering a messenger to assemble the cabinet, it is usual to apply to the first minister, who then naturally orders the summons, addressed to 'her Majesty's confidential servants,' to be issued."³ During a session of parliament, it is customary for the cabinet to be summoned every Saturday, to discuss the progress of legislation and the current business of the week; but, should the public service require, it is also assembled on other days.⁴ Upon the prorogation of parliament, it has been usual to intermit the meetings of the cabinet until some time in October, or later if necessary, so as to enable ministers to absent themselves

¹ See *Com. Jour.* v. 9, p. 702; v. 10, pp. 298, 300.

² *Parl. Deb.* v. 6, p. 303.

³ H. Reeve, in *Ency. Brit.* 9th ed. v. 4, p. 620.

⁴ Lord Aberdeen, in Report of Sebastopol Com^o. *Com. Pap.* 1854-5, v. 9, pt. 3, p. 294; and see pt. 2, p. 210.

from town, to recruit their strength after the labours of the session.¹

Meetings of the cabinet are usually held at the foreign office, but this is merely for convenience; they may be assembled at the private residence of the premier,² or at any other place where they can be got together.

It is not necessary that any definite number of members should be present to constitute a formal meeting of the cabinet council, as there is no fixed quorum.³ The unavoidable absence of the prime minister himself is no hindrance, providing he is willing to allow the cabinet to confer together without him.⁴

Relations of
prime minister
to the cabinet.

In every cabinet there are a select few who take intimate council together, and on important points determine what the policy of the government shall be before proposing it to their colleagues.⁵ In fact, matters are usually matured and considered in the first instance by a small number of members; and many, especially of those who hold offices with heavy departmental work, are not at first consulted as to measures about to be proposed to the cabinet. When the particular question has been suitably matured, a full cabinet council is convened to decide upon it.⁶

"Inner
council" in the
cabinet.

In any case of emergency, requiring immediate action, the prime minister would not scruple to assume the responsibility of exercising the supreme authority which belongs to his office, availing himself merely of such advice or assistance as might be within reach.

Duty of prime
minister in
cases of
emergency.

The topics to be discussed in council on any particular occasion are seldom known beforehand. Ministers are generally aware of the questions under the consideration of government, but it is not customary to announce the subject for which a meeting of the cabinet is convened.

¹ Lord Aberdeen, in Report of Sebastopol Com^e. *Com. Pap.* 1854-5, v. 9, pt. 2, p. 209; see *Welling. Desp.* 3rd ser. v. 2, p. 545.

² Peel's *Memoirs*, v. 2, p. 140; *Corresp. Will. IV. with Earl Grey*, v. 1, p. 74; v. 2, p. 226; *Ed. Rev.* v. 133, p. 335.

³ *Com. Pap.* 1854-5, v. 9, pt. 2, p. 209.

⁴ *Corresp. Will. IV. with Earl Grey*, v. 1, p. 352; *Hans. D.* v. 186, pp. 1590-1598.

⁵ *Quar. Rev.* v. 133, p. 325.

⁶ *Welling. Desp.* 3rd ser. v. 4, pp. 564, 573; *Ld. Cranbourne*, sec. for India; *Hans. D.* v. 185, p. 1348; Lord Russell, *Ib.* p. 1638; see Mr. Disraeli, *Ib.* v. 203, p. 1297.

The cabinet lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, to parliament, or to the nation, or the relations of its members to one another, or to their head.¹

Its deliberations are usually confined to matters of general policy, whether domestic or foreign, including such measures as it may be deemed advisable to submit to the consideration of parliament for the welfare and social advancement of the nation. But there are also other subjects that from time to time are brought before it. For example, questions will continually arise which, though not ripe for immediate settlement, nevertheless require careful preliminary investigation. The details of such questions are first examined, either by individual ministers or by a committee of the cabinet, and, when sufficiently prepared for discussion, are then submitted for the consideration of the whole cabinet.²

It has been customary of late years, when any subject of importance has arisen, upon which the head of a great department of state (being a cabinet minister) has been desirous of consulting his colleagues in the government, for a committee of the cabinet to be convened to consider the details of the question, previously to submitting it to the cabinet collectively. The mode of effecting this is for the minister who desires the advice of his colleagues to request the prime minister to appoint a committee to assist him in preparing the statement which should afterwards be made to the cabinet. Every year it is usual for such committees to be appointed on behalf of the war office, the admiralty, the treasury, and other departments of state.³

Questions of general policy frequently originate with particular departments of state, or in conference between two or more ministers when the question is one of mutual concern; but all matters which are of more than departmental importance should come before the cabinet, who are collectively responsible for every act of government.⁴

¹ Mr. Gladstone, in *North Am. Rev.* v. 127, p. 206.

² Rep. Com^o. on Official Sal. *Com. Pap.* 1850, v. 15; Evid. 1397, 1409; Mr. Gladstone, *Hans. D.* v. 203, p. 889.

³ Rep. Com^o. on Education, *Com. Pap.* 1865, v. 6; Evid. 1887-1894.

⁴ Rep. Com^o. on Dipl. Serv. *Com. Pap.* 1870, v. 7; Evid. 2528, 2588, 2770.

All questions of administration that involve either new or important principles, or which are likely to excite discussion in parliament, are brought up for the judgment of the cabinet. For while, in the government of the country, each minister is virtually supreme in his own department up to a certain point (subject, however, to the constitutional control which properly belongs to the prime minister, and to that which is exercised by the treasury, in all cases where the expenditure of public money is concerned), beyond that he must either consult the prime minister, or his colleagues in council beforehand.¹ The responsibility and control heretofore exercised by a particular minister is then absorbed by the cabinet, and each minister is bound, in his own department, to do his utmost to carry out the decisions arrived at by that body.²

Questions
before the
cabinet.

For example, it is the usage for the cabinet to consider what number of men is required for the military and naval service of the year. Their decision is reported to the queen, and then formally declared by the queen in council. It is afterwards communicated by one of the secretaries of state to the commander-in-chief and the board of admiralty. It then becomes the duty of the secretary of state for war and of the first lord of the admiralty to prepare estimates, to be submitted to parliament, for the necessary supplies to carry out the intentions of the government. The manner in which the naval power shall be distributed is also a cabinet question. And, whenever circumstances render it necessary to send troops abroad, the consideration of the measure devolves, in the first instance, upon the cabinet. The number of battalions to be employed in the different colonies is also a matter of general policy, which is determined by the cabinet. And appointments of officers to chief commands, whether naval or military, are generally made with the concurrence of the cabinet.³

Any matters of difference between cabinet ministers and their colleagues, or with subordinate members of the ministry, in regard to their official duties, if not reconcilable by the

¹ Rowlands, *Eng. Const.* 436; Rep. Com^o. on Board of Admiralty, *Com. Pap.* 1861, v. 5, p. 182.

² Mr. Gladstone, *Hans. D.* v. 204, p. 861.

³ *Com. Pap.* 1861, v. 5, p. 49; Rep. on Military Organization, *Com. Pa^s.* 1860, v. 7, pp. 95, 636; Sir G. C. Lewis, in *Hans. D.* v. 169, p. 1281; *Ib.* v. 190, p. 368.

authority of the premier¹—and any question at issue between different departments of state, ought to be submitted to the decision of the cabinet.²

And here it may be remarked, incidentally, that the public disclosure of differences of opinion between two or more departments of government, though sometimes, perhaps, unavoidable, has always a mischievous effect upon the public service. It is obvious that discussion between different departments, upon points of policy or practice, must frequently take place, and ought to be regarded as private and confidential. Once a decision has been arrived at, the whole administration are responsible for it; but meanwhile the disclosure of any actual disagreement is unseemly, and is calculated to produce most injurious results.³

The deliberations of the cabinet upon all matters which engage their attention are strictly private and confidential; being kept secret even from the other members of the administration, who have no seat in the cabinet, and who therefore are not directly responsible for the conduct of the government. Upon their first introduction into the privy council, ministers are invariably sworn to secrecy. Hence they are not at liberty, thenceforth, to divulge conversations or proceedings in council—or to reveal to others any confidential communications they may have had, either

¹ As in 1811, the relative authority of the offices of secretary-of-war and commander-in-chief, see Clode, *Mil. Forces*, v. 2, p. 714; see cases in Rep. Com^o. on Board of Admiralty, *Com. Pap.* 1861, v. 5, p. 199; Rep. of Sebastopol Committee, *ib.* 1854-5, v. 9, pt. 3, pp. 293, 360.

² Mr. Gladstone, *Hans. D.* v. 217, p. 1373; and see 3rd Rep. Civ. Serv. Exp. pp. 242, 248, *Com. Pap.* 1873, v. 7.

³ *Hans. D.* v. 185, p. 463. See discussion in 1862, respecting differences between the treasury and colonial office in regard to the Jamaica debt, *ib.* v. 168, p. 260; and see *Com. Pap.* 1862, v. 36, p. 817; and upon differences between these departments on confederation of West Indies, *Hans. D.* v. 206, p. 1026; between comptroller and auditor-general and civ. serv. com^o. in regard to appointments in audit office, *Com. Pap.* 1873, v. 39, p. 103. See also Mr. Disraeli's remarks upon effect of cases of misunderstanding between public departments, in sess. of 1862, *Hans. D.* v. 168, p. 1138; also *ib.* v. 169, p. 1393; as respects differences between war office and the Indian Government, *ib.* v. 190, p. 175; between the treasury and the war office, *ib.* v. 216, p. 1288; between the treasury and home and foreign offices, the board of trade, 3rd Rep. Com^o. Civ. Serv. Exp. *Com. Pap.* 1873, v. 7; *Hans. D.* v. 217, p. 1358; between the treasury and postmaster-general, *Com. Pap.* 1876, v. 42, p. 371.

with the sovereign or with a colleague in office—without express permission from the crown.¹ This applies equally to those who have ceased to form part of an administration, as to members of an existing government.²

No secretary or clerk is permitted to be present at meetings of the cabinet council; neither is any official record kept of its proceedings.³ The decisions of the cabinet are either embodied in formal minutes, to be submitted to the sovereign, or else are carried into effect by the personal directions of the individual ministers, to whose departments they may particularly apply.

Mere decisions of the cabinet, unless followed up by some formal order or declaration of the queen in council, or by a treasury minute, or other authoritative official act, are necessarily of an ephemeral character; having a present efficacy so far as concerns the matter in hand, but carrying with them no permanent authority.

If any authoritative action on the part of the crown should be required, in order to give effect to a decision of the cabinet, it would be the duty of the prime minister to advise a meeting of the privy council to be summoned, from whence orders in council, proclamations, or other official notifications might proceed. All commands of the sovereign, whether emanating from the privy council or issued upon the advice of a responsible minister, should be transmitted to the officer or department of state charged with giving effect to the same by a secretary of state, or other responsible minister.⁴

Apart from the adoption of any formal minutes, the extent

¹ *Welling. Desp.* 3rd ser. v. 4, p. 212; Duke of Somerset on *Monarchy and Democracy*, p. 169; *Mir. of Parl.* 1831-2, p. 2069. See observations in parliament upon a letter from the lord-lieutenant of Ireland (Lord Anglesey) to the prime minister (Lord Grey), pointing out, for information of the cabinet, views entertained by his lordship in regard to Ireland; which letter was read in the House of Commons by Mr. Hume and other members. The unauthorized publication of this letter was stigmatized as "a most foul and scandalous breach of confidence" (*Ib.* 1834, pp. 1373, 1375, 1430, 1446).

² *Ib.* 1834, p. 2645.

³ Mr. Gladstone, *North Am. Rev.* v. 127, p. 207. There is a conventional understanding that no notes are to be taken of what passes in the cabinet, or if taken that they should be kept secret until the generation concerned therein shall have passed away (*Quar. Rev.* v. 129, p. 330; H. Reeve, in *Encyc. Brit.* 9th ed. v. 4, p. 620; *Ed. Rev.* v. 153, p. 390, etc.).

⁴ *Hans. D.* v. 140, p. 1047; Clode, *Mil. Forc.* v. 2, p. 722.

to which documentary evidence may exist in regard to matters, which have at any time undergone discussion at cabinet meetings, depends in a great measure upon accidental circumstances. When there is an opportunity for frequent personal intercourse amongst those who take a prominent part in cabinet councils, it may happen that little or nothing is committed to writing at the time.¹ But it was the usual practice with Sir Robert Peel (following the example of the Duke of Wellington) to bring before his colleagues his opinions in regard to great public questions, upon which he desired to have a decision of the cabinet, by means of written memoranda. These papers were generally "read by himself at a meeting of the cabinet, and afterwards sent in circulation amongst the members of the government. The best opportunity was thus afforded for a mature consideration of statements made, and of arguments adduced, in support of measures proposed for consideration, and the most effectual precaution taken against misconstruction, and hasty, inconsiderate decision."² A similar practice is followed, not only by prime ministers, but by subordinate members of the cabinet, who are desirous of calling the attention of their colleagues to important matters that require careful statement or explanation, or who may wish to comment upon the policy pursued by a colleague in affairs appertaining to his own department.³ Such papers are circulated amongst ministers by means of "cabinet despatch boxes," to which every cabinet minister possesses a master-key.⁴

As regards the internal relations of the cabinet, while each minister is an adviser of the crown, the cabinet is a unity, and none of its members can advise as an individual, without, or in opposition actual or presumed to, his colleagues. But the business of the state is vastly too great in volume to allow of the actual passing of

Internal relations of the cabinet.

¹ Peel, *Memoirs*, v. 2, p. 97.

² *Ib.* p. 99.

³ See frequent memoranda by Duke of Wellington, when cabinet minister, in reference to policy of government, *Desp.* 3rd ser. *passim*; *Ib.* v. 2, p. 549.

⁴ Peel, *Memoirs*, v. 2, pp. 184, 194; Donne, *Corresp. Geo. III.* v. 2. p. 134; Haydn, *Book of Dignities*, 88 n. Occasionally documents which are intended to be perused by cabinet ministers only are confidentially printed at the foreign office, to avoid the necessity for multiplying manuscript copies for that purpose (*Hans. D.* v. 166, p. 711).

the whole under the view of the collected ministry. It is, therefore, a prime office of discretion for each minister to settle what are the departmental acts in which he can presume the concurrence of his colleagues, and in what more delicate, or weighty, or peculiar cases he must positively ascertain it.¹

Sometimes a member of the administration, being a privy councillor, but without a seat in the cabinet, is called upon to attend a meeting of the cabinet, in order that he may express his views upon some question which intimately concerns his own department. Thus, Lord Castlereagh, when chief secretary to the lord-lieutenant of Ireland, was invited to confer with ministers upon Irish questions, in September, 1800, and again early in the following year.² And when points of law are likely to arise the law officers are usually invited to attend at the deliberations of the cabinet.³ If the occasion be one of peculiar gravity and importance, a summons should be issued by the proper officer directing certain persons to attend a committee of the privy council, for certain specified purposes; which committee should consist of the cabinet ministers and the other privy councillors whose attendance is required. The report of this committee should be made to the sovereign in council. But, when a mere informal interview is sought by cabinet ministers with a colleague in office, he would simply be asked to be present at a sitting of the cabinet.⁴ In 1848, when Chartist riots were apprehended in London, the Duke of Wellington (then commander-in-chief) was summoned by Lord John Russell to attend a cabinet council upon this emergency.⁵

Other ministers invited to attend a meeting of the cabinet.

The position of the prime minister towards the cabinet is peculiar. Although he is the head of the administration, and necessarily its most important and influential member, yet he meets all his colleagues in council upon a footing of perfect equality. At meetings of the cabinet, the only one who has precedence over his fellows is, in fact, the president of the council. But, inasmuch as the

The prime minister in the cabinet.

¹ Mr. Gladstone in *North Am. Rev.* v. 127, p. 207.

² *Ed. Rev.* v. 103, p. 350; see also *Rep. Com^o. on Education, Com. Pap.* 1865, v. 6; *Evid.* 2395.

³ *Wellington Desp.* 3rd ser. v. 5, p. 550; *Hans. D.* v. 211, p. 261.

⁴ *Corresp. Will. IV. with Earl Grey*, v. 1. p. 399.

⁵ *Earl Russell's Recollections*, p. 253.

entire responsibility for the government devolves on the first minister of the crown, he naturally must possess a degree of weight and authority in council which is not shared by any other member. Ordinarily questions may be put to the vote, and decided by a majority adverse to the opinion of the prime minister.¹ But, if he chooses, he may insist upon the cabinet deciding in any matter in accordance with his own particular views; otherwise he has the power, by his own resignation of office, to dissolve the ministry.² Differences of opinion will naturally and unavoidably occur between cabinet ministers, but the vote once taken, and the question decided, every member of the cabinet becomes equally responsible for the decision, and is equally bound to support and defend it. In case of irreconcilable differences with any of his colleagues, the premier may require their resignation or a dissolution of the cabinet. But it is not usual for the prime minister to proceed to extremity with the cabinet, until he is convinced that there is no other alternative between enforcing the adoption of his own views and his retirement from office. For "a compromise is the natural result of all differences between men in official stations under a constitutional government; it is so even where they are not coequal in authority."³

We have next to consider of personal communications between the sovereign and the members of his cabinet council. And, in view of the constitutional relationship which subsists between the king and his ministers, it will be appropriate to notice, beforehand, the position of political neutrality which is occupied by the sovereign in his intercourse with all other persons, including those who have the privilege of access to the royal presence, and who may desire to avail themselves of such an opportunity to express to him their own convictions upon questions of public concern.

The official channel of intercourse between the sovereign and the cabinet council was formerly a secretary of state,⁴ but

¹ *Corresp. Will. IV. with Earl Grey*, v. 1, pp. 431, 433; *Bulwer's Life of Palmerston*, v. 1, pp. 232-235, 240; Lord Broughton's *Recollections in Ed. Rev.* 133, p. 335; *Martin, Pr. Consort*, v. 4, pp. 458, 484, 486.

² See *Rep. on Board of Admiralty, Com. Pap.* 1861, v. 5, p. 182; *Rep. on Mil. Organization, Ib.* 1860, v. 7, p. 511.

³ *Rep. on Military Organization, Com. Pap.* 1860, v. 7, p. 557.

⁴ See *Ed. Rev.* v. 125, p. 546.

is now invariably the prime minister. It devolves upon this functionary to convey to the sovereign for his approbation all the important conclusions of the cabinet; and to him the sovereign makes known his decisions thereon. The prime minister is bound, in his reports and audiences with the sovereign, not to counterwork the cabinet; not to divide it; not to undermine the position of any of his colleagues in the royal favour. If he departs in any degree from strict adherence to these rules, and uses his great opportunities to increase his own influence, or pursue aims not shared by his colleagues, then, unless he is prepared to advise their dismissal, he commits a treacherous and base act. He must be loyal both to his sovereign and to his colleagues, as well as to parliament.¹ Communications on affairs of state are constantly passing between the sovereign and the prime minister. And any complaint which the sovereign may have to make of the conduct of a particular minister should be conveyed through the prime minister.² The privilege of access to the sovereign is accorded to every political head of an administrative office, who is at liberty to address the crown directly upon political questions; especially in regard to matters appertaining to his own department. But all important correspondence between the sovereign and a subordinate minister should be submitted to the premier; if not beforehand, at any rate immediately after it has taken place.³

Right of access to the sovereign.

Until ministers have come to an understanding as to the advice they will tender to their sovereign, upon any particular subject, it would be premature for them to communicate with the crown thereon. The premier himself is under no obligation, either of duty or of courtesy, to confer with the sovereign upon any matter which is still under the consideration of the cabinet. But so soon as any principles are settled, or any project, or line of policy, has been agreed to, with a view either to legislative or administrative action, it becomes the duty of the premier, as the

Decisions of cabinet to be submitted for the royal approval.

¹ Mr. Gladstone in *North Am. Rev.* v. 127, p. 208; also in his *Gleanings*, v. 1, p. 243.

² Case of Mr. Canning, in 1824; *Wellington Desp.* 3rd ser. v. 2, pp. 251, 261, 262.

³ *Ib.* v. 1, pp. 150, 274; v. 2, pp. 345, 346; Mr. Gladstone, *Ch. Quar. Rev.* v. 3, p. 481; *Corresp. Will. IV. with Earl Grey*, v. 1, pp. 46, 76, 79, 80, 83, 116, 354; *Bulwer's Palmerston*, v. 2, p. 415.

minister in whom the crown has placed its constitutional confidence, to take the royal pleasure thereupon; and to afford his sovereign an opportunity for the exercise of "that constitutional criticism in all departments of the state," which is the right and duty of the crown, and which in its operation is confessedly "most salutary and efficacious."¹

It may seem difficult to determine, in every instance, precisely what matters ought to receive the assent of the crown beforehand, and what may be properly undertaken at the discretion and upon the responsibility of the several heads of executive departments. But this much, at any rate, is clear, that no important acts of government, which would commit the crown to a definite action, or line of policy, which had not already received the royal approbation, should be undertaken without the previous sanction of the sovereign. This rule is not meant to apply to the ordinary course of official communications, but to such only as, to any extent, may initiate a new line of policy, or upon which it might be conceived that a doubt would arise as to the sentiments that would be entertained by the sovereign, either in regard to the act itself, the method of its performance, or the language employed in relation thereto.² On the other hand, it is not necessary to consult the crown upon ordinary matters of official routine, or upon minor points of administration, which are suitable to be transacted by the direct authority of the head of the particular department of state responsible for the same.³

Any minutes that may be agreed upon by the cabinet, and which are intended to be communicated to the sovereign, should be conveyed through the premier, either by letter or at an audience, to be requested for the purpose. Such minutes should invariably

¹ Mr. Disraeli, *Hans. D.* v. 188, p. 1113; and see his speech on the queen's duties, at Hughenden, on Sept. 26, 1871; see also Martin, *Pr. Consort*, v. 2, p. 308. But see *Ib.* v. 4, p. 146, where it is stated that the principles of an important public measure were discussed personally by the premier (Ld. Palmerston) with the queen and prince consort for weeks before any distinct recommendation thereon was submitted for her Majesty's approval.

² May, *Const. Hist.*, v. i. p. 132; and see *Corresp. of William IV. with Earl Grey*, v. 2, pp. 355, 364, 373, 376, 457-459.

³ May, *Const. Hist.* v. 1, p. 135.

record the names of the ministers present when they were adopted.¹

The conclusions of the cabinet in less important matters are usually made known to the sovereign by letter from the prime minister.² If any ministers present at a cabinet council dissent from a minute which has been agreed to by a majority of the ministers present, the names of the dissentients, and the extent of their opposition, should be communicated to the king.³ Sometimes the substance of the deliberations of the cabinet, upon a particular question, is explained to the king by the premier at a personal interview, when, if the matter be of sufficient gravity and importance, written minutes would be prepared of the conversation between the sovereign and his chief minister, in order to prevent misapprehension in communicating the same to other members of the cabinet.⁴

In all his communications with the sovereign, the prime minister is bound to afford the most frank and explicit information in regard to measures agreed upon by the cabinet, and submitted for the royal sanction, for it is a maxim of constitutional law, that "the king is not to be deceived as to the character of the act which he performs."⁵ And "it is not merely the right, but the duty, of the sovereign, to exercise his judgment on the advice which his ministers may tender to him."⁶ If the sovereign should persist in rejecting their advice upon any particular measure, they "have then to choose whether they will abandon that measure, or tender their resignation."⁷ Upon points not affecting the great interests of the country, it is understood that ministers may yield to the opinion of the sovereign.⁸ But in any circumstances, a minister "is bound

Conclusions of the cabinet.

Decision of the crown upon advice of ministers.

¹ Russell, *Corresp. Fox*, v. 1, p. 351; *Colchester Diary*, v. 2, p. 108; *Corresp. Will. IV. with Earl Grey*, v. 1, pp. 2, 18, 38, 225; v. 2, p. 336.

² *Ib.* v. 1, p. 34, 44.

³ *Ib.* pp. 431, 433; v. 2, pp. 70, 395; and see Walpole's *Perceval*, v. 2, p. 231.

⁴ *Corresp. Will. IV. with Earl Grey*, v. 2, pp. 68-80.

⁵ Broom's *Legal Maxims*, pp. 55, 58; Ld. Cairns, *Hans. D.* v. 208, p. 523.

⁶ Grey, *Parl. Govt.* new ed. p. 80; Martin, *Pr. Consort*, v. 2, p. 308.

⁷ Ld. Grenville, *Parl. Deb.* (1807) v. 9, p. 239.

⁸ Palmerston, in *Bulwer's Life*, v. 1, p. 76; Martin, *Pr. Consort*, v. 4, pp. 458, 484, 486; Ld. Broughton's *Recollections*, *Ed. Rev.* v. 133, pp. 318-324.

either to obey the [direction] of the crown, or to leave to the crown that full liberty which the crown must possess, of no longer continuing that minister in office,"¹ thereby affording to the sovereign "an opportunity of ascertaining whether he can find other servants who will enter more readily into his views." "Should he fail in his search, then comes into operation one of those salutary checks which the practice of the constitution has imposed on the royal prerogative, and he must necessarily abandon a line of conduct which he cannot find men of character and ability willing to pursue."²

In order to supply the crown with adequate means for exercising an independent judgment upon all affairs of state, provision has been made, by constitutional practice, for the regular transmission to the sovereign—ordinarily through the prime minister, or else through regular official channels—of every despatch, report or other paper, which it is material should be perused by the sovereign, or which may be of use to enable him to decide upon the merits of any measure submitted to him by ministers.³

All despatches received by a secretary of state, after perusal by the proper officer—and, in important cases, all drafts of answers thereto—are required to be forwarded, by the senior clerk of the particular department, first to the prime minister, then to the queen (for the royal sanction, previous to their being despatched, in the case of important drafts), and afterwards to the other cabinet ministers.⁴ Especially in regard to the foreign relations of the empire, involving as they sometimes do vital questions of peace or war, and the maintenance, at all times, of a frank and dignified courtesy towards other sovereigns and their governments, it has always been a prominent function of the British crown to watch closely and continuously the state of our foreign relations, and to keep itself fully advised of the policy of the government in such matters, in every essential detail.⁵ Constitutional practice accordingly requires that no political instruction should be sent to any British minister abroad, and

¹ Ld. J. Russell, *Hans. D.* v. 119, p. 90.

² Bulwer's *Life of Palmerston*, v. 1, p. 76.

³ *Corresp. Will. IV. with Earl Grey*, v. 1, pp. 43, 114.

⁴ See Rep. Com^o. on Diplomatic Service, pp. 74-76; *Com. Pap.* 1861, v. 6.

⁵ Martin, *Pr. Consort*, v. 2, p. 300.

no official note be addressed to any ~~and~~ to diplomatic agent, without the draft being first submitted to the prime minister, in order that he may take the pleasure of the crown upon it. And, if either the sovereign or the prime minister suggest alterations, they are either adopted, or the despatch is withheld.¹

It is the duty of the prime minister to forward to the sovereign, daily, during the sittings of parliament, an account of debates therein. If the premier is a peer, the leader of the House of Commons writes the account of debates in that House.²

The prime minister, being the recognized medium of communication between the sovereign and the heads of the various administrative departments, and the minister directly accountable to the crown for the government of the empire, must necessarily be cognizant himself of all important correspondence, which is received at or emanates from any of these departments. It is therefore required that all such papers should be regularly forwarded in the first place to the prime minister, then to the queen, and afterwards circulated amongst the other members of the cabinet. By this regulation, the premier is enabled to exercise the controlling influence which properly belongs to his office, over the proceedings of every department of state.³ If any question should arise in the mind of the sovereign, in respect to any matter contained in the official papers forwarded for her examination and approval, she would communicate thereupon with the prime minister, who is especially responsible for all ministerial proceedings and who is the agent of the crown to correct or control all other ministers.⁴ Should it be necessary for the sovereign to interpose, for such a purpose, she would always act upon the constitutional advice and responsibility of the first minister. In this manner the whole administration is brought into due subordination to the supreme head.

Prime minister,
with consent of
the crown,
controls all
state affairs.

¹ Ld. Palmerston, *Hans. D.* v. 119, pp. 105, 110.

² *Colchester Diary*, v. 2, p. 120; Le Marchant, *Life of Earl Spencer*, pp. 388, 464, 471; Mr. Gladstone, *Hans. D.* v. 246, p. 271.

³ Sir R. Peel, in Rep. on Official Salaries, Evid. 326; *Com. Pap.* 1850, v. 15.

⁴ Lord J. Russell, in *Hans. D.* v. 119, pp. 91, 99.

When Lord Palmerston held office as secretary of state for foreign affairs his notion was that a foreign minister, while strictly adhering to the policy of the cabinet, ought to be at liberty to give effect to the same upon his own responsibility, and without being obliged to submit all his despatches to the criticism of his colleagues and to the inspection of the sovereign. But this opinion was repeatedly rebuked by the queen and warmly resented by the premier. At length, in August, 1850, it was agreed upon by her Majesty and the prime minister that more detailed instructions should be conveyed to Lord Palmerston in regard to the manner in which he should communicate with the crown upon matters appertaining to his own department. These instructions were communicated by Lord John Russell to Lord Palmerston in the following terms:—

“The queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to a measure, that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity towards the crown, and justly to be visited by the exercise of her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and the foreign ministers before important decisions are taken, based upon that intercourse; to receive the foreign despatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off. The queen thinks it best that Lord John Russell should show this letter to Lord Palmerston.” Upon the receipt of this memorandum, Lord Palmerston wrote to the premier, stating that he had taken a copy of it, and “that he would punctually obey the directions contained in it.”¹ Nevertheless, in a few weeks after the issue of this memorandum, Lord Palmerston again violated the principle laid down therein. In a formal note to the Austrian *chargé d'affaires* he inserted a paragraph which was regarded by the head of the ministry, and by the queen, as “derogatory to the honour of England, as well as discourteous to Austria.”

¹ Martin, *Pr. Consort*, v. 2, pp. 302-310 *Hans. D.* v. 119, p. 90.

The draft of this note was submitted to Lord John Russell and to her Majesty, but not until the note itself had been sent to the Austrian minister. Whereupon the prime minister advised the queen to insist on its being recalled, and a fresh note, without the objectionable paragraph, substituted for it. At first Lord Palmerston refused to comply with this order, and threatened to resign; but Lord John Russell was firm, and finally Lord Palmerston did as he was directed.¹ He afterwards gave offence by his unguarded conduct in receiving certain addresses from the admirers of Kossuth, upon the occasion of his visit to England, in October, 1851;² and finally, by his conduct in reference to events in Paris in the following December, left no alternative to the queen and the prime minister but to dismiss him from office.

Since the occurrence of this case, the constitutional doctrine involved in it has been so well understood, that when the relative positions of Lords Russell and Palmerston were reversed, and the former held the seals of the foreign office under the premiership of the latter, from 1859 to 1865, Lord Russell afterwards testified that, "according to the uniform practice of the foreign office, the despatches which I wrote were submitted to him as prime minister; frequently he would write the whole despatch over again, and I was always ready to accept his draft."³ By established practice, it is now customary for the draft of despatches to be agreed upon between the prime minister and the foreign secretary before they are submitted for the approval of the sovereign.⁴

During the political existence of a ministry, questions will frequently arise which it is deemed advisable to submit to the decision of the whole cabinet, in which case Minority must the minority are bound to assist in giving effect to yield. the conclusions arrived at by the majority, or else to retire from office. In no other way is it possible to have a vigorous administration, with a decided policy upon important public questions.

¹ Particulars of case in Martin, *Pr. Consort*, v. 2, p. 325; also a similar case of insubordination of Lord Ellenborough, when president of board of control, *Ib.* v. 4, pp. 223-227.

² *Ib.* v. 2, p. 409.

³ *Hans. D.* v. 206, p. 1833.

⁴ Mr. Gladstone, *Ch. Quar. Rev.* v. 3, p. 481.

The exigencies of the public service, or the interests of government, may sometimes require that there should be a readjustment of offices between different members of an administration,¹ or the withdrawal of a particular minister, and the substitution of some more efficient or more desirable person in his place. Such arrangements are not infrequently resorted to in order to strengthen a cabinet, and to secure for it a larger measure of public support. They are generally effected by mutual consent and amicable agreement, although cases of a different description, and which savour more or less of intrigue, are not unprecedented. No doubt a redistribution of cabinet offices will often occasion temporary inconvenience, by the removal of a minister from a department for the charge of which he has evinced a special aptitude; but this is usually counterbalanced by the enlarged experience acquired by men who preside in turn over several leading public departments, and thereby become the more efficient as cabinet ministers to superintend the whole affairs of the country.²

So far as regards the department of the secretariat, an interchange of offices is easily managed. In a constitutional point of view, there is but one secretary of state; and, though the office now consists of five distinct and separate branches, the functions of any secretary may, upon emergency, be discharged by another. The letters patent conferring the appointment are couched in general terms—as of “One of her Majesty’s principal secretaries of state;” the assignment of special duties is a subsequent and arbitrary arrangement that may be altered at any time.

No exchange can be made between other officers of the administration without a previous resignation of the place intended to be relinquished, and a formal appointment to the new office; which, in the case of a member of the House of Commons, until recently vacated the seat. This was long felt to be a hardship to individuals, and a serious impediment to the reconstruction of a cabinet. But, although some change in the law in this respect was advocated by leading statesmen, without distinction of party, it was not until the passing of the new Reform Act, in 1867, that this restriction upon the re-

¹ Torrens, *Life of Melbourne*, v. 2, p. 312.

² Mr. Gladstone, *Hans. D.* v. 204, p. 1996.

adjustment of a ministry was removed, and authority given for the acceptance of another ministerial office by a member whose previous acceptance of a similar office had been endorsed with the approval of his constituents, without requiring a new election.

It cannot be expected that internal dissensions in a cabinet, however much to be deprecated, should never occur. Dissensions in the cabinet. No cause of ministerial weakness has been more fruitful of disaster; but when men of activity and talent, each having political prepossessions in favour of particular views, or being actuated by personal motives of self-interest, unite in the endeavour to form a ministry, they will sometimes clash. The supremacy of a master mind in the person of the prime minister is the best security for strength and unanimity in an administration. But even this has not always availed to preserve peace. Our political history furnishes many instances of governmental difficulties from this cause, which is not peculiar to any time, or to the predominance of any party.

If any member of the cabinet desires a rearrangement of ministerial offices, he must make known his views to the prime minister. If he wishes to resign, he Supremacy of the prime minister. should in the first instance communicate his intention to the premier, in order that through him his intended resignation may be communicated to the sovereign. It is the first minister alone who can advise changes in an administration, and recommend to the sovereign persons to fill vacancies therein.¹ If he himself should vacate his office by death or resignation or dismissal, the ministry is *ipso facto* dissolved.² Individual ministers may retain their Minister retaining office under a new premier. offices, if permitted by the sovereign, and may form part of a fresh combination with another head; but this would be a new ministry, and as colleagues of the incoming premier they must make a fresh agreement with him.³

¹ Sir R. Peel, Com^o. Official Salaries, Evid. 285, 289; *Com. Pap.* 1850, v. 15.

² Gladstone's *Gleanings*, v. 1, p. 243.

³ As when in 1834 Lord Melbourne succeeded Lord Grey, as premier, of substantially the same administration; and in 1868, when Mr. Disraeli became premier, upon the retirement of Lord Derby through ill health (*Wellington Desp.* 3rd ser. v. 4, pp. 208, 221; and see *New Zealand H. of Rep. Jour.* 1873; Appx. v. 1; A-1a, p. 8; *South Africa Pap. Com. Pap.* 1878, v. 56, p. 33).

The substantive power which is wielded by the premier over his colleagues in office is necessarily very great. If he be a man of inferior ability, without very decided opinions, his authority and influence will be naturally impaired, and the influence of the strongest mind in the cabinet will probably predominate. But if he be a man of powerful intellect, or of decided opinions, he will command the support of his fellow-ministers, and leave them no alternative but submission or resignation.¹ A prime minister will rarely interfere in the departmental arrangements of his colleagues, or in the distribution of the patronage which is placed in their hands; but he will require that all matters which in any degree affect the policy of the administration shall be submitted for his approval, and that if need be the whole strength of the government, including that which is afforded by the exercise of the patronage of the crown, should be employed in the furtherance of his political views, and for the purpose of enlarging the influence of the cabinet of which he is the head.

The resignation of office by a cabinet minister, although properly made known to the crown through the Ministerial resignations. prime minister, as the official channel of communication between the sovereign and the cabinet, may be consummated at a personal interview with the sovereign—usually granted previous to the assembling of a privy council, at which his successor is formally appointed—for the purpose of delivering up into the royal hands the symbols of office, and in order to afford an opportunity for explanations on the part of the retiring minister. It is, however, a courtesy due to the head of the administration, to acquaint him previously of an intended resignation, so that he may take the necessary steps for filling up the vacant office without delay.²

When the dismissal of a subordinate member of the ad-

¹ Stapleton, *Canning and his Times*, p. 179. Thus Lord Wellesley resigned the seals as foreign secretary in 1812, because he would no longer serve *under* Mr. Perceval. He was willing to serve *with* Mr. Perceval, under a common chief, but not in subordination to him (*Parl. Deb.* v. 23, pp. 367-370; Pearce, *Memoirs of Wellesley*, v. 3, p. 209; see Mr. Disraeli's observations, *Hans. D.* v. 226, p. 679).

² Pellew's *Life of Sidmouth*, v. 3, p. 395; *Lewis' Administrations*, p. 44^s n.; Bulwer's *Life of Palmerston*, v. 1, pp. 239-245, 276; v. 2, p. 356; *Wellington Desp.* 3rd ser. v. 4, p. 452; Walpole, *Life of Perceval*, v. 2, p. 234.

ministration has been determined upon, it is customary for a formal letter of dismissal to be addressed to the person in question by the prime minister, after he has taken the royal pleasure thereon.¹ In the case of the retirement of a lord chancellor, whether by resignation or dismissal, it is usual for the delivery of the great seal to take place either at a meeting of the privy council, or at an audience granted to him in the royal closet for that purpose, as the "*clavis regni*" is too important an instrument to be entrusted to any one but its lawful custodian or the sovereign himself.² If not surrendered to the sovereign in person, it should only be given to one who claims it with a formal warrant under the privy seal or sign manual.³

Where, in the exercise of the royal prerogative, a whole administration is dismissed, letters of dismissal have been written by the newly appointed secretary of state, in the name of his sovereign.⁴ If the retirement of a ministry takes place by voluntary resignation, it is customary for the individuals composing the same to assemble at the palace, and to be separately introduced into the royal closet for the purpose of delivering up into the hands of the sovereign their respective wands, seals, keys, and other official badges,⁵ or for the ceremony to take place at a meeting of the privy council, at which, also, the newly appointed ministers are invested with the insignia of office.⁶ But, should a personal interview be objectionable to the sovereign, he may direct the surrender of the symbols of office to be made to some one else, whom he may appoint to receive them.⁷

The resignation of an office which is held in connection with a seat in the cabinet necessarily involves a relinquishment of the right to attend cabinet meetings, unless specially invited by the sovereign,

Remaining in
the cabinet
after resigna-
tion of office.

¹ *Wellington Desp.* 3rd ser. v. 4, pp. 210, 213, 215, 219; *Hans. D.* v. 205, p. 1290.

² *Campbell's Chanc.* v. 5, p. 613.

³ *Ib.* v. 1, p. 23.

⁴ Jesse, *Life of George III.*, v. 1, p. 307; *Campbell's Chanc.* v. 5, p. 565.

⁵ *Ib.* v. 6, p. 565. The keys of council or cabinet boxes (not being insignia of office) should be returned to a secretary of state or other minister, and not given to the king (Jesse, *Life of George III.* v. 3, p. 437).

⁶ Torrens, *Life of Melbourne*, v. 2, p. 368.

⁷ *Campbell's Chanc.* v. 5, p. 565.

advantages are of inestimable service in enabling them to mature and propound acceptable measures, and to facilitate their progress through the legislative chambers.

On the other hand, either House of Parliament is at liberty to give free expression to its opinion upon every ministerial act or measure; and no administration can long remain in office that does not possess the confidence of parliament, and particularly of the House of Commons. In giving or withholding their confidence the Houses of Parliament are only restrained by considerations of public policy. Unless they are satisfied that a ministry, which does not fully represent their political sentiments, can be replaced by another, more acceptable and efficient, they will probably be content with vigilant supervision and control over its proceedings and recommendations, rather than incur the hazard of a change of government. But, if they believe that the direction of public affairs ought to be entrusted to other hands, they have only to declare—either expressly or impliedly—that ministers have forfeited their confidence, and a change must inevitably take place. So that, whether directly or indirectly, the ultimate verdict upon every exercise of political power must be sought for in the judgment of the House of Commons.¹

Let us proceed to examine in detail the various points included in the foregoing definition of parliamentary government. The subject will naturally admit of being divided into three heads: I. The presence of the ministers of the crown in parliament. II. The functions of the ministers of the crown in relation to parliament. III. The responsibility of ministers to parliament, and particularly to the House of Commons.

I. The presence of Ministers in Parliament.

We have already, in a former chapter, disposed of the historical part of this inquiry, and have described the position occupied by the king's ministers in parliament anterior to the revolution of 1688: it will now be our endeavour to take a practical view of this subject, and to explain the established law and custom of parliament upon the several questions connected therewith.

While there is no absolute necessity for every member of

¹ Amos, *Fifty Years of Eng. Const.* ch. 3, sec. 3.

the cabinet to hold a departmental office under the crown, the spirit of the constitution requires that every one occupying a seat in the cabinet should also be a member of one or other of the Houses of Parliament.¹ And no one should be introduced into the cabinet, or be permitted to continue therein, who is out of parliament; unless he is likely to be returned by some constituency within a reasonable period.² As the ministry for the time being are strictly and exclusively responsible for the government of the country, in all its various branches and details; and as they possess, on behalf of the crown, an absolute control over all the departments of state, so that every public officer in the kingdom is directly or indirectly subordinate to them; it is right, and in accordance with constitutional practice, that there should be some minister of the crown specially answerable for each particular branch of the public service, and that every department of state should be adequately represented in parliament.³

Cabinet ministers must be in parliament.

All public departments to be represented in parliament.

¹ Macaulay, *Hist. of Eng.* v. 4, p. 435; Mr. Lamb (Lord Melbourne) in *Parl. Deb.* v. 9, p. 287; Lord John Russell, *Hans. D.* v. 110, pp. 230, 231; Lord Stanley, *Ib.* v. 162, p. 1901.

² In 1835, when Sir Robert Peel's ministry was being constructed, it was determined to confer a seat in the cabinet upon Sir George Murray, the master-general of the ordnance. He accordingly became a candidate for a seat in the House of Commons, but was defeated in the county of Perth. After his rejection at Perth, Sir G. Murray volunteered to resign his departmental office, but Sir R. Peel wrote and urged him to retain it. He added, however, "I have more difficulty about the cabinet, and I need not say so solely and exclusively on the score of constitutional precedent. The holding of a seat in the cabinet by a responsible adviser of the crown—that adviser being neither in the House of Lords nor Commons—is, I fear, extremely unusual, if not unprecedented, in modern times. . . . Of course if there were any immediate prospect of your return, the objection could not apply" (Peel, *Memoirs*, v. 2, pp. 50-52). After this Sir George ceased to attend the cabinet councils, although he continued at the head of the ordnance department until a change of ministry occurred (*Hans. D.* v. 84, p. 758; Haydn, *Book of Dignities*, p. 192).

In December, 1845, Mr. Gladstone, on being appointed colonial secretary in Sir R. Peel's administration, was defeated when he stood for re-election in the borough of Newark. He continued out of parliament until after the resignation of this ministry, which took place in June, 1846. The fact of his absence from parliament was commented upon in the House of Commons on March 6, but no explanations were given by the government, except that he continued to attend the cabinet councils (*Hans. D.* v. 84, pp. 754-758. See Lord Campbell's comments on this case, *Ib.* v. 189, p. 946; and Mr. Gladstone in his *Gleanings*, v. 1, p. 225).

³ Lord Stanley, *Hans. D.* v. 162, p. 1901.

This representation may either be direct, by the presence, in either House, of the political chief of the department, or of some political functionary connected with the same ; or it may be indirect, through some other officer of government, who is specially charged with the duty of answering for the department in question, as its parliamentary representative.¹

The representation in parliament of every prominent department of state should not be confined to one chamber merely, but should always, whenever it is practicable, include both Houses. This is most desirable : first, because of the respect due to each separate and independent branch of the legislature ; second, in order to promote harmony between the executive and legislative bodies ; and lastly, because it tends materially to facilitate the despatch of public business through parliament. When the representative of any particular branch of the public service in one House is the chief minister in charge of the same, having a seat in the cabinet, the department should be represented in the other House by an under-secretary, vice-president, or other subordinate officer, if possible ; or otherwise, by some other member of the administration.²

The proportion of cabinet ministers to be assigned to either House of Parliament necessarily varies according to circumstances. It is impossible to fix any rule in regard to a matter which must depend altogether upon the strength of parties, and the amount of available talent at the disposal of an existing administration. The prime minister is responsible for the distribution of the chief offices of government between the two Houses of Parliament. But this is not infrequently a very difficult task. As a leading principle it may be stated that every department entrusted with the expenditure of public money should be represented in the House of Commons either by its head or by its political secretary.³ Moreover, the increasing weight and influence to which the House of Commons has attained, in public affairs, has rendered it advisable that a larger proportion of cabinet ministers should have seats in that chamber.

¹ Mr. Disraeli, *Hans. D.* v. 219, p. 1613.

² Rep. Com^o. on Education, *Com. Pap.* 1865, v, 6 ; Lord Granville's Evid. 1883, 2317.

³ Mr. Cowper, *Hans. D.* v. 172, p. 364.

Under-secretaries of state, however able, are not in a position to declare or defend the policy of government, with the freedom, intelligence, and responsibility that are needful, in order to satisfy the demands of the House of Commons. In fact, they merely hold a brief, and are required to justify a policy in the framing of which they have had no share.

It is curious to observe the change in constitutional practice within the present century, in the relative proportion of cabinet ministers in the two chambers; a change which is a striking indication of the growth of power on the part of the lower House. The first cabinet of George III. (in 1760) consisted of fourteen persons, thirteen of whom were peers, and but one a member of the House of Commons. At the commencement of Mr. Pitt's first administration, in 1783, he was the sole cabinet minister in the House of Commons.¹ Mr. Addington's cabinet, in 1801, consisted of nine persons, five of whom were peers, and the remainder commoners.² When Mr. Pitt returned to office, in 1804, his cabinet consisted of twelve persons, of whom but one besides himself (that is, Lord Castlereagh) was a member of the House of Commons.³ After the death of Mr. Pitt, the Grenville ministry consisted of eleven members, of whom seven were peers and four members of the House of Commons.⁴ Mr. Perceval's cabinet, in 1809, consisted of ten members, of whom six were peers, and four were commoners. Lord Liverpool's cabinet, in 1812, consisted of twelve members, of whom ten were peers, and two only were commoners; but in 1814, the relative strength of the government in the two Houses was altered, by certain ministerial changes, which gave nine cabinet ministers to the upper House and four to the lower. In 1818, there were fourteen cabinet ministers, of whom eight were peers, and six were commoners. In 1822 (Lord Liverpool being still premier), the cabinet was composed of fifteen members, nine of whom were peers.⁵ Since the Reform Bill, it has been customary to apportion the leading members of government more equally between the two Houses.

Upon the formation of Lord Palmerston's second administration, in 1859, the cabinet consisted of fifteen members, of

¹ Stanhope's *Pitt*, v. 1, p. 165.

² *Ib.* v. 3, p. 822.

³ *Ib.* v. 4, p. 189.

⁴ *Parl. Deb.* v. 6, p. 12.

⁵ Sir G. C. Lewis, *Administrations*, pp. 349, 383, 397, 414.

whom five were peers, and ten sat in the House of Commons. But through various casualties, which occasioned changes in the *personnel* of the government, it happened that from 1863 to 1865 eight of the cabinet offices were held by peers, and but seven by members of the House of Commons. The heads of four principal departments of state, viz. the war office, the foreign office, the colonial office, and the admiralty, were all of them peers, and these important departments were represented in the House of Commons by under-secretaries.¹ This apportionment of ministerial offices between the two Houses led to much inconvenience and dissatisfaction; and advantage was taken of the retirement of the Duke of Newcastle from the colonial office, in 1864, to confer the seals of this department upon Mr. Cardwell, a member of the House of Commons. But still the preponderance of cabinet ministers in the upper House remained the same; for Mr. Cardwell had previously held a seat in the cabinet as chancellor of the Duchy of Lancaster, which office was conferred upon a peer, the Earl of Clarendon.

On April 18, 1864, Mr. Disraeli took occasion—in a general way, and without assuming to lay down any inflexible rule upon the subject—to point out the grave objections which existed to the continuance of such an arrangement. He gave it as his opinion that the following ministers ought to find seats in the House of Commons, viz.: the heads of “the two great departments of the public expenditure,” *i.e.* the army and navy, a decided majority of the secretaries of state, and, on the whole, the “great majority” of administrative officers. He showed that the constitution has practically provided for the adequate representation of the government in the House of Lords by allowing but four out of the five secretaries of state to sit in the Commons, and by requiring the lord chancellor, the lord president of the council, and the lord privy seal² to be chosen from amongst the peers. In reply to Mr. Disraeli’s observations, Lord Palmerston did not attempt to dispute the general

Preponderance
of ministers in
the Lords.

Ministers who
ought to be in
the Commons.

¹ *Hans. D.* v. 170, pp. 467, 1960; v. 171, p. 1824.

² [The constitution does not require either the president of the council or the privy seal to sit in the House of Lords. Lord J. Russell sat as president of the council in the House of Commons: Mr. Gladstone at the present time (1892) holds the office of privy seal.—*Editor.*]

doctrine enunciated, in regard to the distribution of cabinet offices between the two Houses, but showed that it was attributable to unforeseen and unavoidable circumstances that the proportion of cabinet ministers allowed to each House upon the first formation of his ministry (viz. five to the Lords and ten to the Commons) had been altered.¹

Upon the formation of the Derby administration in 1866, seven cabinet ministers were assigned to the Lords and eight to the Commons. The secretaries of state for the home, foreign,² and war departments, and for India, all sat in the House of Commons, as well as the chancellor of the exchequer, the first lord of the admiralty, and the presidents of the board of trade and of the poor law board. While in the House of Lords the following cabinet ministers had seats: viz. the premier himself as first lord of the treasury, the lord chancellor, the secretary for the colonies, the president of the council, the lord privy seal, the chancellor of the Duchy of Lancaster, and the postmaster-general. This distribution of offices was in strict accordance with the principles advocated by Mr. Disraeli in 1864, when leader of the opposition. Unexpected vicissitudes led, in the following year, to some change in this arrangement, by which the chiefs of the board of trade and of the poor law board were chosen from the House of Lords; and their departments were respectively represented in the House of Commons by subordinate ministers. But no public inconvenience was occasioned by this proceeding.³

Mr. Disraeli, upon his accession to office in 1874, reduced the cabinet to twelve, an equal number of ministers sitting in each House. They were apportioned in conformity with opinions he had previously expressed on this subject. In 1876, when Mr. Disraeli became a peer, he preserved the balance of cabinet ministers in both Houses by taking the office of lord privy seal in addition to that of first lord of the treasury. The vacant seat in the cabinet was conferred on the chief secretary for Ireland, who sat in the House of

¹ *Hans. D.* v. 174, pp. 1219, 1232; *Ib.* v. 175, p. 596.

² For opinion in favour of presence of foreign secretary in the House of Commons, see 1st Rep. Com^o. Dipl. Service, Evid. 1397, 1398, *Com. Pap.* 1871, v. 7.

³ *Hans. D.* v. 187, p. 877.

Commons. In 1878 the cabinet was increased to thirteen members, and the additional minister was taken from the House of Commons.

Admitting, however, the obvious inconveniences attending the representation of a prominent public department in the House of Commons by an officer of inferior grade, who has no seat in the cabinet, whilst his political chief is in the House of Lords, it has been well said that there is another side to the question, and that there is considerable practical advantage, in an administrative point of view, when you have a man at the head of an important department who has his evenings disengaged, and who is not overburdened by the enormous labour of regular attendance in the House of Commons.¹ This should be allowed to counterbalance, in some degree, the disadvantages resulting from an undue proportion of principal ministers in the upper chamber, when, as will sometimes happen, such an adjustment of ministerial offices becomes a political necessity.

It has been already remarked that,² in order to facilitate the representation of every prominent branch of the public service in the two Houses of Parliament, under-secretaries of state are permitted to act as auxiliaries to the chiefs of their respective departments, in the discharge of this important duty. Officers of this description are not made ineligible for a seat in the House by the 25th section of the statute of Anne (6 Anne, c. 7), inasmuch as their offices are not "new," and therefore do not disqualify;³ they are not appointed directly by the crown, but, both in form and in substance, by a secretary of state, and therefore do not come within the scope of the 26th section of that Act, requiring the vacation of the seat upon the first appointment to a non-disqualifying office. Moreover, the Act 15 George II. c. 22, sec. 3, which was framed for the purpose of excluding therefrom all "deputies or clerks" in the principal departments of state, contains a proviso that this Act shall not be construed so as to prevent the secretaries of the treasury, of the chancellor of the exchequer, and of the admiralty, or the under-secretaries to the principal secretaries

Advantages to a minister of a seat in the Lords.

Representation by under-secretaries of state.

¹ Report Com^o. on Education, *Com. Pap.* 1865, v. 6, Evid. 760.

² *Ante*, p. 29.

³ See 2 Hatsell, pp. 51, 61 *u*.

of state, from sitting and voting in the House of Commons. In truth, it is a matter of public convenience and advantage that the ministry should be able to ensure the presence in the House of Commons of confidential officers empowered to represent therein leading departments of the state, and who, in the absence of ministers specially charged with and responsible for the same, may be entrusted with the conduct of public business in relation thereto.¹

As, however, the law allows but four out of the five principal secretaries of state to sit in the House of Commons at any one time, so it has been decided that a similar number only of under-secretaries may sit therein together.²

A limited number may sit in the House of Commons together.

While every facility is afforded to the efficient working of parliamentary government by the permission which is given to the political chiefs and their immediate subordinates, in every public department, holding office upon a similar tenure, to sit in the House of Commons—the House is extremely jealous of the introduction of any other civil servants of the crown within its precincts. The same statute, that sanctions the presence in the House of certain under-secretaries, expressly declares all other “deputies or clerks,” in the offices therein named, to be incapable of being elected, or of sitting and voting in that assembly.³ And, where there is no direct statutable disqualification, constitutional practice requires that a member of the House of Commons who accepts a permanent and

Why permanent civil officers are excluded from the House.

¹ In 1867, parliament consented to abolish the office of vice-president of the board of trade, and to substitute a parliamentary secretary in lieu thereof, for the express purpose of getting rid of an office which necessitated the re-election of any member upon whom it might be conferred, and replacing it by an office which, by analogy with corresponding situations of a similar grade, should not entail any such obligation (*Hans. D.* v. 187, p. 475; Stat. 30 & 31 Vict. c. 72). And by the Act 34 & 35 Vict. c. 70, sec. 4, one of the two secretaries of the local government board is permitted to sit in the House of Commons. The War Office Act of 1870, 33 & 34 Vict. c. 17, authorizes the appointment of a financial secretary having a seat in parliament, but who does not vacate it on his appointment. It also creates a surveyor-general of ordnance, who if in parliament likewise does not vacate his seat (*Hans. D.* v. 201, pp. 104, 456, 571).

² See 2 Hatsell, 64 n.; Acts 18 & 19 Vict. c. 10; 21 & 22 Vict. c. 106, sec. 4.

³ 15 Geo. II. c. 22.

non-political office in the civil service shall vacate his seat in parliament.¹

There are sound constitutional reasons for the exclusion of all non-political servants of the crown (excepting, of course, officers in the army or navy, who are exempted from disqualification by the 28th section of the statute of Anne) from the House of Commons. Strictly subordinate, and accountable for their conduct, to the minister of state who is charged with the oversight of the department to which they belong, and who is exclusively responsible to parliament for its administration, the presence, in either House, of a permanent officer of any branch of the public service—who might possibly differ in politics from his responsible chief—would be found highly inconvenient, and might lead to unseemly and injurious collisions.²

Besides the injury to free deliberation in parliament from the presence therein of persons who would be exposed to peculiar hindrances in the discharge of their legislative duties, their ineligibility serves to increase their efficiency as departmental officers. A reputation for impartiality, honesty of purpose, high sense of duty, and fidelity to their political chief for the time being, is eminently characteristic of the whole body of public servants in Great Britain. It is their possession of these qualities that begets a just confidence on the part of a minister of state in the subordinate officers upon whom he must greatly depend. And nothing could be more adverse to the continuance of such esteem than to permit an officer to

¹ Case of Mr. Phinn, *Hans. D.* v. 138, p. 1187; and see *ante*, v. 1, p. 166.

² Mr. Gladstone, *Hans. D.* v. 182, p. 1862. Half a century ago, the constitutional practice in this particular was less stringent than it is now. Nevertheless, in 1820, when Colonel Sir Herbert Taylor, the military secretary to the commander-in-chief (the Duke of York) was elected to the House of Commons, he was distinctly informed by the premier (Lord Liverpool) that "he ought not to interfere in the military discussions on the estimates," as the secretary-at-war was the mouthpiece of the government to sustain any attacks that might be made upon the commander-in-chief, or his office." For the same reason, and in order to prevent the commander-in-chief from interfering in the House of Commons, Lord Liverpool objected to Major-General Sir H. Torrens, the adjutant-general, accepting a seat in parliament. "Sir H. Torrens, therefore, declined the offered seat, as he was to be mute on military discussions, and Sir H. Taylor never interfered in the discussion of the estimates" (Clode, *Mil. Forces*, v. 2, p. 343).

occupy a position where a conscientious expression of his opinions might bring him into collision with the government of the day, or with political opponents, or partisans on either side.¹

This question will be further elucidated by considering the terms of the existing law affecting the eligibility of persons holding office under the crown to sit in the House of Commons.

Law of eligibility for House of Commons.

We have already reviewed the circumstances in which parliament, after many unsuccessful efforts, succeeded, in the reign of Queen Anne, in limiting the number of office-holders who should be capable of sitting in the House of Commons; and, finally, by subsequent legislation, in ridding the House of all placemen who are not required, either directly or indirectly, to assist in carrying on the queen's government, or whose presence cannot be justified upon grounds of public policy.²

The statute of Anne,³ it will be remembered, established two important principles, which have remained substantially unchanged to this day. First, that the acceptance by a member of the House of Commons of an office of profit from the crown shall thereby vacate his seat. Second, that such person may, nevertheless, be re-elected, provided his office be one that is not declared expressly (by this or any other statute) to be incompatible with a seat in the House of Commons.

Ministers accepting office must be re-elected.

In regard to the first of these principles, it should be observed that this statute is invariably construed very strictly.

The second principle initiated by the statute of Anne, and ratified and extended by subsequent legislation, provides for the positive exclusion from the House of Commons of all placemen not required therein. By the 25th section of the statute of Anne this exclusion was directly applied to the incumbents of all "new offices" to be created after October 25, 1705; as well as to certain other offices therein enumerated. There remained, however, a numerous class of officials, holding "old offices" under the crown, who were still eligible to be elected to

Exclusion of all unnecessary officials.

¹ See *Mir. of Parl.* 1839, pp. 3939, 3942; *Hans. D.* v. 151, pp. 788, 1583.

² See *ante*, v. 1, p. 425.

³ 6 Anne, c. 7, secs. 25, 26.

parliament. But their exclusion was gradually effected by various statutes subsequently passed.¹ So that, as a general rule, no government office-holders are now competent to sit in the House of Commons but such as have a representative character in connection with a particular branch of the public service. It is true that there are certain dignified and non-political offices to which the principle of exclusion has not yet been applied, and which it is contended ought not, on public grounds, to disqualify for a seat in that assembly. But these privileged exceptions are the mere relics of a bygone age, are very few in number, and are being gradually abolished. In proof of these statements it will be necessary to take a brief survey of the actual results of parliamentary action upon this subject since the statute of Anne.

The "twelve"² judges of England, though holding offices which were in existence long anterior to the statute of Anne, and not expressly disqualified by any Act of Parliament, are excluded from the House of Commons by ancient usage, on account of their receiving writs of summons to attend the House of Lords.³ Since Queen Anne's reign, other judicial functionaries have been rendered ineligible by statutes passed from time to time.⁴ For example, the Scotch judges, by the Act 7 Geo. II. c. 16; the Irish judges, by 1 & 2 Geo. IV. c. 44; and the judge of the Admiralty Court in Ireland, by the Act 30 & 31 Vict. c. 114, sec. 9.⁵

The judge of the High Court of Admiralty was disqualified in 1840 by the Act 3 & 4 Vict. c. 66.⁶ But, as the then judge

¹ For these statutes and the decisions upon them, see Rogers, *Law of Elections*, ed. 1886, pt. 2, pp. 576-593.

² Down to 1830, the number of common law judges was twelve. In that year they were increased to fifteen, and in 1868 to eighteen. Under the Supreme Court of Judicature Act, 1873, the number of judges was fixed at twenty-one (see *Hans. D.* v. 226, p. 761); another judge was added by Act 40 Vict. c. 9. They are all declared by sec. 9 to be ineligible to sit in the House of Commons.

³ *Mir. of Parl.* 1839, p. 4588; and see *ante*, v. 1, pp. 235, 236.

⁴ Rogers, *Law of Elec.* ed. 1886, pp. 571-573. See article in *Law Mag.* pt. 2, for Aug. 1868. Can a person holding a judicial office sit in the House of Commons?

⁵ Up to passing of this Act, in 1867, the judge of this court was eligible to be elected (*Com. Pap.* 1864, v. 29, p. 232).

⁶ See *Mir. of Parl.* 1839, p. 161; but see *Hans. D.* v. 127, p. 1008.

of this court (Dr. Lushington) was a member of the House at the time of the passing of this Act, the words "after the present parliament" were inserted in the clause of disqualification, on the ground that, inasmuch as he had been "chosen by his constituents while holding his judicial office," it would be "quite beyond the jurisdiction" of parliament to require him to vacate his seat.¹ The judges of the new Landed Estates Courts in Ireland, by Act 21 & 22 Vict. c. 72, sec. 7; and all judges, registrars, and officers attached to any court having jurisdiction in bankruptcy, are disqualified by the Act 32 & 33 Vict. c. 71, sec. 69.

Upon the establishment of county courts in England, the judges thereof were excluded from the House of Commons by the Acts 9 & 10 Vict. c. 95 and 25 & 26 Vict. c. 99.

The recorders of the several boroughs in England and Wales are not disqualified from sitting in the House of Commons; but they are prohibited from Recorders. representing the boroughs for which they act as recorders;² and, upon their appointment to a recordership in the gift of the crown, they must invariably present themselves for re-election, if they desire to remain in parliament.³

The recorders of London and Dublin, however, are eligible to sit in the House of Commons for any constituency. The London recorder is elected by the Court of Aldermen, but the Dublin recorder is Judicial officers still eligible. appointed by the crown.⁴

The judges of the Ecclesiastical Court and of the Provincial Courts of Canterbury and York under the Public Worship Regulation Act of 1874 are likewise at liberty to hold seats in the House of Commons.⁵ And so was the Master of the

¹ *Mir. of Parl.* 1839, p. 4587. The learned judge remained in the House of Commons, of which he had been a distinguished ornament, for thirty-four years, until the dissolution of parliament in 1841. He continued to preside over the Admiralty Court until 1867, and retired from office in his 86th year.

² Act 5 & 6 Will. IV. c. 76, sec. 103. In like manner, a revising barrister may not sit in the House of Commons for any county or borough for which he is appointed to act, by 6 & 7 Vict. c. 18, sec. 28.

³ *Com. Journ.* 1861, p. 156. See case of Attorney-General Sir R. Collier and the Recordership of Bristol, *Am. Law Rev.* v. 5, p. 195.

⁴ *Pol. Cyclop.* v. 4, p. 614; *Mir. of Parl.* 1831-2, pp. 333L, 3496; *Ib.* 1839, pp. 3938, 4591; *Hans. D.* v. 218, p. 945.

⁵ *Mir. of Parl.* 1839, p. 4588; *Hans. D.* v. 221, p. 905.

Rolls, until he was expressly excluded by the Supreme Court of Judicature Act of 1873: from and after "the time appointed for the commencement of this Act." But Sir George Jessel was appointed master of the rolls before this date; and, inasmuch as the 11th section of the Act of 1873 exempted from its disqualifying operation every "existing judge," the election of Sir G. Jessel to the House of Commons in April, 1880, was deemed to be valid, and the Judicature Act to present no objection to his taking his seat in that assembly.¹

There is but one other person holding an office of profit under or from the crown (not being a recognized minister of the crown), who may now sit in the House of Commons, namely, the first church estates commissioner.² This functionary is a lay member of the Church of England, appointed by the crown during pleasure, in whom is vested all estates held in trust for the ecclesiastical commissioners of England, he being *ex officio* one of the said commissioners. But, ever since its constitution, the office of "first commissioner" has been held by a peer. The second and third commissioners have been usually selected from amongst the members of the House of Commons, as the acceptance of these offices entails no disability. The second commissioner is, in fact, competent to sit, because, though appointed by the crown, he receives no salary. The third commissioner because, though a salaried officer, he is appointed by the archbishop of Canterbury.

Thus the tendency of opinion in parliament since the Reform Act of 1832 has been to adhere, with augmented severity, to the principle of exclusion embodied in the statute of Anne, by reducing the number of office-holders under the crown, who shall be capable of sitting in the House of Commons, and by excluding all such as are not directly serviceable in a representative capacity. We accordingly find that the number of offices of profit from the crown which might have been held at any one time by members of the House of Commons has been steadily decreasing through the abolition of various unnecessary offices, and the consolidation of others with kindred departments.

Exclusion of all officials but such as represent a public trust.

¹ *L. T.* May 8, 1880, p. 19.

² See return relating to Offices of Profit, *Com. Pap.* 1867, v. 56, p. 19.

In certain of the Australian colonies, the principle of legislative independence has been still further extended: so as to forbid an elected or nominated member of the legislative chambers, under penalty, accepting any office or place of profit under the crown, at any time *within six or twelve months after ceasing to be such member*. This has been the law in Victoria since 1859¹ and in New Zealand since 1879.²

Moreover, within the past ten years, the principle of exclusion has been still further extended in reference to certain offices newly created under tenure of "good behaviour," and by applying it in these particular cases, to the House of Lords. Thus, in the Government of India Act of 1858, it was provided that the Certain officials excluded from both Houses. members of the council to advise and assist the governor-general, though appointed for life, during "good behaviour," should not be capable of sitting or voting in either House of Parliament.³ And in 1866, in the Act empowering the crown to appoint a comptroller and auditor-general, and an assistant-comptroller and auditor, notwithstanding that these officers were likewise to serve during "good behaviour," a tenure which renders them practically independent of ministerial control, they were declared to be ineligible for a seat in the House of Commons, and it was further enacted that no peer of parliament should be capable of holding either of the said offices.⁴ And the Parliamentary Elections Act of 1868 provides concerning the puisne judges to be charged with the trial of election petitions that, while their tenure shall be similar to that of other judges, which excludes them from the House of Commons, no judge being "a member of the House of Lords" shall be appointed an election judge.⁵

On the other hand, in several instances, permanent non-

¹ By Act 23 Vict. No. 91, sec. 12.

² By Act 42 Vict. No. 30, sec. 6.

³ 21 & 22 Vict. c. 106, sec. 12; and see *Hans. D.* v. 151, pp. 784-790, 1582; *ib.* v. 187, p. 1048; *ib.* v. 196, p. 1236.

⁴ 29 & 30 Vict. c. 39, sec. 3. The previous comptroller of the exchequer (Ld. Monteagle), whose office was identical with that of the new comptroller and auditor-general, was a member of the House of Peers. But see *Hans. D.* v. 182, p. 1862.

⁵ 31 & 32 Vict. c. 125, sec. 11. See first draft of Bill, No. 27, 1868. In New Zealand the disqualification of office-holders (other than political functionaries) extends equally to both Houses. See Disqualification Acts, 1876, c. 70, and 1878, c. 30.

political appointments, as paid commissioners of public boards, or heads of administrative departments, have been conferred upon peers.

While there is a decided disposition in parliament to insist with increasing emphasis upon the incompatibility of a seat in the House of Commons with the acceptance of a non-political office under the crown, on the other hand, ever since the introduction of the first Reform Act of 1832, there has been a growing conviction in the minds of statesmen, wholly irrespective of party considerations, that the clause in the statute of Anne, obliging members who accept ministerial offices under government to go to their constituents for re-election, required some modification in order to adapt it to the exigencies of our modern political system.¹

When the Reform Bill of 1832 was under discussion in the House of Lords, it was proposed by Lord Northampton to insert a clause therein to render it unnecessary for members of the House of Commons to vacate their seats upon the acceptance of political offices. Lord Grey (the prime minister) stated that he was favourably inclined to the proposition, as it appeared to him that great inconveniences resulted from the present practice, which more than counterbalanced any advantages attached to it. But it was judged to be imprudent to risk giving additional strength to the opponents of the Reform Bill by attempting to introduce into it an amendment so liable to be misunderstood.² Accordingly, Lord Northampton brought in a separate Bill for the purpose. The Duke of Wellington, who then led the opposition in the House of Lords, declared his opinion that some such measure would be necessary in consequence of the passing of the Reform Bill, but he conceived that it ought to originate with the government. The other peers who took part in the debate, though generally favourable to the Bill, required more time to consider it; it was therefore postponed and ultimately dropped.³

¹ See the Right Hon. Mr. Cave's remarks on the Bill, passed in 1867, to convert the office of vice-president of the board of trade into an under-secretaryship, expressly to avoid the obligation of re-election upon accepting office (*Hans. D.* v. 187, p. 476).

² *Mir. of Parl.* 1831-2, p. 2382; Grey, *Parl. Gov.* ed. 1864, p. 125; *Hans. D.* v. 189, p. 740. ³ *Mir. of Parl.* 1831-2, pp. 2569, 2808.

In 1834 a similar motion was proposed by a private member in the House of Commons, but it met with little favour. An amendment was moved to substitute a plan for members of government to be allowed seats in the House *ex officio*, but without the privilege of voting, unless returned by a constituency. This proposal proved still more unacceptable to the House, and several years elapsed before this question was again mooted in parliament. But, upon the revival of the agitation for reform by Lord John Russell in 1852, this point once more presented itself for solution. Warned by the fate of previous efforts in this direction, Lord John contented himself with proposing that a member of the House who, at the time of his election, held an office under government, should not be required to ask for re-election upon a mere change of office. This was intended to meet the argument, so often urged against the larger proposition, that a constituency, having chosen a free and independent man as its representative, had a right to an opportunity of reconsidering its choice when he undertook the trammels and responsibilities of public employ. But the Bill did not pass, so that the law concerning the vacation of seats remained unaltered.

Proposal that the seat should not be vacated by a change of office.

In 1854, Lord John Russell, as the mouthpiece of Lord Aberdeen's coalition ministry, introduced another Reform Bill, which contained a clause to do away with the necessity for re-election, in the first instance, upon a member of the House of Commons accepting office as a minister of the crown. In advocating this provision, his lordship commented upon the inconvenience and embarrassment occasioned by the existing law; argued that the particular constituency rarely considered the question involved in the acceptance of office by their representative, but often opposed his return upon totally different grounds; and pointed out that the true responsibility of a member accepting a share in the government lay to the House itself and not to his own constituents, while he was confessedly at liberty to change his course of politics without reference to his constituents, until he sought a renewal of trust at their hands.¹ But this Bill did not pass.

That re-election should be dispensed with.

In 1859 a Reform Bill was submitted to the House of

¹ *Hans. D.* v. 130, p. 508; and see p. 530.

Commons by Mr. Disraeli, as the organ of Lord Derby's administration, which contained a clause to dispense with the necessity for re-election in the case of a member who had been elected when holding an office of profit under the crown, upon his again accepting any office of profit (not being a disqualifying one) "while he continues to be such member."¹ It was not commented upon, or discussed, in the House, during the debates on the Bill, which was thrown out upon its second reading.

That a second re-election should not be required.

In 1860, Lord John Russell, on behalf of Lord Palmerston's administration, again introduced a Reform Bill. By the 30th clause of this Bill it was proposed to enact—in the terms of Mr. Disraeli's Bill for the preceding year—that it should not be necessary for a member who had been elected whilst holding an office under the crown, to ask for re-election upon his accepting another office, "while he continues such member;" provided only, that any subsequent acceptance of office shall be "upon or immediately before his resignation of the office" previously held by him.² After much debate, this Bill was withdrawn without any discussion having ensued upon this particular clause. The Reform question was then allowed to slumber for several years.

In the event of a continuous holding of office.

At length in 1866, after the death of Lord Palmerston, the attention of the House of Commons was again aroused to the state of the representation, and a Reform Bill was laid upon the table by Mr. Gladstone, as the organ of Lord Russell's ministry. Strange to say, this Bill contained no clause concerning the vacation of seats on accepting office; an omission which, considering that Lord Russell had repeatedly advocated some change in the law on this subject, can only be attributed to an unwillingness on the part of Mr. Gladstone to reopen the question.³ But this Bill also shared the fate of its predecessors.

Up, then, to the year 1867, the principle embodied in the statute of Anne, requiring a member to submit his acceptance of an office under the crown, upon every occasion and in all

¹ *Com. Pap.* 1859, 1st sess. v. 2, p. 678.

² *Hans. D.* v. 157, App. p. vi.

³ This surmise is corroborated by Mr. Gladstone's remarks upon this question in the following session (*ib.* v. 185, p. 471).

circumstances, to the approval of his constituents, was resolutely and persistently maintained by the legislature;¹ notwithstanding that some modification thereof, more or less extensive, had been proposed by successive administrations, and advocated by political writers of ability and repute for upwards of thirty years.²

In 1867, however, it once more devolved upon Mr. Disraeli, as the organ of Lord Derby's administration, to submit to parliament a Bill to amend the laws relating to the representation of the people, which, after undergoing protracted discussion in the House of Commons, was finally agreed to by both Houses. As originally introduced, the 37th clause of this Bill was an exact transcript of the 68th clause of Mr. Disraeli's Reform Bill of 1859.³ But, objection being taken in committee that this clause might be so construed that "a defeated government could again take office without re-election," whereas it was the sense of the House that "it should be clearly limited to changes in the existing government after the members had been once re-elected," the government consented to withdraw the clause and substitute another to that effect.⁴ Upon the introduction of the new clause, it was agreed to without a division, Mr. Gladstone expressing his approval of the alteration of the law as being the removal of a very serious inconvenience, which more than outweighed the small constitutional privilege hitherto enforced against a member of the House of Commons whenever he might accept an office from the crown.⁵

In the House of Lords, in committee on the Bill, an attempt was made, by Lord Grey, to substitute for the clause above-mentioned another which, instead of merely permitting members to exchange one office for another without vacating their seats, should render re-election unnecessary whensoever

¹ May, *Const. Hist.* v. 1, p. 308.

² For example: Lord Grey on *Parl. Gov.* ed. 1864, pp. 125, 239; Hearn, *Govt. of Eng.* p. 252; Brief Remarks upon the Working of the Reform Bill, as it affects One of the Royal Prerogatives (a pamphlet) printed by Gilbert and Rivington, London, 1831; *Ed. Rev.* v. 61, p. 40; v. 96, p. 500; v. 106, p. 282; by Mr. W. R. Greg in *North Brit. Rev.* May, 1852, No. 1. On the other side, see Toulmin Smith, *Parl. Rememb.* 1857-8, p. 54; *Quar. Rev.* v. 94, p. 602; Warren, *Election Law*, ed. 1857, p. 189.

³ Representation of the People Bill, 1867, Bill 79.

⁴ *Hans. D.* v. 188, p. 302.

⁵ *Ib.* pp. 301, 614-616.

a member of parliament should accept of any office now tenable by law with a seat in the House of Commons. Lord Grey's amendment was opposed by Lord Derby, on the ground that, however convenient such an arrangement might be to a government, it would be an invasion of the constitutional rights of the electors to declare that a person whom they had chosen whilst in an independent position, and free to devote the whole of his time and attention to his duties on their behalf, but who had afterwards accepted an office which must require a great portion of his time, and also to a certain extent must cripple his independent judgment, should not have to go before his constituents, in order to know whether, in these altered circumstances, they were willing to continue him as their representative. These arguments prevailed with the House, and Lord Grey's amendment was negatived, without a division.¹

The law, as it now stands, seems to be a reasonable settlement of this long-contested point. It preserves to every constituency, that has returned a member to parliament untrammelled by the fetters of office, an opportunity of reconsidering their choice, upon their representative agreeing to assume such a responsibility; and it is, to this extent, a check upon members who might be disposed to ignore the conditions upon which they had been elected to serve in parliament by a particular constituency. On the other hand, it enables a member, whose acceptance of office "from the crown" has been ratified by the suffrages of the electors, to change from one such office to another without the personal trouble and inconvenience to public business, which would result from his having again to offer himself for re-election: provided only that the change be immediate, and that the office subsequently accepted, as well as that which has been relinquished, be an office actually designated in the schedule.²

In Canada, where, as a general rule, the English parliamentary practice prevails, the law concerning the vacation of seats on accepting office has been modified in a similar direction ever since 1853. First, by the statute 16 Vict. c. 154, and afterwards by the amended statute 20 Vict. c. 22, sec. 7, it was provided, that if a member of the

Law in
Canada.

¹ *Hans. D.* v. 189, pp. 744-747.

² See May, *Parl. Prac.* ed. 1883, p. 704.

legislative assembly, or an elected member of the legislative council, who holds any of the (enumerated) offices forming part of the provincial administration, "resigns his office, and, within one month after his resignation accepts any other of the said offices, he shall not thereby vacate his seat in the said assembly or council."¹

Having ascertained the circumstances in which a member of the House of Commons is required, by law, to vacate his seat upon accepting office under the crown, we have next to inquire, what constitutes an acceptance of office sufficient to justify the issue of a new writ?

What constitutes an acceptance of office.

Ordinarily, and as a matter of convenience, mere agreement to accept a disqualifying office vacates the seat.² But such agreement should be distinctly stated, as the ground of vacancy; and, at any rate, in offering himself for re-election, the candidate must appear before his constituents as an actual office-holder under the crown, or his seat may again be vacated by his appointment to the particular office.³

Agreement to accept office vacates seat.

But while it is customary to issue a new writ so soon as a member has agreed to accept a disqualifying office, mere agreement does not of itself disqualify.⁴ It is true that, by agreeing to accept an office from the crown, a member places himself under the

When the issue of a new writ may be delayed.

¹ *Con. Stat. of Canada* (1887), p. 181.

² *Hats. Prec.* v. 2, p. 61 n.

³ In 1801 Mr. Addington, being at the time a member of the House of Commons, received the king's commands to form a new administration, in which it was intended that he should fill the post of chancellor of the exchequer. The arrangements for the new ministry were in progress, when they were interrupted by the king's illness. Believing that the delay would be short, Mr. Addington thought to expedite matters by accepting the Chiltern Hundreds. Thereupon, on February 19, a new writ was ordered. Mr. Addington had fully anticipated that his appointment as chancellor of the exchequer would have taken place before his re-election. But this was prevented by the continued illness of the king; and he was again returned, and took his seat in the House on February 27, not as a minister of the crown, but as a private member. It was not until March 14 that the king was sufficiently recovered to admit of his receiving the seals from Mr. Pitt, and transferring them to Mr. Addington. This formal acceptance of office by Mr. Addington again vacated his seat; and it was March 23 before he reappeared in the House as a minister of the crown (*May, Const. Hist.* v. 1, pp. 164, 165).

⁴ Lord Nugent's case, *Mir. of Parl.* 1831-2, pp. 3331, 3350.

influence against which the statute of Anne is directed. Nevertheless, if there be a reasonable excuse to justify delay, it has been usual for the House to await the performance of some formal act of acceptance, before proceeding to order the issue of a new writ. Meanwhile, the member is not debarred from the exercise of any of his legislative functions.¹

The proper time for the issue of a new writ to supply a vacancy in the House of Commons may be further illustrated by reference to vacancies occasioned by elevation to the peerage.

New writs
upon elevation
to the peerage.

¹ For example, in the session of 1822, Mr. Canning spoke and voted in the House of Commons repeatedly after he had agreed to accept the post of governor-general of India. (*Parl. Deb. N.S. v. 7*, p. 136; *Ib. Index, verbo Canning, G.*; Bell, *Life of Canning*, pp. 319-322; *Ed. Rev. v. 109*, p. 269).

In 1840 Mr. Horsman, M. P. for Cockermonth, issued an address to his electors, dated May 18, informing them that he had been offered the post of a junior lord of the treasury, and had felt it to be his "duty to accept it" (*Mir. of Parl. 1840*, pp. 3243, 3265, 3308); but it was not until May 21 that a new writ was ordered for Cockermonth, Mr. Horsman having, meanwhile, spoken and voted in the House.

Upon the formation of Sir R. Peel's administration in September, 1841, the office of lord chancellor of Ireland was assigned to Sir E. B. Sugden. On September 20 the question was asked in the House of Commons, why no new writ had been moved for upon this nomination, to which Sir E. B. Sugden replied, "It is quite true that I have considered it my duty to accept the appointment; but those measures have not as yet been completed which are necessary to displace the former officers." Sir R. Peel confirmed this statement, saying, "It is intended the appointment should be made, but the ceremony even of kissing hands has not yet taken place" (*Ib. 1841, sess. 2, p. 327*).

On November 22, 1830, a new writ was ordered by the House of Commons for Preston, in the room of the Hon. E. G. Stanley, appointed chief secretary for Ireland. On November 25, a supersedeas thereto was directed to be issued, it being stated that Mr. Stanley "had not accepted" the said office "with the legal technicalities necessary; and that therefore the House, in directing the issue of the writ, acted upon misinformation as to the fact of the vacancy." This course was declared to be "quite in accordance with former precedents" (*Ib. 1830, sess. 2, p. 350*). Eight days afterwards the writ was again ordered, without remark (*Ib. p. 365*).

In 1835, upon the formation of the Melbourne Administration, new writs were ordered in the House of Commons on behalf of several members who had accepted office therein; but in the case of Lord Morpeth, the intended secretary for Ireland, the writ was ordered upon his having accepted the Chiltern Hundreds; which was explained by "the circumstance of sufficient time not having yet elapsed for making out his appointment as chief secretary for Ireland" (*Ib. 1835, p. 845*). But he appeared at the hustings, and was re-elected in the latter capacity (Smith, *Parl. of Eng. v. 2, p. 139*).

When a member of the House is created a peer of the realm, it is usual to issue the writ on his kissing hands after the warrant under the sign manual has issued, although this is but a preliminary step to the making out of the patent; but the writ is sometimes delayed until the patent has been made out, or the *recepti* endorsed.¹

But, where a peerage devolves by inheritance upon a member of the House of Commons, it is customary to await the issue of the writ of summons calling the heir to the other House; when the motion for a new writ of election should be "in place of —, now summoned up to the House of Lords." It is not because the issuing or withholding the writ of summons at all affects the rights of succession, that this practice is observed, for the legitimate heir is entitled to demand his writ of summons *ex debito justitiæ*, if it has been wilfully or inadvertently withheld; but because it affords the readiest proof to the House of Commons that one of their number has become a peer, and is no longer entitled to a seat in their chamber.² The fact of the issue of a writ of summons is not indeed the only conclusive evidence in such cases, for should any unreasonable delay occur, or other cause require it, the House might institute an inquiry into the birth, parentage, and legitimacy of the claimant, he being a member of the Commons.

Any statement of the law and practice concerning the vacation of the seat of a member of the House of Commons upon accepting an office of profit from the crown, would be incomplete without some account of the Chiltern Hundreds. It being contrary to the ancient law of parliament for a chosen representative of the people to refuse to accept, or to resign, the trust conferred upon him,³ a member wishing to retire accepts an office by which his seat is legally vacated. For this purpose it is customary to confer upon any member who may apply for the same the office of

¹ Campbell, *Lives of the Chancellors*, v. 4, p. 125; but see May, *Parl. Prac.* ed. 1883, p. 698.

² See *Hans. D.* v. 74, pp. 109, 283.

³ May, *Parl. Prac.* ed. 1883, p. 708. Members of the Canadian legislature are empowered to resign their seats at any time, except when their right to the seat is contested, or within the ordinary period for petitioning against their election: by the Consol. States of Canada. (1886), c. 13, secs. 5, etc.

steward or bailiff of her Majesty's three Chiltern Hundreds, of Stoke, Desborough, and Bonenham; or, of the Manors of East Hendred, Northstead, or Hempholme; or, of Escheator of Munster.¹ These stewardships are merely nominal offices; but they are technically sufficient for the purpose in view; and, as soon as that purpose is accomplished, they are resigned.²

The appointment to the Chiltern Hundreds is vested in the chancellor of the exchequer; but he acts formally and ministerially in conferring it upon any applicant, unless there appears to be sufficient grounds to justify a refusal. Nevertheless, the office would never be granted to a person in a state of mental incapacity, or where proceedings were pending whereby the applicant might be lawfully deprived of his seat, or expelled from the House.³

Where a vacancy occurs in the House of Commons, whether by death, elevation to the peerage, or acceptance of office—prior to, or shortly after, the first meeting of a new parliament; or within fourteen days after the return of a newly elected member—a writ will not be issued, upon any such member so vacating his seat, until the expiration of the time limited for presenting election petitions. Furthermore, upon any such vacancy occurring, as a general rule, no new writ can issue, if a petition has been presented against the election or return, until the petition has been finally adjudicated upon.⁴ And for the obvious reason that it might appear, as a result of such an investigation, that there had been no vacancy, for that, in fact, another person was the rightful owner of the seat.

But in 1852, the latter part of this particular rule was set

¹ 2 *Hats. Prec.* 55 n. As an office cannot be conferred twice on one day, if there be a second applicant, on the same day, for the Chiltern Hundreds, it is necessary to have recourse to another stewardship (Peel, *Hans. D.* v. 83, p. 505).

² May, *Parl. Prac.* ed. 1883, p. 709.

³ *Hans. D.* v. 65, p. 1102; and see the Bodmin case (Election Compromises), *Ib.* v. 155, pp. 960, 1039, 1293; see also the Pontefract Election case, *Ib.* pp. 1254, 1276, 1296, 1406, 1409. At the termination of this inquiry the sitting member (W. Overend) accepted the Chiltern Hundreds on February 2, 1860.

⁴ See Election Petitions Act, 1868, c. 6; Clerk, *Law of Elections*, p. 223; *Hans. D.* v. 186, p. 1199.

New writs not to be issued until expiry of time for questioning returns.

aside, and a contrary practice established, on behalf of members accepting office. In this year there was a general election, and, shortly after the meeting of parliament, it became necessary to form a new administration. The wholesome and hitherto invariably respected rule—to delay the issue of writs upon any vacancy until the rights of the election (if called in question) had been determined—would undoubtedly have occasioned some public inconvenience at this juncture. Amongst the members who had accepted office in the new ministry, there were several whose returns had been petitioned against. Whereupon the speaker was appealed to, and he decided, “that in the case of an election petition complaining of an undue return, or of the return of a member in consequence of bribery, but not claiming the seat for another person, it was competent for the House to issue a new writ. But that in the case of a petition complaining of the undue return of a member, and claiming the seat for another person, it was not competent for the House to issue a new writ, pending [the decision upon] the petition; inasmuch as the House in that case could not know which of the two [candidates] had been duly elected.” As it happened that in every instance but one, where petitions had been presented against the return of the newly appointed ministers, the seat was not claimed, new writs were immediately issued.¹ But in the Athlone case, where the seat of the sitting member (Mr. Keogh) was claimed for another person, no new writ was ordered, upon his being appointed solicitor-general for Ireland, until the petition against his return had been tried and determined.²

And if there be a petition, no writ to issue, if seat be claimed.

Issue of writs.

The new practice—authorizing the issue of new writs upon members accepting office, directly after the expiration of the time allowed for petitioning against the return, unless the seat is claimed—was followed, in similar circumstances, in 1859. But it gave rise, in one case (that of Lord Bury), to much dispute.³ The decision of the speaker in 1852 was

¹ *Hans. D.* v. 123, p. 1742. The point has been previously decided to the same effect in the case of Sir Fitzroy Kelly, in April, 1852 (see May, *Parl. Prac.* ed. 1883, p. 714).

² Clerk, *Law of Elec.* p. 218 n.

³ May, *Parl. Prac.* ed. 1883, p. 696; Smith, *Parl. Remembrancer*, 1859, pp. 103, 105.

questioned before an election committee, and the opinion expressed that the House ought to reconsider the matter.¹ It must be admitted that the weight of legal authority is against the construction of the law adopted by the House of Commons,² however much may be said in favour of the speedy issue of the writ on the score of convenience.

In 1867, an attempt was made to get rid of the distinction drawn by the speaker, in respect to petitions claiming the seat for another candidate. On April 5, 1867, a member called the attention of the House to the practice that, "when a petition praying for the seat was presented against any person who had been appointed to an office of profit under the crown, no writ could issue until the petition had been decided." He pointed out a recent example of the vexatious operation of the existing usage, whereby a minister of the crown had been kept out of the House of Commons by reason of a petition claiming his seat, which was afterwards withdrawn; and he moved that, "whenever a member of this House shall accept an office of profit under the crown, a writ for a new election may issue, notwithstanding that the time limited for presenting a petition may not have expired, or that a petition praying for the seat may have been presented." A technical objection prevented the debate on this motion from proceeding; but it was remarked by an old and experienced member, that the mover "had made out no case for altering the rules of the House" in this matter. For "that which might turn out to be the property of one person ought not to be given to another. In the very rare case of cabinet ministers not being able to take their seats for a fortnight or three weeks . . . the secretary to the treasury, or some of the subordinate officers of the government who did not vacate their seats, might very well discharge the necessary business in their absence."³

Where there has been no legal return made to the writ—as by the election of a person who is incapable of being chosen—the House of Commons will proceed to inquire into the matter, and to order a new writ to be issued without any delay. For, except in the trial of

Unsuccessful attempts to change this practice.

¹ *Hans. D.* v. 157, p. 1149.

² See Clerk, *Law of Elec.* pp. 212-224.

³ *Hans. D.* v. 186, pp. 1199-1201.

election petitions, and questioning returns to writs of election (which are now tried by the judges, under the Act of 1868), the House still retains its ancient jurisdiction, to determine all questions affecting the seats of its members, not arising out of controverted elections.¹

¹ May, *Parl. Prac.* 1883, pp. 59, 722; case of O'Donovan. Rossa, *Hans. D.* v. 199, p. 122.

CHAPTER III.

THE FUNCTIONS OF MINISTERS OF THE CROWN IN RELATION TO PARLIAMENT.

IN the preceding chapter our attention has been mainly directed to the mode in which ministers of the crown find entrance into parliament, for the general purpose of representing therein the authority of the crown, and the conduct of the several branches of the executive government, and in order to enable them to administer the affairs of state which have been assigned to their control, in harmony with the opinions of that powerful and august assembly.

We must now point out the functions appertaining to ministers in connection with parliament, defining those which belong to the administration collectively, and those for which particular ministers are accountable.

Our observations on this subject may be suitably arranged under the following heads:—(1) The Speech from the Throne and the reply thereto. (2) The introduction of public Bills and the control of legislation. (3) The oversight and control of business generally. (4) The necessity for unanimity and co-operation amongst ministers. (5) Questions put to ministers or private members, and statements by ministers. (6) The issue and control of royal or departmental commissions.

I. *The Speech from the Throne, and the Address in Reply.*

According to modern constitutional practice, the first duty of ministers in relation to parliament is to prepare the speech intended to be delivered by, or on behalf of, the sovereign at the commencement and at the close of every session.

Speech from
the throne.

Parliament being the great council of the crown, it has

always been customary, until a very recent period,¹ for the sovereign to be personally present when it is first assembled. But the duty of declaring the causes of summoning parliament has been assigned from the earliest times to one of the king's principal ministers, usually the lord chancellor.²

In addition to the formal "opening of the cause of the summons" by the chancellor, it was usual for the sovereign from very early times to address a few words of compliment, congratulation, or advice, to his faithful parliament. This was understood to proceed directly from the heart of the sovereign, and was not intended as a substitute for the more formal and official utterance of the minister. Thus, at the opening of the first parliament of King James (A.D. 1603), it is recorded: "The king's speech being ended" [the which is omitted from the journal, "because it was too long to be written in this place"], "the lord chancellor made a short speech, according to the form and order."³ At other times, however, James I. dispensed with the services of the chancellor, and made his own speech the vehicle of communicating to parliament the causes of summons.⁴

Upon the accession of Charles I. the following ceremony was observed at the opening of his first parliament: "The king's Majesty being placed in his royal throne, the Lords in their robes, and the Commons present below the bar, his Majesty commanded prayers to be said. And, during the time of prayers, his Majesty put off his crown, and kneeled by the chair of estate. Then it pleased his majesty to declare the cause of the summons of this parliament," in a speech which, in comparison with the quaint and pedantic harangues of his royal father, was brief and businesslike. It concluded in these words: "Now, because I am unfit for much speaking, I mean to bring up the fashion of my predecessors, to have my lord keeper to speak for me in most things; therefore I commanded him to speak something to you at this time—which is more for formality than any great matter he hath to say unto you."

¹ [Lord Melbourne, writing to Lord John Russell in 1837, said of William IV.'s intention not to open parliament in person, "No king had ever stayed away before except on account of some personal infirmity of his own" (*Life of Lord J. Russell*, v. 1, p. 275 n.).—*Editor.*]

² Stubbs, *Const. Hist.* v. 3, pp. 428, 478; Elsynge, *Meth. of Parl.* c. vi.

³ *Lords' Jour.* v. 2, p. 264.

⁴ *Ib.* v. 3, pp. 8, 209.

Then followed a few observations from the lord keeper, setting forth the king's reasons for calling the present parliament.¹

After the Restoration, the ancient and constitutional practice was continued of entrusting to the lord chancellor the formal communication of the causes for convening parliament; whilst the sovereign gave personal expression to his desires and sentiments upon the occasion.² One of Charles II.'s own speeches is probably the first instance of an avowedly written speech read by an English monarch to the assembled parliament. On October 21, 1680, both Houses being present, the king said, "My lords and gentlemen, I have many particulars to open to you; and, because I dare not trust my memory with all that is requisite for me to mention, I shall read to you the particulars out of this paper." Then follows the royal speech, which, contrary to the ordinary practice, was not supplemented by any observations from the lord chancellor.³

Since the revolution of 1688, there has been but one address from the throne at the opening of parliament—that which is uttered by the mouth of the king when present, or by the lord chancellor in his behalf, and by his express command,⁴ or by commissioners deputed by the sovereign in his absence. And

it has become the invariable practice, and is an acknowledged constitutional right, to treat this speech, by whomsoever written, as the manifesto of the ministers for the time being, so as to admit of its being freely criticized or condemned, with the usual licence of debate.⁵

William III. was too independent a monarch to receive his speech cut and dried from the hands of any one, though he did not hesitate to avail himself of the ability and experience of his lord keeper Somers to clothe his own high thoughts and

¹ *Lords' Jour.* v. 13, p. 435.

² *Ib.* p. 293.

³ *Ib.* p. 610. See Smith, *Parl. Remembrancer*, 1862, p. 4.

⁴ As in the case of George I., who, from his inability to speak English, directed the lord chancellor to read the speech, when he opened parliament in person (Campbell's *Chan.* v. iv. p. 600). Her Majesty Queen Victoria followed this precedent when she opened parliament 1866, 1867, 1876, and 1877, etc.

⁵ Massey, *Reign of George III.* v. 1, p. 156; *Parl. Hist.* v. 23, p. 266; *Mir. of Parl.* 1830, sess. 2, p. 36: A similar latitude is allowed in the debate upon the address: witness the speech of Mr. O'Connell, on February 5, 1833, when he styled the address a "brutal and bloody" one (*Ib.* 1823, p. 36).

purposes in dignified and judicious language.¹ And, even after Somers had retired from office, his accomplished pen was still employed by the king on this service.

We have a notice, concerning the speech at the opening of parliament in 1701, which points to the introduction of that which has since become an unvarying usage. The crafty and experienced Earl of Sunderland—who was the chief adviser of James II. during most of his unhappy reign, and who contrived to exercise immense influence over King William until his retirement from public life in 1697—writing to Lord Somers, to advise him upon the proper management of the new parliament, says, “It would be well for the king to give order to two of the cabinet to prepare the speech, as the Duke of Devonshire and Secretary Vernon, and bid them consult in private with Lord Somers, rather than to bring to the cabinet a speech already made.” Sunderland’s advice was taken in such good part, that the speech, with which King William opened this his last parliament, on December 31, 1701, was entrusted to Somers to draft, notwithstanding that the great *ex-chancellor* was no longer a minister, although he still remained one of the king’s most honoured servants. Burnet pronounced this speech to be “the best that he, or perhaps any other prince, ever made to his people.”²

In 1708–9, the lord treasurer Godolphin entrusted to Robert Walpole, then secretary-at-war, the task of framing the speeches from the throne, to be delivered by Queen Anne.³

Prompted by her Tory counsellors, Queen Anne’s speech, at the opening of parliament in 1711, was made the vehicle of a startling attack upon the conduct of her great general and quondam Whig minister, Marlborough, whose recent campaigns upon the continent had rendered him unpopular at court and with the people. In the exordium of this speech her Majesty said, “I am glad that I can now tell you that, notwithstanding the arts of those who delight in war, both place and time are appointed for opening the treaty of a general peace.” To this the Commons—whose feelings against Marlborough were very bitter—responded by a special reference in their address

¹ Macaulay, *Hist. of Eng.* v. 4, p. 726.

² *Parl. Hist.* v. 5, p. 1329; *Pict. Hist. of Eng.* v. 4, p. 134; *Eng. Cyclop.* (Biography), v. 5, p. 592.

³ Ewald’s *Life of Walpole*, p. 32.

to "the arts and devices of those who, for private views, may delight in war."¹

The first speech delivered by George III., upon his accession to the throne in 1760, was the production, not of his constitutional advisers, but of ex-chancellor Hardwicke, in conjunction with the king's favourite, the Earl of Bute, and with the addition of a paragraph, adverting to his birth and education as a "Briton," which was penned by the king's own hand. The draft of this speech, however, was communicated to the Duke of Newcastle, in order that it might be formally "laid before the king in cabinet council."² We learn that, upon this occasion, the king endeavoured to procure the insertion of other words, referring to "the bloody and expensive war" in which England had been engaged; but Mr. Pitt, who had been mainly responsible for the conduct of that war, succeeded with much difficulty in prevailing upon his Majesty to omit them."³

By modern constitutional practice, the royal speech to be addressed to parliament is drafted by the prime minister, or by some one under his advice and direction; it is then submitted to the cabinet collectively, that it may be settled and approved, and it is afterwards laid before the sovereign for consideration and sanction.⁴

Great care is necessary in framing a royal speech, so as to avoid any expression that might occasion differences of opinion in parliament, lead to acrimonious debate, or otherwise impair the harmony that ought to subsist between the crown and the other branches of the legislature.⁵ The speech at the opening of a session should include a statement of the most material circumstances of public interest which have occurred since parliament separated, and should announce in general terms the principal measures which it is the intention of ministers to bring under the consideration of parliament.⁶ But it is not customary

Contents of a
royal speech to
parliament.

¹ Knight, *Pop. Hist. of Eng.* v. 5. pp. 377, 378.

² Harris, *Life of Hardwicke*, v. 3, p. 231.

³ May, *Const. Hist.* v. 1, p. 12; *Ed. Rev.* v. 126, p. 4; *Lords' Jour.* v. 30, p. 9.

⁴ Campbell, *Chanc.* v. 7, p. 409.

⁵ Yonge, *Life of Ld. Liver. ool.*, v. 1, p. 207.

⁶ Lord Derby, *Hans. D.* v. 144, p. 22; Mr. Disraeli, *Ib.* v. 198, p. 1375; v. 222, p. 96; v. 227, p. 89. See the reason assigned for omitting any reference to an intended measure relative to the civil list, in

to refer to subsidiary arrangements that have been taken by government, pursuant to the provisions of particular Acts of Parliament, no matter how important they may be.¹ And it is not usual to refer in a speech from the throne to the existence of distress in the country, unless it be of a character wholly exceptional, and of universal prevalence.²

In fact, nothing should be mentioned by the sovereign that parliament cannot echo with freedom and propriety, it being always borne in mind that parliament echoes nothing without discussion. It is for this reason that it is not customary to mention the death of foreign sovereigns in a king's speech. To bring a deceased foreign sovereign before parliament for discussion would be a liberty unwarrantable with the sovereigns of other nations.³ Furthermore, in the speech at the close of the session, as well as upon all other occasions, the sovereign should abstain from taking notice of any Bills or other matters depending, or votes that have been given, or speeches made, in either House of Parliament, until the same have been communicated to the crown in a formal and regular manner.⁴

In 1864, Lord Palmerston (prime minister) adverted to the omission in the royal speech of the old stereotyped phrase, that her Majesty "had received friendly assurances from foreign powers." He said it was not the first time that that very unmeaning passage had been left out, and he trusted it would never appear again, "because such friendly assurances are never given or received;" and the only meaning of the expression was that the sovereign was in good relations with foreign powers, which, when it was actually the case, should be stated plainly.⁵

It was formerly the usage for the prime minister to read over the royal speech to the supporters of government, on the day before its delivery, in "the cockpit," *i.e.* the treasury chambers—so called from these apartments having been originally built by Henry VIII. as a cockpit, and assigned by

the speech from the throne (*Mir. of Parl.* 1831, p. 193; and see *Hans. D.* v. 194, pp. 68, 76, 81.

¹ Mr. Gladstone, *Hans. D.* v. 209, p. 112.

² *Ib.* v. 199, pp. 1070, 1071; and see Le Marchant, *Life of Earl Spencer*, p. 233.

³ Mr. Canning's letter, Jan. 27, 1826; Stapleton's *Canning*, p. 610.

⁴ Hatsell, *Prec.* v. 2, pp. 353, 356.

⁵ *Hans. D.* v. 176, p. 1286.

Charles II. to the use of the Treasury¹—but the custom was dropped in 1794 or 1795.² It has since been the practice to read the speech the evening previous to its delivery to the chief supporters of the government in both Houses, at the dinner-table of the leaders of the Lords and Commons respectively.

One of the first acts, in both Houses, at the commencement of the session, is to pass an address of thanks in answer to the speech from the throne. It was during the premiership of Sir Robert Walpole, in 1726, that we find the first instance of the two Houses echoing the words of the speech, in such addresses;³ a practice which until recently has been invariably followed.⁴

Prior to the revolution of 1688, it was customary to postpone, until a subsequent day, the consideration in parliament of the speech from the throne, so as to afford an opportunity to members to become more fully acquainted with its contents. But, since that epoch, it has been usual to move the address in answer to the speech on the same day that it was delivered; inasmuch as members had ample means of knowing the contents of the speech before they were called upon to debate it, either by attending overnight at the cockpit, or through the medium of the newspapers, into which the general contents of the royal speech ordinarily find their way on the morning of the day upon which it is uttered. In the year 1822, an attempt was made in the House of Commons to defer the consideration of the speech for two days, but without success.⁵

Royal speeches, in former times, were generally of considerable length, embracing a variety of topics, which rendered it advisable to take time in framing a suitable reply; but, since the introduction of parliamentary government, it has become the practice to treat the several topics contained in the speech in a manner which does not oblige the Houses, in their addresses of thanks, to

Addresses of
thanks for the
speech.

Rule in
framing such
addresses.

¹ Thomas, *Hist. of Excheq.* p. 137.

² Russell, *Memorials of Fox*, v. 2, p. 211 n.

³ Campbell, *Chanc.* v. 4, p. 600.

⁴ [Of late years, in order to save the time which had been occupied by the debates on the address, a short address thanking the crown in general terms for the speech from the throne, has been substituted for the longer echo of the speech itself.—*Editor.*]

⁵ *Hans. D.* N.S. v. 6, pp. 27, 47; and see *Ib.* v. 72, p. 60.

pronounce any opinion upon questions of a doubtful character—and upon which full information has not yet been communicated to parliament—but rather enables them to reserve for separate discussion upon subsequent motions all matters whereupon there is likely to be any material difference of opinion amongst members of the legislature.¹

It has sometimes happened, however, that ministers “have felt it be their duty, and of importance to the public service, that, on the first occasion of meeting the parliament, the definite and positive opinion of parliament should be taken on some great principle, introduced for the purpose of regulating their public conduct.”² And sometimes the opposition has deemed it to be incumbent upon them, at the outset of a session, to propose amendments to the address for the purpose of determining whether the administration does or does not possess the confidence of the House.³

It is customary for the leader of the House to entrust the moving and seconding of the address in answer to the speech to some member who is not an “habitual speaker;”⁴ and such occasions afford an excellent opportunity for the introduction to the notice of parliament of members from whom a successful *début* may be anticipated. The House is always disposed to receive with favourable consideration new candidates for parliamentary distinction, and the numerous topics of public interest contained in the speech present a peculiarly advantageous opening for an inexperienced debater. And here it may be noticed that, by the 37th rule of the House of Commons, the proposer and seconder of such a motion ought to “attend in their places in uniform or full dress.”

In selecting persons for this duty, it is usual, in the House of Commons, to make choice of a member who represents the

¹ Lord John Russell, *Ib.* v. 72, p. 85; Sir R. Peel, *Ib.* p. 94; Palmerston, *Ib.* v. 102, p. 205; and see *Ib.* v. 136, p. 91. A debate on the address has been likened to a day's coursing where there were too many hares on the ground. You started a fresh hare every moment, and caught none (*Ib.* v. 227, p. 32).

² Lord Stanley (Earl of Derby), *Hans. D.* v. 139, p. 18.

³ See cases of such amendments in both Houses, in 1841, and in the House of Commons in 1859; and see Smith, *Parl. Rememb.* 1859, p. 91. See also the amendment to the address carried against ministers in the House of Commons in 1835, and, more recently, in 1892.

⁴ *Hans. D.* v. 173, p. 7.

landed interest to move the address, and some one specially acquainted with commerce and mercantile affairs to be the seconder. No particular usage is observed in the House of Lords in this particular.¹

The form and order of drawing up the address in answer to the speech, and the stages at which it is permissible to propose amendments thereto, need not be described, as they are clearly explained in May's *Parliamentary Practice*.²

Pending the agreement of the House to the address, questions may be put to ministers, and addresses passed for the production of papers.³ But it is usual to defer the presentation of papers asked for, and to postpone a formal reply to an ordinary address, until the answer of the crown to this address has been reported.⁴

The speech from the throne at the close of a session recapitulates the principal measures which have engaged the attention of parliament, and to which the royal sanction has been given. Regret may be suitably expressed on this occasion at the inability of parliament to mature legislation upon any particular subjects which were commended to their consideration in the royal speech at the opening of the session.⁵

2. *The Introduction of Public Bills, and the Control of Legislation.*

In addition to the measures, specially commended to parliament in the speech from the throne, it is the right and duty of ministers of the crown to submit to its consideration whatever measures they may deem to be necessary for the public service.

Where the rights of the crown, its patronage or prerogative, are specially concerned, although the subject-matter of a proposed Bill affecting the same may have been generally recommended to the notice of parliament in the speech from the throne, a special royal message—either under the sign manual, or verbally conveyed

¹ See Wellington's *Desp.* Civ. S. v. 6, pp. 399, 458, 462.
² May, ed. 1883, p. 223; but see cases on these points, *Mir. of Parl.* 1831, pp. 7-10; *ib.* 1834, p. 37; *ib.* 1839, p. 43; *Hans. D.* v. 185.
³ *Com. Jour.* 1833, pp. 8-30.
⁴ *Hans. D.* v. 199, p. 322.
⁵ See speeches from throne, Aug. 10, 1872, and Aug. 7, 1874.

through a minister of the crown—is necessary to signify that her Majesty is pleased to place at the disposal of parliament her interests, etc., in the particular matter.

This intimation should be given before the committal of the Bill.¹ But where a public bill of this description is proposed to be initiated by a private member, and not upon the responsibility of ministers, the House ought to address the crown for leave to proceed thereon, before the introduction of the same ;² although, according to the practice of parliament, it is not absolutely necessary to obtain this assent before the third reading.³ In the case of a local or private bill, affecting the crown property or rights, the royal consent must be given before the third reading, or the bill cannot be proceeded with.⁴

By modern constitutional practice, ministers of the crown are held responsible for recommending to parliament whatsoever laws are required to advance the national welfare, or to promote the political or social interest of any class or interest in the commonwealth.⁵ This is a natural result of the pre-eminent position which has been assigned to ministers of state in the Houses of Parliament, wherein they, collectively, represent the authority of the crown, personify the wisdom and practical experience which is obtainable through every branch of the executive government ; and as leaders of the majority in parliament are able to exercise a powerful influence over the national counsels.

Ministers
responsible for
legislation.

But it has only been by degrees, and principally since the passing of the Reform Acts of 1832, that it has come to be an established principle, that all important acts of legislation

¹ Church Temporalities (Ireland) Bill, *Mir. of Parl.* 1833, pp. 1627, 1733, 2377, 2836.

² *Ib.* 1835, pp. 608, 724, 1826 ; *Ib.* 1837-8, p. 778 ; *Hans. D.* v. 63, p. 1585 ; *Ib.* v. 191, p. 1899, v. 192, p. 113. See the debate on this point in the House of Lords, April 28, 1868 ; and proceedings in the Lords, on Irish peerage question, July 9 and 26, 1875.

³ The Speaker, *Hans. D.* v. 191, p. 1564 ; Mr. Gladstone, *Ib.* p. 1898.

⁴ May, *Parl. Prac.* ed. 1883, p. 875. For precedents where consent of crown has been withheld to bills before parliament, see Mr. Watson's evidence (194-218, 926), in Rep. of Com^o on Thames Embankment (*Com. Pap.* 1871, v. 12).

⁵ For a striking comparison of ancient and modern practice in regard to the proper limits of duty of administrations and sphere of legislation, see Duke of Somerset on monarchy and democracy, c. xi.

should be originated, and their passage through parliament facilitated, by the advisers of the crown.

Formerly, ministers were solely responsible for the fulfilment of their executive obligations, and for obtaining the sanction of parliament to such measures as they deemed to be essential for carrying out their public policy.¹ But the growing interest which, of late years, has been exhibited by the constituent bodies upon all public questions, and the consequent necessity for systematic and enlightened legislation for the improvement of our political and social institutions, and for the amelioration of the laws, in accordance with the wants of an advancing civilization, together with the difficulty experienced by private members in carrying bills through parliament, have led to the imposition of additional burthens upon the ministers of the crown, by requiring them to prepare and submit to parliament whatever measures of this description may be needed for the public good ; and also to take the lead in advising parliament to amend or reject all crude, imperfect, or otherwise objectionable measures which may at any time be introduced by private members.²

These high functions are performed in direct responsibility to parliament, and especially to the House of Commons, to whom ministers are accountable for the policy and wisdom, as well as for the legality, of all their acts ; because they are bound to exert themselves to the utmost in the service of the crown, and are justly liable to punishment if they undertake such obligations without possessing the ability requisite for the adequate discharge thereof.³

But, in proportion to the enlarged scope of ministerial duty in the initiation of important public measures, greater latitude should be allowed to parliament to criticize, amend, or reject the same, without it being assumed that their general confidence in ministers is consequently impaired.⁴ On the other hand, it should be freely conceded to private members that they have an abstract right to submit to the consideration of parliament measures upon every question which may suitably

¹ See Ld. John Russell's speech in 1848, *Hans. D.* v. 101, pp. 709, 710.

² See Park's *Lectures on the Dogmas of the Constitution*, pp. 36-41.

³ Grey, *Parl. Govt.* c. 2 ; Bowyer, *Eng. Const.* p. 136 ; Fischel, *Eng. Const.* p. 502 ; Rowland's *Eng. Const.* p. 437 ; Cox, *Inst. Eng. Govt.* p. 30.

⁴ *Ed. Rev.* v. 95, p. 226 ; v. 108, p. 278 *u.*

engage its attention, subject only to the limitations imposed by the prerogative of the crown, or by the practice of parliament.

Bearing this in mind, it must be admitted that the rule that all great and important public measures should emanate from the executive has of late years obtained increasing acceptance. The remarkable examples to the contrary, which are found in parliamentary history antecedent to the first Reform Acts, could not now occur, without betokening a weakness on the part of ministers of the crown which is inconsistent with their true relation towards the House of Commons.

Ministers
expected to
originate all
important
legislation

By modern practice, "no sooner does a great question become practical, or a small question great, than the House demands that it shall be 'taken up' by the government. Nor is this from laziness or indifference. It is felt, with a wise instinct, that only thus can such questions in general acquire the *momentum* necessary to propel them to their goal, with the unity of purpose which alone can uphold the efficacy and [preserve their] consistency of character."¹ The effect of adverse amendments by either House of Parliament, to government Bills, upon the position of ministers towards such Bills, or towards parliament itself, will naturally depend upon the circumstances of each particular case.

Sir Robert Peel, in 1844, insisted that "individual members of parliament had a perfect right to introduce such measures as they thought fit, without the sanction of the government."² Again, in 1850, the propriety of affording to private members an opportunity of inviting consideration to great questions of public interest, was urged by that statesman, whilst he admitted that it was an excellent principle that the duty of preparing legislative enactments in all such cases should be undertaken by the ministers of the crown.³ For private members naturally regard the measures which they advocate simply from the point

Important
Bills brought
in by private
members.

¹ *Ed. Rev.* v. 126, p. 565; and see *Hans. D.* v. 200, p. 931; v. 214, p. 1007; v. 218, pp. 1745, 1770.

² *Ib.* v. 75, p. 475; and see Cox, *Commonwealth*, p. 133.

³ *Hans. D.* v. 108, p. 974. Sometimes a Bill on an important public question is brought in by a minister in his capacity as a private member, and not as a government measure (*Ib.* v. 194, p. 1092; v. 198, p. 125).

of view of the good they are designed to effect; while it is the duty of ministers to consider them in their general bearing upon public legislation.¹

But of late years the great increase of debates, and the annual accumulation of arrears of public business, have combined to render it practically impossible for Bills introduced by private members to become law, unless by the active assistance of the government. In default of such assistance, at least in the case of Bills which encounter much opposition, no sufficient time for their progress through parliament can now be obtained.²

While it is the especial duty of ministers of the crown to prepare and submit to parliament whatever measures may be required for the defence of the empire, the support of the civil government, or to amend or otherwise improve the fundamental or constitutional laws of the realm—and to control by their advice and influence all public legislation which is initiated by private members—a most useful purpose is served by the previous free investigation and debate in parliament of these and all other questions affecting the public welfare.

It is not, in fact, the primary duty of either House to pass the measures of the executive, but rather, as the great council of the nation, to advise the crown as to the way in which the public service may be most beneficially conducted, and to give expression from time to time to enlightened opinions upon the various topics which are attracting public attention.³ This function cannot be fulfilled except by granting to private members adequate opportunity for introducing to the notice of parliament projects for effecting desirable reforms in our political or social system, and by facilitating the discussion of such measures until public opinion is sufficiently agreed upon them to render legislation not only safe but expedient, when it will become the duty of ministers of the crown to assume the responsibility of advising the passing of Bills in parliament to give effect to the same. Nearly all the great reforms which

Advantages of
free discussion
in parliament.

¹ Mr. Goschen, *Hans. D.* v. 495, p. 1970.

² *Social Science Trans.* 1875, p. 186; *Hans. D.* v. 235, p. 1189.

³ Mr. Disraeli, *Ib.* v. 461, p. 163. Mr. Fox used to say that "deliberation, and not despatch, is the duty of the House of Commons" (*Ib.* v. 208, p. 76).

SERVANTS
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have received the sanction of parliament during the present century have originated in this manner.¹

Instances indeed have occurred in our political history wherein a majority of the House of Commons, acting contrary to the advice of the existing administration, have demanded the immediate settlement of some great political reform in a certain way, bringing to bear upon the ministers of the crown a pressure in relation thereto, which they have been unable to withstand. It has then been optional with the ministry either to render assistance in carrying out the proposed reform, provided the consent of the sovereign could be obtained, or else to resign and give place to others, through whose efforts such legislation might take place upon the particular question as would conciliate the good-will of the several estates of parliament. The repeal of the Test and Corporation Acts in 1828, and the settlement of the long pending question of Roman Catholic emancipation in 1829—to both of which measures the ministry then in power were at first opposed—were actually accomplished with the consent and co-operation of ministers themselves.²

The will of parliament ultimately prevails.

The repeal of the corn laws, in 1846, affords an illustration of a different principle and shows what can be done by a bold and determined minister, who views the exigency of the state with sagacity and resolution. No such measure had been demanded by either House of Parliament, for the Lords were staunch protectionists, and the majority of the Commons had been elected as the opponents of free trade. Sir Robert Peel himself had been hitherto the great champion of the protectionist party. Nevertheless, being convinced that the time had come when the national interests required the abrogation of the corn laws, he assumed the responsibility of advising their repeal, and, after a severe struggle, succeeded in obtaining the consent of his colleagues in office, and of both Houses of Parliament to his Bill.

Sir R. Peel and the corn laws.

All motions for the grant of money for the public service, or for imposing any pecuniary charge upon the people, must emanate from ministers of the crown in the House of Commons. By standing orders passed

Supply votes to be initiated by the crown.

¹ *Hans. D.* v. 161, pp. 160, 161, 657; v. 162, p. 353; v. 203, p. 204; v. 218, p. 1745; v. 235 p. 563.

² See May, *Const. Hist.* v. 2, pp. 389-402.

in 1866, and which are more stringent than those previously in force, private members are effectually debarred from initiating such proceedings, unless with the recommendation of the crown.¹

The rules of the House of Commons, as will be presently noticed, afford to an administration ample opportunity for inviting the attentive consideration of parliament to whatever measures its members may think fit to propose. But their ability to carry them successfully through both Houses must wholly depend upon the extent to which they possess the confidence of parliament, and especially of the Lower House. An adequate degree of parliamentary support is essential, not merely to the continuance in office of the ministers of the crown, but also to the integrity and usefulness of their legislative measures. If they cannot rely upon being able to pass their Bills, at all events without substantial alteration, they will naturally refrain from bestowing the necessary pains to render them perfect and complete; and thus either the statute-book will be encumbered with crude and imperfect laws, or else the duty of framing desirable measures will pass out of the hands of the responsible servants of the crown, and will be assumed by men who merely represent the will and opinions of a popular assembly to the manifest detriment of the public interests, and in violation of the principles of parliamentary government.²

Twice, within the past thirty-five years, the executive government have had recourse to the unusual proceeding of inviting the House of Commons to assist them in determining upon the leading principles whereon particular Bills should be framed, which were of the highest importance in a constitutional point of view, but in regard to which successive administrations had failed to propound a policy acceptable to parliament.³ The course adopted by ministers upon these

Ability of ministers to pass their measures.

Government Bills based on general resolutions.

¹ See *post*, pt. v. ch. 3.

² See Mr. Disraeli's speech on the business of the session, August 30, 1848, *Hans. D.* v. 101, especially pp. 704-707; Mr. Lowe's speech, *Ib.* v. 185, pp. 958, 960; Disraeli's *Lord Geo. Bentinck*, 4th ed. p. 573; Mr. Gladstone upon amendments to the ministerial scheme of elementary education, *Hans. D.* v. 202, pp. 1253, 1282.

³ [The cases referred to by Mr. Todd were (1) the resolution, introduced in 1858, on which the Bill for the government of India was based; and

occasions was to submit in committee of the whole House certain general resolutions, which, after they had been altered by the committee in accordance with the prevailing opinions of the majority, became the framework of a Bill, which was introduced as a ministerial measure. A proceeding of this kind, however, is at variance with the principle of ministerial responsibility, and can only be justified on grounds of public necessity. A somewhat similar example of this abnegation of ministerial responsibility is afforded by the course taken by the Gladstone ministry of 1883 in regard to the projected Channel tunnel in proposing to leave the determination of the question to a joint committee of both Houses of Parliament.¹

It will be observed that the peculiar responsibility which attaches to ministers of the crown in matters of legislation is confined for the most part to the initiation and control of public business. As regards private Bills, wherein the rights of private parties are adjudicated upon by parliament in a semi-judicial manner, an opposite principle prevails. Thus, it was remarked by Sir Robert Peel, when home secretary in 1830, in reference to the Rye Harbour Bill, then pending in parliament, "I must decline interference with any private Bill, and I cannot but think, from the experience of every day, that the principle on which ministers abstain from any such interference is most salutary."² Again, it was stated by the chancellor of the exchequer (Mr. Baring) in 1840, that "it is contrary to all established practice for ministers of the crown to give an opinion upon a private Bill."³ And in 1872 a proposal "to place in the hands of a minister, or of the ministers of the crown, the power of putting a veto on private legislation" was disapproved by the House and by the govern-

Private Bills.

Position of ministers towards private Bills.

(2) the resolution, introduced in 1867, on which it was proposed to found a Reform Bill. The latter was, however, almost immediately withdrawn.—*Editor.*]

¹ *Sat. Rev.* April 7, 1883, p. 428. [There appears, however, to be a broad distinction between this case and the precedents of 1858 and 1867, since, though the construction of a Channel tunnel was a matter of public policy, it could only be sanctioned by private legislation, and in private legislation, as Mr. Todd immediately points out, it is not customary for a government to guide the decision of parliament.—*Editor.*]

² *Mir. of Parl.* 1830, p. 2009.

³ *Ib.* 1840, p. 4657.

ment.¹ On general principles, as well as on account of their pressing official duties, the occupants of the treasury bench are exempt from serving on private Bill committees.²

But if an attempt should be made to infringe upon the established rules of parliament by urging the House to permit a private Bill to proceed, notwithstanding the report of the committee on standing orders against it, it would be "usual for the vice-president of the board of trade, or some other member of the government, to support the general authority of committees of the House."³ So also if the interests of the public were likely to be injuriously affected by a private Bill,⁴ or if an attempt were made to establish an unsound principle by such means,⁵ ministers would be justified in using their influence to oppose it; whilst, on the other hand, ministers would be justified in promoting the passing of a private Bill, if it should appear to be desirable for the public interest,⁶ because they are responsible for exercising the prerogative of the crown so as to control all legislation in parliament, whether upon public or private matters, for the furtherance of the public welfare, and for the protection of private rights from unjustifiable aggression.

In such circumstances, it is proper for the public department charged with the duty of watching over the public interests, in this particular sphere, to suggest or require amendments, in any private Bills, which they may deem to be necessary, for the protection of the public or for the saving of private rights.⁷

Since the establishment of parliamentary government, the crown has ceased to exercise its undoubted prerogatives, as an essential part of the legislature, by the direct personal intervention of the sovereign. Its legislative powers are now effectually put forth in both Houses, and especially in the House of Commons, by means of responsible ministers, who, availing themselves of the influence which they possess as members of parliament, serve

Legislative
rights of the
crown.

¹ *Hans. D.* v. 212, p. 627.

² *Ib.* v. 175, p. 1545.

³ Sir R. Peel, *Ib.* v. 80, p. 177; see also *Ib.* v. 117, p. 1148.

⁴ Case of Mersey Conservancy and Docks Bill, *Ib.* v. 147, pp. 15-19 and see *Ib.* v. 230, p. 231.

⁵ *Ib.* v. 198, p. 1128; v. 214, p. 1097.

⁶ *Ib.* v. 230, p. 1949.

⁷ May, *Parl. Prac.* ed. 1883, p. 808; *Hans. D.* v. 235, p. 881.

as the mouthpiece and representatives of the monarchical element in our constitution.¹ Contemporaneously with the introduction into our political system of the constitutional usage whereby the sovereign abstains from exercising direct and external authority over the Houses of Parliament, in matters of legislation, we find the modern machinery for the control of business in parliament on behalf of the crown coming into play. The last occasion upon which an English sovereign vetoed a Bill presented for the royal assent was in 1707,² whilst the first resolution of the House of Commons, to forbid the reception of petitions for grants of money without the consent of the crown, was agreed to in the previous year. Thenceforth, the rules of parliament, which prohibit the introduction of a Bill to appropriate any portion of the public revenue, except on the recommendation of the crown, through a responsible minister, and which require the consent of the crown before either House can agree to a Bill affecting the royal prerogative³—together with the admitted right of ministers, so long as they retain the confidence of the House of Commons, to regulate the course of public business—have secured the rights of the sovereign, as a constituent part of the legislative body, as unmistakably, if not more effectually, than by the direct interposition of a personal veto.

“The authority of the crown in England,” says Lord Derby, “does not depend upon the veto which her Majesty theoretically possesses to impose upon Acts of Parliament after they have passed, but upon the right and proper influence which she exercises over her ministers, and, through them, over both branches of the legislature, which gives her the opportunity of exercising her judgment upon measures before they have been submitted to parliament, not after they have received its assent.”⁴ To the same effect, Lord Palmerston states that it is “a fundamental error” to suppose that “the power of the crown to reject laws has ceased to exist.” “That power survives as before, but it is exercised in a different manner. Instead of being exercised upon the laws presented for the

¹ See Park's *Dogmas*, p. 126.

² See *Hats. Prec.* v. 2, pp. 342-347; also Hearn, *Govt. of Eng.* p. 61.

³ *Ante*, p. 60.

⁴ *Hans. D.* v. 134, p. 839.

royal assent, it is exercised by anticipation in the debates and proceedings of the two Houses of Parliament. It is delegated to those who are the responsible advisers of the crown; and it is therefore not possible that a law passed by the two Houses should be presented to the crown, and should then by the crown be refused. And why is this? Because it cannot be imagined that a law should have received the consent of both Houses of Parliament, in which the responsible ministers of the crown are sitting, debating, acting, and voting, unless those who advise the crown have agreed to that law, and are therefore prepared to counsel the sovereign to assent to it. If a law were passed by the two Houses against the will and opinion of the ministers of the day, those ministers must naturally resign their offices, and be replaced by men in whose wisdom parliament reposed more confidence, and who agreed with the majorities in the two Houses."¹

But, if need be, the dormant power of the crown to veto a Bill presented by the two Houses of Parliament for the royal assent could be revived and exercised;—provided only that a ministry could be found to assume the responsibility of such an act—for “her Majesty has no constitutional right to abdicate that part of her prerogative which entitles her to put a veto upon any measure she thinks fit.”² And, “although no minister can introduce a measure into either House without the consent of the crown, such consent is only given in the first instance in the executive capacity of the sovereign. It implies no absolute approbation of the measure, but merely signifies the royal pleasure that the two branches of the legislature should consult upon the merits of the case. As a branch of the legislature whose decision is final, and therefore last solicited, the opinion of the sovereign remains unshackled and uncompromised until the assent of both Houses has been received. Nor is this veto of the English monarch an empty form. It is not difficult to conceive the occasion when, supported by the sympathies of a loyal people, its exercise might defeat an unconstitutional ministry, and a corrupt parliament.”³

¹ *Hans. D.* v. 159, p. 1386; and see Hearn, *Govt. of Eng.* pp. 60–64.

² Mr. Secretary Hardy, *Hans. D.* v. 192, p. 732; Lord Granville, *ib.* v. 140, p. 284; and Yonge, *Const. Hist. of Eng.* p. 390 (Am. ed.).

³ Disraeli's *Lord George Bentinck*, 4th ed. p. 65. [I have retained in the

When a measure has become law, it is an understood obligation that its opponents should refrain from any further attacks upon its provisions or policy until the result of the law may have become apparent, so as to justify an effort for its repeal.¹

3. *The Oversight and Control of Business in Parliament.*

Ministers of the crown are constitutionally responsible, not merely for the preparation and conduct of legislative measures through both Houses of Parliament, and for the control of legislation which is undertaken by private members, but also for the oversight and direction of the entire mass of public business which is submitted to parliament. Nothing should be left to the will and caprice of a fluctuating majority in the legislature, but the efforts of ministers should be continually directed to the furtherance of business so as best to promote the public interests, and ensure the convenience of members generally. For ministers are the natural leaders in both Houses, as well as the proper guardians of the powers and privileges of Parliament. Representing therein the authority of the crown, and exercising therein the influence which appertains to them in that capacity, they should be able to regulate the performance of all parliamentary functions and the distribution of public business, so as to keep them within reasonable limits, and in a steady course.²

In 1692, before William III. had constructed his first parliamentary administration, a formal complaint was made by ministers to the king, that "nobody knew one day what the House of Commons would do the next," and that "it were perhaps too confident a thing for any one to pretend to say the parliament will or will not do anything what-

Ministerial
lead in both
Houses.

Advantages of
this practice.

text the concluding sentence of this remarkable passage. But I presume that it would be as difficult to conceive the occasion when a sovereign would oppose his veto to his ministry and parliament as it would be to define an unconstitutional ministry. Any ministry that enjoys the confidence of parliament cannot be included in that vague expression.—*Editor.*]

¹ *Hans. D.* v. 229, p. 371.

² Hearn, *Govt. of Eng.* p. 536; Amos, *Fifty Years of Eng. Const.* p. 340; Mr. Disraeli, *Hans. D.* v. 174, p. 1230; Mr. Gladstone, *Ib.* v. 192, pp. 1190-1194; v. 208, p. 1653.

soever that may be proposed to them."¹ The present highly organized system of parliamentary government has been elaborated by the wisdom and experience of successive generations, in order to remedy this evil condition, and to establish harmony and unanimity between the crown and parliament.

Ministerial lead. Nowadays, immediately upon the formation of a ministry, it assumes, in addition to the ordinary duties of an executive government, other and more important functions—unknown to the theory of the constitution—namely, the management, control, and direction of the whole mass of political legislation, by whomsoever originated, in conformity with its own ideas of political science and civil economy; and, so long as a ministry commands the confidence of the House of Commons, it should have sufficient strength to prevent the adoption by parliament of any measure which it may judge to be inexpedient or unwise.²

The ministry is also responsible for guiding the deliberations of each House of Parliament, so as best to secure and maintain the appropriate privileges of each House in due subordination to established constitutional principles. In such an endeavour the ministry are usually assisted by the co-operation of the leaders of the opposition.

It has been estimated that at least nine-tenths of the legislation of the House of Commons passes through the hands of the government, and the portion of the business of the country which ministers are expected and required to transact is yearly increasing.³ Successive parliamentary committees have advised the adoption of rules to facilitate the distribution and disposal of business in the hands of ministers of the crown; and the House of Commons has always evinced the utmost readiness to further the same, so far as is compatible with the rights and privileges of private members.

A select committee of the House of Commons on public business, in 1848, concluded a report containing numerous valuable suggestions, which were afterwards incorporated into the practice of the House, by expressing their opinion "that

¹ Dalrymple, *Memoirs of Great Britain*, 2nd ed. v. 2; App. part ii. p. 240; and see Macaulay, *Hist. of Eng.* v. 4, p. 433; v. 5, p. 168.

² Park's *Dogmas*, p. 39.

³ Mr. Gladstone, *Hans. D.* v. 197, p. 1188; Rep. Com^o. Business of the House, p. 16, *Com. Pap.* 1871, v. 9.

the satisfactory conduct and progress of the business of the House must mainly depend upon her Majesty's government, holding as they do the chief control over its management. They believe that by the careful preparation of measures, their early introduction, the judicious distribution of business between the two Houses, and the order and method with which measures are conducted, the government can contribute in an essential degree to the easy and convenient conduct of business. They trust the efforts of the government would be seconded by those of independent members, and that a general determination would prevail to carry on the public business with regularity and despatch."¹

Conduct of
business by
ministers.

A similar committee of the House of Commons, appointed in 1861, reported that, "although it is expedient to preserve for individual members ample opportunity for the introduction and passing of legislative measures, yet it is the primary duty of the advisers of the crown to lay before parliament such changes in the law as in their judgment are necessary; and while they possess the confidence of the House of Commons, and remain responsible for good government, and for the safety of the state, it would seem reasonable that a preference should be yielded to them, not only in the introduction of their Bills, but in the opportunities for pressing them on the consideration of the House."² The committee accordingly advised that more time should be granted for the consideration of government orders—a recommendation which was concurred in by the House.

The proposals for the despatch of public business advocated by the aforementioned and other committees—there were fourteen in all from the passing of the Reform Bill to the year 1882—failed absolutely in effecting any improvement. In the words of Mr. Gladstone, "Those committees, never leading to adequate results, have now for many years past taken effect in what I may, for practical purposes, accurately call total failure. Their, I will not say, impotence, but their insufficiency of power to deal with a matter of this kind, has been demonstrated to the satisfaction of all."³ In the session of 1881 the government introduced

Order of
business.

¹ *Com. Pap.* 1847-8, v. 16, p. 146.

² *Ib.* 1861, v. 11, p. 436.

³ *Hans. D.* v. 266, pp. 1124-1125.

two Bills, one for the "Preservation of the Peace (Ireland)," and the other for the "Protection of Property (Ireland)," and the proposed legislation brought matters to a crisis. To oppose these measures the Home Rule members availed themselves of every rule and custom of the House to obstruct the entire business of parliament; they did not succeed in defeating the government, but they effectually prevented the passing of any other legislative act of importance. It was at last generally recognized that vigorous measures must be adopted to restore to the House of Commons its former power and dignity. Early in the sessions of 1882 the government introduced the new Rules of Procedure, the most striking feature of which was the *clôture*, or, as it is now termed, the closure of a debate. In introducing this portion of the new scheme the premier stated, "That while almost every assembly of a popular character which exists in the world has moved in this direction, we, who have by far the greatest necessity incumbent on us, have not moved."¹ But this allusion to the foreign origin of the new rule was peculiarly distasteful to a large section of the House, and elicited the angry retort from a prominent member of the opposition, "I am sorry and indignant that England, the 'Mother of Parliaments,' the country from which all others have derived their lessons of parliamentary procedure, should condescend to borrow this undesirable system from such mushroom imitators."²

The deplorable assassinations of Lord F. Cavendish, chief secretary, and Mr. Burke, under-secretary, for Ireland, led to the introduction of the "Crimes Act (Ireland)," and the further consideration of the new rules was postponed to the following autumn, when a special session was held for their discussion. The proposals of the government were substantially adopted in November, 1882, but were subsequently revised in 1887, and again in the early part of 1888.

The leader of the House of Commons is at liberty to
 Government orders. arrange the order of business appointed for government nights as he thinks fit, it being provided by a standing order of the House that "the rights be reserved to her Majesty's ministers of placing government orders at the head of the list, in the rotation in which they are to be taken,

¹ *Hans. D.* v. 266, p. 1138.

² Mr. Beresford Hope, *Ib.* v. 267, p. 1705.

on the days on which government bills have precedence."¹ This privilege, however, should be exercised with the most "perfect courtesy, and the most impartial fairness," and with a due regard to the general feeling of the House.² And members should have sufficient intimation of what business is to be proposed to enable them to move amendments thereto, at their discretion.³ But usually no control is conceded to ministers over orders in the hands of private members, which are governed by the customary rules of parliament.⁴

It is not the duty of ministers to find a day for debates on motions of private members, unless in the case of a vote of censure on the conduct of the government.⁵

By recent statistics it has been ascertained that, generally speaking, the official members and the unofficial members propose an equal amount of legislation every year. But, out of 120 government bills, 100 become law; while, out of 120 bills introduced by private members, only 20 or 25 succeed.⁶ Usually, about the middle of July, the government announce to the House of Commons the measures they intend to press forward, and those which they purpose to abandon, for the session.

Any private arrangement intended to permit an independent member to proceed upon a particular motion on a government night would be liable to be overruled by the House; although, in ordinary circumstances, an engagement made by the leader of the House would be respected.

It is customary, in debates of the House, to allow priority to members of the administration who wish to speak;⁷ and to permit the prime minister, or leader of the House, to have the last word.⁸ In all important debates, it is usual for the speaker to give preference, alternately, to the known supporters and opponents of the

¹ May, *Parl. Prac.* ed. 1883, p. 275; see *Hans. D.* v. 174, p. 189; *Ib.* v. 190, p. 1200.

² Mr. Disraeli, *Ib.* v. 186, p. 1319; v. 191, p. 1707.

³ *Ib.* v. 207, pp. 141-149.

⁴ But see *Ib.* v. 217, pp. 1256, 1336.

⁵ Mr. Gladstone, *Ib.* v. 205, p. 53.

⁶ *Ib.* v. 222, pp. 581, 589.

⁷ *Ib.* v. 67, p. 898.

⁸ Lord Granville, *Ib.* v. 227, p. 904; *Ib.* v. 228, p. 501.

Legislative
business.

Motions by
private
members.

Priority in
speaking.

question ;¹ and it would be considered irregular to interfere with the speaker's call in favour of any other member.² When many members desire to address the House, an arrangement is sometimes made—in the Commons, between the government and the opposition “whippers-in,” and in the Lords, between the leaders of both sides of the House,—as to the order in which the speaker shall name those who are to take part in the debate.³ But the speaker is not bound to any list of intending debaters, and never interferes with the right of any one to address the House.⁴

Since 1830, the number of members who take an active part in debate has steadily increased. Thus, before the Reform Bill, the speaking and business of the House were in the hands of about 150 members. In 1841 there were 231 members who took part in its proceedings. In 1861 the number had gone up to 300; and in 1876 to 385 members. At the same time the sphere of legislation has widened, and now extends over a vastly more comprehensive area; so that it has become impossible for the House of Commons to overtake and properly dispose of the amount of public business which annually claims attention.⁵

In the House of Commons there are three government whips, and two on behalf of the opposition.⁶ The principal “whipper-in” on behalf of the government is the parliamentary, or, as he used to be known, the patronage secretary of the Treasury, who is a very important personage. He is usually one of the tellers in great political divisions, and it devolves upon him, under the direction of the leader of the House, “to facilitate, by mutual understanding, the conduct of public business,” and “the management of the House of Commons.”⁷ He is specially

The whippers-in, in the Commons.

¹ *Hans. D.* v. 77, p. 866; May, ed. 1883, p. 346.

² *Ib.* v. 153, p. 839. But in disputed cases an appeal may be made to the House (May, ed. 1883, p. 343).

³ *Ib.* v. 182, pp. 1972, 2173; *Ib.* v. 191, pp. 1422-1424; v. 198, p. 149; v. 201, p. 1934; v. 204, p. 1967; v. 234, pp. 707, 728.

⁴ *Ib.* v. 209, pp. 1032-1039.

⁵ *Ib.* v. 233, pp. 1553, 1676.

⁶ Escott's *Eng.* v. 2, pp. 147-149.

⁷ Disraeli's *Lord G. Bentinck*, 4th ed. pp. 145, 314; Ritchie's *Modern Statesmen* (Treasury Whipper-in), and *Chambers' Jour.* Dec. 26, 1868 (The Whips); the Government Whip in *Sat. Rev.* Feb. 17, 1872, p. 210; an account of late W. Adam, whip of the Liberal party, *Fras. Mag.* v. 24, N.S. p. 113.

responsible for "making a House," and for preventing a "count-out" at unseasonable times.

As "whipper-in," the secretary is generally assisted by two of the junior lords of the treasury. These useful functionaries are expected to gather the greatest numbers of their own party into every division, and by persuasion, promises, explanations, and every available expedient, to bring their men from all quarters to the aid of the government upon any emergency. It is also their business to conciliate the discontented and doubtful amongst the ministerial supporters, and to keep every one, as far as possible, in good humour.

The opposition, likewise, have their "whippers-in, who perform similar services for their own party. They are usually gentlemen who have filled the like offices when their party was in power, or have been otherwise selected by the chiefs of the opposition for that purpose.

In the House of Lords, the postmaster-general and the master of the buckhounds have generally been the ministerial "whippers-in," and, for the opposition, In the Lords. peers who have held, or expect to hold, similar offices are chosen.¹

4. *The Necessity for Unanimity and Co-operation amongst Ministers of the Crown.*

The influence which is rightfully exercised by ministers of the crown in the Houses of Parliament depends, Political unanimity of a ministry. in the first instance, upon the degree of unity and of mutual co-operation they exhibit between themselves; and finally upon the amount of control they are able to exercise over the political party to which they belong. We have now to consider the mode in which these vital elements of ministerial existence are exemplified.

In tracing the origin and development of the rule, which requires political unanimity amongst ministers of the crown, we have seen that it has become an acknowledged principle that, so long as a minister continues to form part of a government, he shares with his colleagues an equal responsibility for everything that is done or agreed upon by them. Except in the case of an admitted "open ques- Of cabinet ministers. tion," it must be taken for granted that the whole

¹ Private information from Sir Erskine May.

cabinet have assented to the ministerial policy as officially transacted or propounded by any minister acting or speaking on their behalf.¹ It is not, therefore, allowable for a cabinet minister to oppose the measures of government; to shrink from an unqualified responsibility in respect to the same; to refrain from assisting his colleagues in the advocacy of their particular measures in parliament;² or to omit the performance of any administrative act which may be necessary to carry out a decision of the government, even though he may not have been a consenting party thereto;³ or to withhold his support from the ministry when attacked by their political opponents. A minister who infringes any one of these rules is bound to tender his immediate resignation of office.

The responsibility of a minister who has no seat in the cabinet is less comprehensive, although in its degree no less complete. Such a one is required to render active assistance in sustaining the policy of the government; and in carrying out, intelligently and faithfully, the instructions given him by his political chief. But his individual responsibility ends here. If called upon to represent the department to which he belongs, in either House of Parliament, he does so, strictly speaking, as the organ and mouthpiece of his official superior. He cannot be held answerable for a policy in the framing of which he has had no share; although, upon questions of special importance, he should rather resign than become a party to decisions to which he entertained strong and insurmountable objections. Upon all ordinary questions, it is justly held to be the duty of a subordinate minister, after stating his opinion, to defer to the judgment of his chief. For his responsibility is that of a subordinate, not of a principal, and mainly consists in an accountability for the efficient discharge of the duties assigned to him, in subjection to the acknowledged authority of the head of his department.⁴

¹ See Mr. Gladstone's observation, quoted and endorsed by Lord Grey, "that it is one of our first duties to decline to acquit any member of the cabinet of responsibility for the announced and declared policy of another" (*Hans. D.* v. 192, p. 2057; and see *Ib.* v. 196, p. 14; v. 227, pp. 90, 711).

² Mr. Gladstone, in *Hans. D.* v. 168, p. 176; and see *Ib.* v. 166, p. 1388.

³ Lord Grey, on the Jamaica debt, *Ib.* v. 168, pp. 276, 280; Mr. Gladstone, *Ib.* v. 217, p. 1268.

⁴ *Hans. D.* v. 126, p. 883; Lord Grey, in *Com. Pap.* 1871, v. 7, p. 12; *Hans. D.* v. 203, p. 330.

But questions will sometimes arise which, in the opinion of leading members of a government, are of too ^{Open} doubtful, delicate, or complex a nature to admit ^{questions.} either of agreement or compromise, and yet which require an immediate settlement. Upon such questions, cabinet ministers may agree to differ,¹ and when brought before parliament they are treated as "open questions" to be advocated or opposed by individual ministers at their discretion.

It is impossible to define, beforehand, what questions may properly be accounted "open" without detriment to the character of a ministry, or to its claims to the respect and confidence of parliament. Since unanimity in the cabinet has become an acknowledged rule, such great questions as parliamentary reform, the ballot, the abolition of the slave trade, hours of labour in factories, marriage with a deceased wife's sister, women's disabilities, household franchise in counties, and the Public Worship Regulation Bill, with other minor matters, have severally been considered as "open questions" by some administrations, though not by others.²

But, however unavoidable they may be in certain exceptional circumstances, the multiplication of "open questions" must be regarded as a great evil, as they tend to diminish the sense of individual responsibility, which ought to be keenly felt by every one who is admitted to share in the government of the country. If all questions were open, and the minority in a ministry opposed or refused to support the majority, few important measures could be carried; and the degrading spectacle would be exhibited of a government without a decided policy upon the grave political issues that are continually arising, and which need to be determined upon definite principles that can be understood and appreciated by the nation at large.³

¹ See discussion in cabinet as to the propriety of considering mode of dealing with disfranchised boroughs of Penryn and East Retford as an open question (Bulwer's *Life of Palmerston*, v. 1, pp. 253 258).

² *Mir. of Parl.* 1839, pp. 3067-3070; *Hans. D.* v. 194, p. 661; *Ib.* v. 201, p. 959; v. 206, p. 88; v. 217, p. 842.

³ Lord Grey, *Parl. Govt.* new ed. p. 116; Duke of Somerset on *Monarchy*, etc. p. 172; see Macaulay's arguments in favour of open questions, *Mir. of Parl.* 1839, p. 3067; Sir R. Peel's arguments against them, *Ib.* 1840, p. 602; an article (probably written by Macaulay) refuting Sir R. Peel's opinions, *Ed. Rev.* v. 71, p. 493; Lord John Russell, as to

It has become an established principle that, when a member of the administration—whether he has a seat in the cabinet or not—votes against his colleagues upon any government measure (not being an open question), he is bound to lose no time in affording to the prime minister “an opportunity of placing his office in other hands, as the only means in his power of preventing the injury to the king’s service which might ensue from the appearance of disunion in his Majesty’s councils.”¹ It is then optional with the head of the administration either to advise the sovereign to accept the resignation of his colleague, or to express his willingness to retain him in office, notwithstanding his opposition to a particular measure of the government.² The first recorded instance of political dismissals on account of votes in parliament adverse to the ministerial policy occurred in December, 1762, after the debate on the preliminaries of peace at the close of the Seven Years’ War. On this occasion Henry Fox, who had accepted the leadership of the House of Commons, determined to force the peace through the House by claiming the unqualified support of all officials in parliament. Previously there appears to have been no settled rule on this subject. Mr. Pitt, when paymaster (1746–1755), not only voted, but frequently spoke against the government; but the course adopted in 1762 has since become the rule, and has been gradually extended so as to include even officials of the court who happen to occupy seats in either House of parliament.³

In order to enable ministers to carry on the government

their being generally inexpedient, *Mir. of Parl.* 1840, p. 620; and see Lewis, on *Matters of Opinion*, ch. vii. “On the applicability of the principle of authority to the decisions of political bodies.”

¹ Mr. Huskisson’s case, *Mir. of Parl.* 1828, p. 1691. See *Bulwer’s Life of Palmerston*, v. 1, pp. 260–422.

² See case of Lds. Sidmouth and Ellenborough, who were invited to continue in the Grenville administration, notwithstanding their opposition to any concession to the Roman Catholics, after the cabinet had agreed upon a contrary policy (*Parl. D.* v. 9, p. 396; *Ib.* v. 23, p. 463). In 1844, and again in 1867, the lord chancellor voted against his colleagues in the ministry upon a clause of a Bill to confer certain legal patronage upon the lord-lieutenant of Ireland (*Hans. D.* v. 189, pp. 843, 1603).

³ Walpole’s *Geo. III.* Le Marchant’s ed. v. 1, pp. 233–235; *Lord Shelburne’s Life*, v. 1, pp. 174, 181; *Quar. Rev.* v. 138, p. 418.

in harmony and agreement with parliament, without their being subjected to the degradation of becoming the mere tools of a democratic assembly, it is necessary that they should be sustained by an adequate majority in both Houses, and especially in the House of Commons. This advantage is ordinarily secured to them through the agency of party. Whichever political party predominates in the nation, and in the legislature, it presumably selects its best men to be its leaders and representatives. The sovereign having chosen from amongst such those whom she is willing to appoint to be her councillors and administrators, the interests of party and of the state alike demand that they should receive from parliament a generous support ; and that, so long, at least, as the House of Commons continues to repose confidence in them, they should be permitted to advise and influence the deliberations of parliament, with the authority that belongs to their office as ministers of the crown. Relying upon the judgment and discretion of the men to whom both crown and parliament have agreed to entrust the direction of public affairs, the legislative chambers should be willing to receive with favour whatever measures they may deem expedient to submit for their sanction ; and should be slow to impede or interfere with the action of ministers in executive matters, otherwise than by the free criticism and promptness to demand the redress of all manifest grievances, which is the inherent prerogative of parliament.

Ministers
require a
parliamentary
majority.

And here it will be appropriate to notice a feature in our political system, which began to be developed con- The
temporarily with the establishment of parlia- opposition.
mentary government, and which has materially contributed to the vigour and efficiency of the same—namely, the presence in both Houses of an organized opposition.

The political party of which the administration for the time being is the mouthpiece and representative is invariably confronted in parliament by another party, who themselves expect to succeed to power, whenever they acquire sufficient strength to overthrow their antagonists, and to assume the responsibilities of office. Acting upon well-defined principles, and within the strict lines of the constitution, to which they profess an equal attachment to that exhibited by its official defenders, the adherents of this party have been aptly styled

“Her Majesty’s Opposition,”¹ and although the propriety of this designation has been disputed, yet it may be understood as implying that loyalty to the sovereign, and that honourable and patriotic rivalry in political strife, which should equally animate all parties in the great council of the nation.²

The opposition exercise a wholesome influence upon parliamentary debate, and upon the conduct of the ^{Their} _{functions.} business of the crown in parliament, for they are the constitutional critics of all public affairs;³ and, whatever course the government may pursue, they naturally endeavour to find some ground for attack. It is an old maxim, that “the duty of an opposition is very simple—it is to oppose everything, and propose nothing.”⁴ And, in the same spirit, Sir Robert Peel used to say that “he declined to prescribe until he was called in.”⁵ The peculiar office of the opposition is doubtless “to watch with keen eye the conduct of the government they oppose, to see if anything be wrong or blamable or liable to criticism therein, to trip them up even before they fall; at all events if they stumble to mark their stumbling, and call upon them to set things right again.”⁶ “The originators of measures and inventors of a policy, the individuals who come forward with their schemes and suggestions for public approbation, are not the opposition, but the ministers of the crown; we (the opposition) stand here to criticize the suggestions and schemes which they bring forward, and which are founded on knowledge wherein we cannot share, and inspired, no doubt, by the feeling of responsibility under which they act.”⁷

While parliamentary opposition affords a valuable security against the misconduct of a government, it is, nevertheless, liable to abuse, and may easily be perverted to factious and unpatriotic issues. It may be made the vehicle for personal acrimony and false accusation. It may pander to the popular passions for selfish or sectional ends. It is mainly kept in check by two considerations. First, that its own proceedings

¹ A phrase which originated with Mr. Hobhouse, *Ed. Rev.* v. 133, p. 301.

² Mr. Lowe’s observations, *Hans. D.* v. 221, p. 373.

³ Mr. Disraeli, *Ib.* v. 174, p. 1366; and see *Ib.* v. 230, p. 1523.

⁴ Attributed to Mr. Tierney, a friend and follower of Fox, and a great Whig authority (*Mir. of Parl.* 1841, p. 2117).

⁵ *Hans. D.* v. 176, p. 811.

⁶ *Ld. Palmerston, Ib.* v. 174, p. 1234.

⁷ Mr. Disraeli, *Ib.* p. 1366; and v. 205, p. 1658.

are made.¹ A member will sometimes consult a minister beforehand in regard to the form in which he should propose an intended question.²

It is customary for members to address questions to the law officers of the crown in the House of Commons, for information upon legal points, arising out of measures before parliament, or relating to matters of public interest. But it is not imperative upon them to reply to such questions. They are the legal advisers of the government, and in that capacity are confidential officers, and "nothing could be more inconvenient" than that they should be liable to be interrogated by members as to the advice they have given, or may be called upon to give, to any department of government, or as to their opinions upon the construction of a statute, or other document, or upon abstract questions of law which need to be judicially determined.³ In like manner, a question addressed to the home secretary has been refused a reply, as being "a question of law," as "it is not the duty of the home office to interpret statutes."⁴ But within reasonable limits, and according to the discretion of the law officers themselves, the interpellation of these functionaries is attended with considerable advantage to members, and to the public generally.

Accordingly, it is not unusual for the several law officers of the crown to afford such information to members in the House of Commons in answer to a direct question, or in reference to points of law arising in debate⁵—either with a view to determine the necessity for additional legislation upon a particular subject⁶—or to explain the legal effect of certain provisions in a Bill before the House⁷—or in regard to a legal question of interest to the whole community⁸—or as to the legality of the conduct of public functionaries in particular cases.⁹

¹ Speaker, *Hans. D.* v. 206, p. 468; May, Rep. Com^o. Business, p. 24, *Com. Pap.* 1871, v. 9; *Hans. D.* v. 217, p. 803; v. 223, p. 607; v. 230, p. 1889.

² *Ib.* v. 211, p. 607.

³ Sir R. Palmer, *Ib.* v. 185, p. 1334; see *Ib.* v. 187, p. 1493; *Ib.* v. 209, p. 766; v. 214, p. 1097; v. 216, p. 1623; v. 222, p. 751; v. 234, p. 1436.

⁴ *Ib.* v. 213, p. 867.

⁵ *Ib.* v. 185, p. 1140.

⁶ *Ib.* v. 186, p. 902.

⁷ *Ib.* v. 188, p. 608.

⁸ *Mir. of Parl.* 1839, p. 4212; *Hans. D.* v. 201, p. 328.

⁹ *Mir. of Parl.* 1833, p. 3746; *Ib.* 1834, p. 3399; *Hans. D.* v. 209, p. 1151; v. 210, p. 886.

The House should not require from crown law officers an opinion on matters of policy, but should simply ask for information as to matters of fact.¹ Neither should they be called upon to give opinions upon matters between parties,² or upon a hypothetical case,³ or on a point which is determinable by a judge and jury,⁴ or which is about to be brought before a legal tribunal.⁵ Finally, it should be understood that legal information given to the House by the crown officers merely expresses their "individual opinion,"⁶ and that it cannot be received as conclusive authority, however much it may be entitled to respectful consideration.⁷

By the practice of parliament inquiries may also be addressed to ex-ministers,⁸ to the leader of the opposition,⁹ and to members of parliament holding subordinate or non-political offices, in regard to particular public interests they may represent; as, for example, to members of royal or statutory commissions;¹⁰ to the archbishop of Canterbury, in his capacity as president of the Upper House of Convocation or otherwise;¹¹ to the trustees of the National Gallery (in explanation and defence of purchases made upon their responsibility for that collection);¹² to the trustee of the British Museum, who acts as parliamentary representative of that institution;¹³ to the lord chamberlain upon a matter within his jurisdiction;¹⁴ and to members of the Metropolitan Board of Works.¹⁵

The right to put questions to private members of either House is strictly limited, however, to inquiries with respect to any bill, motion, or other public matter connected with the

¹ *Hans. D.* v. 185, p. 1331; *Ib.* v. 234, p. 1574.

² *Ib.* v. 215, p. 220.

³ *Ib.* v. 224, p. 388.

⁴ *Ib.* v. 188, pp. 542, 543.

⁵ *Ib.* v. 182, p. 288; and see *Ib.* v. 222, p. 1391.

⁶ *Ib.* v. 190, pp. 126, 127, 515.

⁷ *Mir. of Parl.* 1839, p. 4205; *Hans. D.* v. 203, p. 1096.

⁸ *Mir. of Parl.* 1834, p. 324. See *Hans. D.* v. 77, p. 133.

⁹ *Ib.* v. 192, p. 657.

¹⁰ *Mir. of Parl.* 1829, p. 2071; *Ib.* 1834, p. 3384; *Hans. D.* v. 190, pp. 1457, 1796.

¹¹ *Ib.* 188, p. 1168; *Ib.* v. 196, p. 5.

¹² *Ib.* v. 198, p. 652.

¹³ *Ib.* v. 201, p. 1737.

¹⁴ *Ib.* v. 222, p. 1277.

¹⁵ The Speaker, *Ib.* v. 209, p. 1954. [The Metropolitan Board of Works has now been superseded by the London County Council.—*Editor.*]

business before parliament in which they may be concerned.¹ If a question does not come within this category, the speaker would interpose and prevent its being put, or else inform the member that he need not answer it unless he pleased.²

If it be necessary to express opinions, or assign reasons upon asking a question in the House of Commons, the inquirer is at liberty to move the adjournment of the House.³ But this privilege has been reserved by common consent for occasions of urgency. Unless it were exercised with great forbearance the result would be fatal to the successful conduct of public business.⁴

It is also customary to allow questions to be addressed to ministers on the motion for going into committee of supply, and upon this motion desultory discussions frequently arise; but a minister to whom two or more distinct questions have been addressed is not allowed to speak twice. Notwithstanding the obvious inconveniences of the practice, a minister in such circumstances must reserve his answer until he can reply to all the questions at once.⁵

Answers to inquiry, with such explanations only as may be necessary to render the answer intelligible.⁶ But it has always been usual to accord a greater latitude in this respect to ministers of the crown.⁷

It has become an increasing habit for minute inquiries to be made in the House of Commons, in regard to public occurrences in all parts of the globe,⁸ and sometimes questions are asked which ministers find it inconvenient to answer. In

¹ *Hans. D.* v. 63, p. 491; and see *Ib.* v. 155, p. 1345; v. 166, p. 2028; v. 174, p. 1914.

² *Ib.* v. 76, p. 1177; v. 209, p. 141; v. 228, p. 1758; v. 234, p. 1239; and see v. 75, p. 1211.

³ *Ib.* v. 196, p. 750; v. 201, p. 971. [By the new rule, made in 1882, no such motion shall be made, unless a member rising in his place shall propose to move the adjournment, for the purpose of discussing a definite matter of urgent public importance, and not less than forty members shall thereupon rise in their places to support the motion.—*Editor.*]

⁴ The Speaker, *Ib.* v. 196, p. 19. See *Ib.* v. 212, pp. 1132-1137; v. 233, p. 978; v. 235, pp. 684, 689.

⁵ *Com. Pap.* 1854, v. 7, p. 14; *Ib.* 1871, v. 9, p. 32.

⁶ *Mir. of Parl.* 1831, p. 208; *Hans. D.* v. 198, p. 452.

⁷ The Speaker, *Ib.* v. 161, p. 497; v. 174, p. 1423.

⁸ See *Com. Pap.* 1852-3, v. 25, p. 303.

such circumstances it is not unusual for the minister responding to enter largely into detail, but nevertheless to evade a direct reply to the question. This "is a course which is often fit and becoming to adopt when questions are put to which it would be indiscreet to give a direct answer."¹

If a minister decline to answer a question, upon a matter of public concern, the subject thereof may be brought before the House by a special motion.² This course is sometimes preferable, as no matter ought to be propounded in the form of a question which is calculated to raise discussion, to anticipate explanations that could only be properly given in a general debate,³ or to impugn the character or conduct of a member of parliament,⁴ or of an individual in the public service.⁵ In such cases it is necessary to propose a substantive motion to the House.

Numerous precedents can be cited wherein ministers of the crown and other members have declined to give any answer to questions which they considered to be unnecessary, inexpedient, unusual, impertinent, or as involving matter of too much gravity to be dealt with by way of reply to a question. Generally they state reasons for declining to afford the desired information, but sometimes when the question is peculiarly objectionable no notice whatever is taken of it.⁶

In the House of Lords a greater latitude is allowed in regard to questions. Until recently a private notice was always deemed to be sufficient, which gave Questions in the Lords. rise to much inconvenience, as it is customary to permit debates to take place, in the Lords, upon putting and answering questions, commenting upon the subject-matter of the same, without any formal question being before the House.⁷ But in 1867 a committee of the House of Lords recommended that, with a view to direct the attention of peers

¹ Ld. Palmerston, *Hans. D.* v. 170, p. 359.

² *Mir. of Parl.* 1838, pp. 5381, 5386, 5870.

³ *Ib.* 1831, p. 2201; *Hans. D.* v. 169, p. 1932; v. 186, p. 126; v. 194, p. 716; v. 219, p. 1059; v. 233, p. 324; and see Rep. Com^o. Public Business, *Com. Pap.* 1861, v. II, p. 441.

⁴ The Speaker; *Hans. D.* v. 210, p. 39. ⁵ *Ib.* v. 213, pp. 554, 842.

⁶ *Mir. of Par.* 1828, p. 516; *Ib.* 1829, p. 137; 1831, p. 1262; 1831-32, pp. 1197, 2427; 1835, p. 1060; 1839, p. 171; *Hans. D.* v. 184, pp. 1659, 2164; v. 185, pp. 1239, 1327; v. 192, p. 2135; v. 212, p. 342.

⁷ May, ed. 1883, p. 357; *Hans. D.* v. 187, p. 367; v. 188, p. 1255.

interested therein to questions upon which a debate may arise, notice of all questions which admit of delay should be given in the minutes.¹ After due deliberation thereon, the House resolved, on April 2, 1868, that it is desirable, where it is intended to make a statement, or to raise a discussion on asking a question, that notice of the question should be given in the orders of the day and notices.² But this rule does not extend to questions of urgency, and is not always strictly enforced.³

Sometimes information upon a subject on which an inquiry has been made of ministers is given at a later period of the session, without further question or motion thereupon.⁴ Or ministers may voluntarily communicate information upon a matter of public interest, concerning which no question has been asked.⁵

Ministers of the crown may make statements to parliament, from information in their possession, without being obliged to produce a written authority for the same.⁶ But they are not at liberty to read, or quote from, a despatch or other official document, not before the House, unless prepared to lay it on the table. But this rule only applies to public documents, and to such as can be produced without injury to the public interests.⁷

6. *The Issue and Control of Royal, Statutory, and Departmental Commissions.*

In the preparation of measures to be submitted for the consideration of parliament, and in the conduct of public inquiries into matters which require the action of the executive government, it is necessary that the ministers of the crown should be able to avail themselves of competent assistance from every quarter, in collecting accurate information upon all public questions.

¹ *Lords' Jour.* v. 99, p. 497; and see *Hans. D.* v. 189, p. 1329; v. 190, p. 157.

² *Ib.* v. 191, p. 693; v. 194, p. 933. ³ *Ib.* v. 201, p. 1462.

⁴ *Mir. of Parl.* 1830-31, p. 350; *Hans. D.* v. 121, p. 685.

⁵ *Mir. of Parl.* July 18, 1831, p. 638.

⁶ Palmerston, *Hans. D.* v. 170, pp. 1585, 1841; Att.-Gen. (Palmer), *Ib.* v. 179, p. 489.

⁷ See cases cited, in May, ed. 1883, p. 378; *Hans. D.* v. 186, p. 907; v. 190, p. 667; v. 203, p. 1118; v. 209, p. 1157; v. 219, p. 1029; v. 232, p. 112.

So far as the preparation of legislative measures is concerned, the time of cabinet ministers is unavoidably so much engrossed by their official functions, that "there are very few of them who can give their attention to a great subject, and look at the consequences to the country of the measures which are adopted."¹ With a view to afford substantial assistance to government in this direction, it has been customary of late years for select committees to be appointed by the Houses of Parliament, either at the suggestion or with the concurrence of ministers, to investigate various important public questions upon which legal inquiry may upon evidence is necessary. But a resort to the head of any department in such cases is sometimes a particular grievance, or alleged defect in the administration of a public department,² or to collect information on any public question and advise the crown upon the convenience of

it would be unconstitutional to refer to a royal commission subjects which are connected with the subject, a parties of the executive government and abandon the decisions to parliament;" or to investigate satisfaction, which arises out of a particular decision of parliament on a given question;⁴ or to appoint a commission and undivided view to evade the responsibility of ministers in any

Their scope and powers limited.

Preliminary to do the work of existing departments of state, service to the press all needful facilities for obtaining information Besides affording details of detail, and which are directly responsible to the public, they fit to inquire into acts of misconduct which may be committed by a judge, or a minister of state, which way; and the report

often of the highest value in the state of Oxford and Cambridge of the public mind. "The questions of poor-law administration, of crime and pestilence and sanitary legislation, and of the effects of excessive manufacturing labour, are conspicuous commissions of inquiry in fact, on which the general public, parliamentary and leading statesmen, were prepared to legislate."

¹ Ld. J. Russell, Report on Official Salaries, *Com. Pap.* Evid. 1225.

² Paper by Mr. E. Chadwick, C.B., read before the So

1873, v. 7.

(*Hans. D.*

Education in cases incurred

of *Macaulay*, v. 2,

ary commissions of

§-9, class ii. p. 63.

time.

Education in

on application

cases incurred

It is not only as being directly helpful to ministers of the crown in the preparation of their legislative measures, but also as a means for the impartial investigation of every class of question upon which the crown or parliament may need to be informed, that recourse may appropriately be had to a royal commission. It will therefore be suitable in this connection to point out the rules applicable to the issue of commissions, and to the subsequent proceedings in relation thereto.

A royal commission may be appointed by the crown, either at its own discretion, and by virtue of its prerogative,¹ or in conformity with the ~~discretion~~ ^{prerogative} of parliament, or in session, without the ~~aid~~ ^{aid} of one or more ~~of its members~~ ^{of its members}. Or ministers may voluntarily ~~offer~~ ^{offer} information upon a matter of public interest, concerning the crown no question has been asked.⁵ The same is

Ministers of the crown may make statements to the House of Commons, from information in their possession, without being required to produce a written authority for the same.⁶ But it is not at liberty to read, or quote from, a despatch or parliamentary document, not before the House, unless prepared for the table. But this rule only applies to public documents, and to such as can be produced without injury to the public interests.⁷

6. *The Issue and Control of Royal, Statutory, and Departmental Commissions.*

In the preparation of measures to be submitted to the consideration of parliament, and in the issue of commissions of public inquiries into matters of government, the action of the executive government is not questioned,⁸ but mainly for reasons competent assistance of the Law, January 29, 1859, on the preparation of information upon matters by the cabinet, by parliamentary committees, and inquiry: in *Law Amendment Jour.* Feb. 3, 1859.

¹ *Lords' Jour.* v. 94, p. 1361.

² *Ib.* v. 191, p. 157. For a list of commissions concerning powers of these commissions see Rep. Com.

³ *Ib.* v. 191, p. 157. *Com. Pap.* 1870, v. 6, p. 19; see also May, *Parl. Mir. of Parl.* p. 730.

⁴ *Mir. of Parl.* v. 118, pp. 250, 265, 363, 377; v. 119, pp. 215, 229.

⁵ *Palmerston Jour.* v. 93, p. 633.

⁶ *Ib.* v. 179, p. 179. *The National Gallery, Hans. D.* v. 142, p. 2154; *Ib.* v. 143,

⁷ See cases *Fisheries, Ib.* v. 171, pp. 261, 515.

⁸ *Ib.* v. 190, p. 667; see also Smith, on *Government by Commissions*, particularly pp. p. 112. See also debates in House of Commons on April 23 and July 18,

which, however weighty they might have been so long as prerogative government existed, are wholly inapplicable to our present political system. Since the establishment of ministerial responsibility, commissions have become a recognized part of our governmental machinery, and it is now freely admitted that, when confined to matters of legitimate inquiry, they serve a most useful and beneficial purpose.¹ Parliament, moreover, is duly informed, in the annual estimates, of the appointment, powers, progress, and expenditure of all commissions issued by the crown, and of the probable duration of their inquiries.²

Commissions of inquiry may be properly appointed by the crown, or by the head of any department of state, to examine into a particular grievance, or alleged defect in the administration of a public department,³ or to collect information on any important public question and advise the crown upon the same.

But it would be unconstitutional to refer to a royal commission "subjects which are connected with the elementary duties of the executive government and with its relations to parliament;" or to investigate a grievance which arises out of a particular decision of parliament, on a given question;⁴ or to appoint a commission with a view to evade the responsibility of ministers in any matter; or to do the work of existing departments of state, which possess all needful facilities for obtaining information upon questions of detail, and which are directly responsible to parliament; or to inquire into acts of misconduct which may have been committed by a judge, or a minister of state, which

Their scope
and powers
limited.

1850, on proposed commission of inquiry into state of Oxford and Cambridge Universities; and legal opinions in *Com. Pap.* 1852, v. 22, App. A. and B. to *Rep. of Oxford University Commission*; also Amos, *Fifty Years' Eng. Const.* p. 113.

¹ Cox, *Inst. Eng. Govt.* p. 155; Trevelyan, *Life of Macaulay*, v. 2, p. 59. In the fiscal year 1867-8 twenty-three temporary commissions of inquiry were sitting at one time. *Civ. Serv. Est.* 1868-9, class ii. p. 63. In 1874-5 nineteen commissions were sitting at the same time.

² *Ib.* 1869-70, p. 411. The Commission on Primary Education in Ireland was originally appointed for fourteen months, but on application its duration was prolonged more than once. The expenses incurred by this commission were largely in excess of the grant (*Hans. D.* v. 201, p. 739).

³ See 3rd Rep. Com^o. Civ. Serv. Exp. p. 62, *Com. Pap.* 1873, v. 7.

⁴ *Hans. D.* v. 217, p. 1067.

should be investigated by the House of Commons, or into the conduct of persons charged with criminal offences, except they be officers of the crown, and the right of inquiry into their conduct by commission is expressly derived from an act of parliament.¹ Neither should a commission be appointed unless the government are prepared to give definite instructions to the commissioners.²

A commission of inquiry should be limited in its operations to obtaining information, and suggesting the points to which it might be expedient that legislative or executive action should be directed. No commission should be invited to "enter upon any question of policy," lest it should trench upon the proper limits of ministerial responsibility, and upon ground which belongs to parliament.³

Commissions are usually issued from the office of the executive government which they may specially concern, whether it be that of a secretary of state, the treasury, or any other department.⁴ When not otherwise ordered, it becomes the duty of the home office to conduct the correspondence with the commissioners. And, as a general rule, "all the reports of royal commissioners come within the province of the home department alone."⁵

It is customary on all occasions that the royal commands set forth in the commission should be more fully explained by instructions issued from the department of state specially concerned in the inquiry.⁶

If the inquiry has been instituted upon the recommendation of either House of parliament the government are not pre-

¹ Case of Mr. Balfe, *Ib.* v. 156, p. 1094; Commⁿ. of Inquiry into Belfast Riots, *Ib.* v. 177, pp. 345, 378, 401; and see *U. C. Q. B. Rep.* v. 46, p. 481.

² See *Hats. Proc.* v. 4, pp. 70, 113; *Hans. D.* v. 170, pp. 915-919; *Ib.* (Mr. Gladstone) v. 175, pp. 1208, 1219; and see *Ib.* v. 219, p. 1396; Toulmin Smith on *Commissions*, pp. 150-159.

³ Mr. Gladstone, *Hans. D.* v. 177, pp. 233, 236; *Ib.* v. 217, p. 664; Sir S. Northcote, *Ib.* v. 184, p. 1731; and see v. 185, pp. 1768, 1781; v. 194, p. 241.

⁴ *Com. Pap.* 1859, sess. 2, v. 15, pp. 557-559; *Hans. D.* v. 191, p. 1456. The Railways (Ireland) Commission was appointed by a Treasury Minute on October 15, 1867 (see their report in *Com. Pap.* 1867-8, v. 32).

⁵ Cox, *Inst. Eng. Govt.* p. 672; *Hans. D.* v. 187, pp. 880, 1294.

⁶ *Ib.* v. 185, p. 1769.

cluded from making it more extensive than was sought for by the terms of the parliamentary resolution.¹

The persons appointed to serve on royal or statutory commissions are selected without reference to their political opinions as supporters or opponents of the existing administration,² and generally on account of their familiarity with the subject-matter of the proposed investigation, or because they possess special qualifications for the task.

Sometimes, at the discretion of government, members of one or both branches of the legislature are appointed upon important public commissions, not merely because of their personal fitness, but also for the purpose of obtaining a direct and efficient representation of the commission in parliament.

As a general rule, members of the government should not be appointed on commissions of inquiry, as it might afterwards become their duty to decide upon some executive action growing out of the same, as a question of state policy upon which a minister of the crown ought not to have previously committed himself to an opinion. But this rule is not without exceptions. It would be quite justifiable and expedient to appoint a cabinet minister on a commission of inquiry into matters particularly affecting the department of state over which he presides; or on a commission charged to consider and determine upon any matters which had no connection with politics.

In any circumstances, a commission of inquiry ought not to be of a "partisan" character, but should comprise "the fairest and fullest representation of all opinions," even such as may be "strong and extreme" on the question proposed to be investigated. At the same time, the composition of a royal commission is a fair subject for parliamentary criticism.³

If a commission is to be appointed under an act of parliament, the selection of the members thereof should be left to the executive government,⁴ unless it is

¹ Lord Derby, *Hans. D.* v. 188, p. 489.

² *Hans. D.* v. 193, p. 972; *Ib.* v. 196, p. 422; v. 204, p. 764; v. 218, p. 88.

³ *Ib.* v. 185, pp. 190, 514; *Ib.* v. 188, pp. 121-125, 243.

⁴ *Ib.* v. 194, p. 1410; v. 211, p. 2028; v. 212, p. 25. See Mr. Gladstone's observations deprecating private members assuming responsibility

proposed to entrust greater legislative powers to the commissioners, when it may be proper to invite the assistance of parliament in their selection. Or, unless it be a commission issued under the provisions of the Act 15 & 16 Vict. c. 57, upon a joint address of both Houses, to inquire into the existence of corrupt practices in a parliamentary constituency—when it is required that the commission shall consist of “persons named in such address,” having the particular qualifications prescribed by the statute aforesaid. In this case it is the practice to insert the names of the proposed commissioners in the resolution for the address, which is first introduced into the House of Commons.¹ This resolution is usually moved by the attorney-general, although it may be proposed by a private member.² But it is ordinarily in the discretion of ministers either to choose the commissioners themselves or to present to parliament the names of persons whom they recommend to be nominated in the act or address. In the year 1692, the commissioners appointed to determine the land tax assessment were named in the bill,³ and that precedent has since been frequently followed.⁴ In the case of a royal, as distinct from a statutory, commission, it is not usual to communicate to parliament, beforehand, the names of persons intended to be appointed, with a view to invite discussion upon the choice of the crown,⁵ although the government sometimes prefer to take this course;⁶ but in the case of a statutory commission, while it is discretionary with the government to give, or to withhold from parliament, the names of intended commissioners, whether for insertion in the act or not, it is not unusual to submit them for parliamentary approval, with a view to create a good understanding between

of naming a proposed commissioner, *Ib.* v. 192, p. 1941; and see *Ib.* v. 193, pp. 1658, 1905. But see case of Epping Forest Commissioners, *Hans. D.* v. 208, p. 621; and *Ib.* April 26, 1877.

¹ 15 & 16 Vict. c. 57, sec. 1. This provision was inserted in the Bill by the House of Lords, *Hans. D.* v. 122, pp. 567, 572, 587; see 32 & 33 Vict. c. 65; *Com. Jour.* v. 121, pp. 271, 272.

² *Hans. D.* v. 186, p. 995; v. 195, pp. 3, 15, 1270.

³ Macaulay, *Hist. of Eng.* v. 4, p. 317.

⁴ See Act 30 & 31 Vict. c. 51. Public Schools Bill of 1868, secs. 16–20. Public Works Loan Comrs. in 1817, 57 Geo. 3 c. 34, and again in 1875, *Hans. D.* v. 226, p. 537.

⁵ *Ib.* v. 187, p. 1489.

⁶ *Ib.* v. 188, p. 983; v. 189, p. 602.

the crown and parliament in the settlement of a particular question.¹

The time for submitting to parliament the names of commissioners, or members of council, intended to be inserted in a bill varies, according to the nature of the bill itself, and the extent of alteration to which it may be liable in its passage through parliament. Sometimes the names appear in the bill as first introduced, at other times not until the bill has nearly passed through committee.²

The services of persons appointed as members of a royal commission are almost invariably rendered gratuitously, except where they involve to a great degree the exercise of professional skill, when compensation is allowed for time and labour. Actual expenses incurred are, of course, defrayed out of the public funds.³

Compensation
to commis-
sioners.

It is customary for a royal commission not only to take evidence, but also to receive written communications from competent persons who may be willing to address them on the subject-matter of their inquiry. They may hold their sittings in any part of the United Kingdom. They are at liberty, moreover, when it is necessary for the furtherance of their investigations, to institute and conduct experiments for the purpose of testing the accuracy of particular theories, or the utility of inventions, etc.

Powers.

But, unless expressly empowered by act of parliament, no commission can compel the production of documents, or the giving of evidence,⁴ or can administer an oath.⁵ It was, indeed, provided by Lord Brougham's Act of 1851, to amend the law of Evidence, that any "commissioner," etc., now or hereafter having by law, or by consent of parties, "authority to hear, receive, and examine evidence," shall be "empowered to administer an oath to all such witnesses as are legally called before him."⁶ But this act applies only to commissioners appointed by the courts for

Compulsory
powers of
commissions.

¹ *Hans. D.* v. 189, p. 1746; v. 197, p. 516; v. 198, p. 1499; v. 221, p. 761.

² *Ib.* v. 214, pp. 600, 1191.

³ *Ib.* v. 200, p. 1362; *Com. Pap.* 1856, v. 38, p. 395; *Ib.* 1859, v. 15, p. 561; *Ib.* 1867, v. 40, p. 361.

⁴ *Cox, Brit. Commonwealth*, p. 251; Toulmin Smith, *Govt. by Comm.*, p. 202; *Law Mag.* v. 15, p. 85.

⁵ Toulmin Smith, p. 188; *Hans. D.* v. 214, pp. 1334-1361.

⁶ 14 & 15 Vict. c. 99, sec. 16. But see the decision on this clause, in *Reg. v. Hallett*, 2 Denison C. C. 237.

legal purposes, and does not extend to ordinary commissions, whether appointed by royal authority or by legislative enactment. Upon certain occasions the crown has undoubtedly assumed the right to confer upon commissioners appointed by prerogative "full power and authority, when the same shall appear to be requisite, to administer an oath or oaths to any person whomsoever to be examined" before them.¹ It is extremely doubtful, however, whether this was legal; and such an assumption of power, on the part of the crown, is now abandoned, and the want of compulsory powers has seldom prevented a royal commission from obtaining full and impartial information upon the subject-matter of their inquiry.²

On the other hand, there have been frequent applications to parliament to confer upon royal commissioners, in certain cases, additional powers, and to appoint statutory commissions with extraordinary powers.³ And it has become customary to define the exact powers intended to be conferred upon a statutory commission in the act itself, which generally include the compulsory powers aforesaid.⁴ But there is no precedent for empowering a statutory commission to administer an oath "except where individual misconduct is directly at issue."⁵

Within the limits of their prescribed functions, and subject to the provisions of any act of parliament defining the same, commissions have "the absolute power of regulating the proceedings of their own tribunal, and of admitting or excluding what persons they please" from attendance during their sittings.⁶ But, as will be presently shown, they are liable in certain circumstances to have their proceedings questioned in either House of parliament.

¹ For example, the Navy (Dockyards Commⁿ. in 1860, *Com. Pap.* 1861, v. 26, p. 3; the Children's Employment Commⁿ. (1862), *Ib.* 1863, v. 18, p. 3; the Irish Church Commⁿ., 1867, *Ib.* 1867-8, v. 23.

² See *Ld. Campbell, Hans. D.* v. 65, p. 491; Stat. 5 & 6 Will. IV. c. 62, sec. 13; Smith, *Parl. Remem.* 1857-8, pp. 21, 51; *Ib.* 1865, p. 43.

³ For example, see Stat. 1 & 2 Geo. IV. c. 90; 3 Geo. IV. c. 37; 5 Geo. IV. c. 20, sec. 11; 3 & 4 Will. IV. c. 37, sec. 165; 17 & 18 Vict. c. 117; 30 & 31 Vict. c. 104; 33 & 34 Vict. c. 105; see *Hans. D.* v. 197, p. 755.

⁴ Acts 34 & 35 Vict. cc. 85, 86, 93.

⁵ Mr. Fortescue, *Hans. D.* v. 214, p. 1349.

⁶ *Ib.* v. 188, p. 1437; v. 215, p. 1024; v. 216, p. 168; v. 236, p. 539.

All the expenses attending temporary royal commissions are defrayed out of moneys annually voted by parliament for such purposes.¹ But it is not usual for commissioners to incur any extraordinary expenditure without the previous sanction of the home office, by which the application would naturally be referred to the treasury.²

As a check upon the proceedings of commissions, in pecuniary matters, it is required that the secretary, even of a statutory commission, should be appointed either by or with the direct approval of the executive government. He is often nominated in the commission itself. Unless special qualifications occasion another choice, it is not uncommon to select the secretary of a commission from amongst the subordinate officers of the treasury.³

A royal commission continues in existence until it has completed its labours, unless its duration be expressly limited by the terms of the letters patent or act of parliament, under which it was appointed; or unless it be sooner revoked and discharged by the crown or by act of parliament.⁴

To revoke a crown commission it is necessary that a warrant should be issued under the royal sign manual. When the whole, or any particular portion, of the inquiry has been brought to a close, the commissioners present their report to the crown through the secretary of state for the home department. The report should be signed by all the commissioners. But, if any of them are unable to agree with the majority in the terms of the report, they are at liberty to record their dissent, and to state their individual opinions, either in paragraphs appended to the report, or in memorandums following, signed by themselves.⁵ The report is usually transmitted to parliament by command, or communicated upon an address. For royal commissioners are not directly amenable to parliament, but only to the crown.⁷ And parliament ought not to interfere with their proceedings, unless it could be shown that they were acting unfairly, or were

¹ See *Civ. Serv. Est.* 1887-8, p. 485, *Com. Pap.* 1877, v. 57.

² *Hans. D.* v. 184, p. 1070.

³ *Ib.* v. 188, pp. 436, 527.

⁴ See Act 36 Vict. c. 13.

⁵ *Hans. D.* v. 194, p. 1544.

⁶ See Second Rep. Judicature Commⁿ. *Com. Pap.* 1872, v. 20; Second Rep. Legal Departments Commⁿ. *Ib.* 1874, v. 24.

⁷ *Hans. D.* v. 158, p. 2083.

incompetent, or were otherwise unworthy of the confidence of the government, or of parliament, when either House might address the crown for their removal from office.¹

There is another species of commission, of a less prominent and important character, but which is nevertheless of great utility in furthering the work of administration, viz. what is usually termed a departmental committee, appointed by a treasury minute,² or by the authority of a secretary of state, for the purpose of instituting inquiries into matters of official concern, and suggesting improvements or remedies for obvious defects or deficiencies in existing administrative arrangements.³ Such committees are generally composed of two or more permanent and experienced officers, belonging to the particular departments concerned in the proposed investigation, with whom is frequently associated a lord of the treasury, or some other subordinate member of the administration. But it is not the practice to communicate to parliament the names of persons employed in such inquiries, as it would expose them to responsibilities to which they ought not to be subjected.⁴

If a political officer be included in a departmental committee, and a change of ministry should occur before its labours are completed, the committee would necessarily become defunct. Although, if the committee were prepared with a report, they might be permitted to present an informal and unofficial statement, or draft report, to the new administration, setting forth what they had intended to embody in their report, which would receive the careful consideration of the government.⁵

Salaried public officers receive no additional allowance for services on a departmental committee. The remuneration of persons not already in official employment, who are appointed to such service, is authorized and

¹ *Hans. D.* v. 158, pp. 902, 903; v. 203, p. 800.

² For copy of the treasury minute of April 12, 1853, appointing a committee of inquiry into the organization of the permanent civil service, see *Com. Pap.* 1854-5, v. 30, p. 375.

³ See Mr. Gladstone's observations on utility of an official committee of practical men, as a means of breaking ground upon a question of administrative reform, *Hans. D.* v. 193, p. 320.

⁴ *Ib.* v. 215, p. 523.

⁵ *Ib.* v. 188, p. 1909; *Com. Pap.* 1867, v. 39, p. 425.

Its prerogative is that, in all doubtful questions, in all questions which have not been previously settled in cabinet, and which may require instant decision, he is to decide—upon communication with his colleagues sitting by him undoubtedly, if he be courteously inclined, but he is to decide—with or without communication with them, and with or against their consent.”¹

The strength and efficiency of a government, and the activity and usefulness of the House itself, largely depend upon the character, energy, tact, and judgment of the leader of the House of Commons.² It devolves upon him to control the conduct of business in that chamber so as best to promote the public interests; and out of the House to contribute, as far as possible, to the maintenance of a good understanding amongst members, of every shade of political opinion, by a frank cordiality and social intercourse.³

The office of leader or manager of the House of Commons is coeval with the existence of parliamentary govern- Origin of the office.
ment. It was first filled by Charles Montague, chancellor of the exchequer in William III.’s first party ministry, who for four years (1694–1698) exercised an authority in the House of Commons which Macaulay says “was unprecedented and unrivalled.”⁴ Under the discordant and vacillating cabinets that immediately followed, there was no opportunity for the leader of the Commons to assert his true position. But in 1715, in the hands of Sir Robert Walpole, the office began to resume its original importance.⁵ It has since been held and adorned by most of the eminent statesmen who have shed lustre upon our annals from that period until now.

On account of the dignity and influence belonging to this office, it is usually held in conjunction with that of Upon whom conferred.
first lord of the treasury, or chancellor of the exchequer, or with both combined. When the prime minister is a peer, the leadership of the House of Commons is most

¹ Mr. Canning’s Letter in 1812, citing examples, *Life of Wilberforce*, by his sons, v. 4, pp. 38–40; Stapleton, *Canning and His Times*, p. 208; and see Yonge, *Life of Ld. Liverpool*, v. 1, pp. 408–423.

² Lord Russell’s *Recollections*, ch. v.; *Ed. Rev.* v. 108, pp. 279, 280.

³ Mr. Disraeli, *Hans. D.* v. 186, p. 1593.

⁴ Macaulay, *Hist. of Eng.* v. 4, p. 732; v. 5, pp. 157, 165.

⁵ Mahon, *Hist. of Eng.* v. 1, pp. 165, 198.

suitably conferred upon the chancellor of the exchequer.¹ Formerly, it used to be given, by preference, to a secretary of state ; but, according to recent precedent, it may be associated with any cabinet office, provided it be one of the highest grade.

Within the present century, it has been held by Lord Castlereagh and by Mr. Canning² in connection with the office of foreign secretary ; by Sir R. Peel and Lord John Russell with that of home secretary ; by Lord John Russell in connection with the office of colonial secretary ; and again by Lord John Russell in conjunction with the presidency of the council.³ Upon the formation of the Aberdeen ministry, in December, 1852, Lord John Russell took the office of foreign secretary, together with the leadership of the House of Commons. But within a few weeks he resigned the secretaryship to the Earl of Clarendon, "for the very sufficient reason that no man can efficiently discharge in conjunction" the duty of these two offices.⁴ Accordingly, in 1855, it was agreed between Lord Palmerston and Lord Derby that, in view of the increasing labour and responsibility attaching to the office, it was no longer possible to combine the lead of the House of Commons with the duties of an extensive and laborious department.⁵ Since then the leadership has been held by Lord Palmerston, by Mr. Gladstone and by Mr. Disraeli, while prime ministers, as first lords of the treasury ; by Mr. Disraeli, Mr. Gladstone, Sir Michael Hicks-Beach, and Lord Randolph Churchill, as chancellors of the exchequer ; and by Mr. Smith and Mr. Balfour as first lords of the treasury.

In 1868, when, upon the resignation of Lord Derby, Mr.

¹ The office of chancellor of the exchequer was hardly ever associated with the lead of the Commons until Mr. Perceval's time, in 1807. It is the increasing importance of finance which has invested this office with its present influence. Up to the date of Lord Grey's ministry its emoluments were inferior to those of almost every other member of the Cabinet. —*Editor.*]

² In 1812 Mr. Canning claimed a right to the leadership in connection with the office of foreign secretary, in preference to that of chancellor of the exchequer, but was overruled on personal grounds (see Yonge, *Life of Lord Liverpool*, v. 1, pp. 408-423 ; v. 3, p. 191).

³ Torren's *Life of Melbourne*, v. 2, p. 313 ; *Hans. D.* v. 130, pp. 380, 385 ; *ib.* v. 136, p. 937.

⁴ Mr. Gladstone, *Ch. Quar. Rev.* v. 5, p. 472.

⁵ *Hans. D.* v. 136, p. 1344.

Disraeli became first lord of the treasury, he assigned the office of chancellor of the exchequer to Mr. Hunt, but retained in his own hands the lead of the House of Commons. Upon the reconstruction of the Gladstone ministry, after the session of 1873, Mr. Gladstone assumed the office of chancellor of the exchequer in addition to that of first lord of the treasury. This would have naturally involved his retention of the leadership of the House, but he was not exposed to this extraordinary labour, inasmuch as parliament was soon afterwards dissolved, and his administration resigned before the opening of the new parliament. The incoming premier (Mr. Disraeli) again became first lord of the treasury and leader of the House of Commons, and Sir S. Northcote was appointed chancellor of the exchequer.

2. *Ministers charged with the moving of Estimates and submitting the Budget in the House of Commons.*

As a general rule, any member of the administration who represents a department on behalf of which votes are to be taken in committee of supply is competent to propose such votes.¹ Moving of supply votes.

In the event of the secretary of state for war and the first lord of the admiralty being members of the House of Lords, the under secretaries of these departments become their official representatives in the Lower House. Otherwise, they ought not to move the estimates for their respective departments, except in the presence of their official superior—who is the responsible minister to afford the necessary explanations upon matters of importance to parliament—unless with the intention of merely taking a vote “on account,” or upon a minor question.² But, for special reasons, the first lord of the treasury may undertake to propose these estimates.³

The civil service estimates are ordinarily moved by the financial secretary to the treasury, in presence of the chancellor of the exchequer and other ministers for whose departments the supply is required, who should be at hand to explain

¹ See May, ed. 1883, p. 247.
² *Hans. D.* v. 185, p. 18. *Ib.* v. 193, p. 535.
³ *Ib.* v. 145, p. 850.

or defend a vote or item that may be objected to.¹ Any unusual or extraordinary vote, however, should be proposed by the chancellor of the exchequer himself;² or, at his discretion, by the first lord of the treasury, notwithstanding that the chancellor of the exchequer may be present.³

It is ordinarily the duty of the chancellor of the exchequer himself to submit the annual financial statement, usually termed "the budget," to the House of Commons.⁴ But in 1842 and 1845 Sir Robert Peel, and in 1848 Lord John Russell, introduced the budget, instead of leaving it to the chancellor of the exchequer, who was present in the House at the time.

The legal business of the crown in the House of Lords is conducted by the lord chancellor, who is *ex-officio* speaker of the House and a prominent and influential member of the cabinet in every administration. He is chiefly responsible for the administration of justice throughout the kingdom, in connection with the home secretary. And he usually takes an active part in furthering the measures of government in the House of Lords.

The common law judges, also, it may be observed (not being of the peerage), may be specially summoned to attend as assistants in the House of Lords, and their opinion may be asked by the House, not only in relation to points of law and equity when their lordships are sitting as a court of judicature, but also upon public bills pending in parliament, and as to the strict legal construction of existing statutes. But they will decline to answer any question which they consider should not have been propounded to them—or which involves points likely to come before them in the courts below.⁵

The home secretary is generally a member of the House of Commons, and is answerable therein for all matters relating to the administration of justice, and especially for the exercise of the prerogative of mercy, which is administered through him.

¹ 3rd Rep. Com^o. on Civ. Serv. Exp. p. vi. *Com. Pap.* 1873, 7.

² *Hans. D.* v. 172, p. 75; v. 181, p. 1055.

³ *Ib.* v. 171, pp. 903-924. 423; v. 2,

⁴ May, ed. 1883, p. 667.

⁵ See cases cited, *Macqueen, R.* 1831-2, p. 442. See also *Ib.* 1840, p. v. 144, pp. 2033, 2050.

The law officers of the crown who are now considered eligible to sit in the House of Commons are the attorney-general, the solicitor-general, and the judge advocate-general, together with the lord advocate, and the solicitor-general for Scotland, and the attorney and solicitor-general for Ireland.¹ None of these functionaries are ever included in the cabinet.² Their continuous presence in the House of Commons, though very desirable and most serviceable, is not therefore considered obligatory.

Nevertheless, it is an acknowledged principle that the House of Commons ought not to proceed to make any alterations, which would affect the administration of law and equity, except with the sanction and authority of the law officers of the crown.³ This sanction cannot be effectually given unless by the presence of those functionaries in parliament, when questions of legal reform are under consideration, in order that they may advise as to the proper method of accomplishing the same. Moreover, being the confidential advisers of the government on legal subjects, they are the natural defenders and expounders in parliament of proceedings or measures which the government may adopt upon their recommendation.⁴ It has accordingly been the uniform practice, from a period anterior to the revolution of 1688, to require the presence of the attorney and solicitor-general of England in the House of Commons, to assist in framing laws, and in carrying on the government of the crown in parliament. The same principle applies to the law officers of the crown for Scotland and Ireland, since the union with those kingdoms, but the practice has not been so general or imperative.

In 1826, when Mr. Canning was leading the House of Commons in the ministry of Lord Liverpool, he wrote to the

¹ See Return on Offices of Profit, *Com. Pap.* 1867, v. 56, p. 19.

² For constitutional objections to the introduction of the law officers of the crown into the cabinet, see Judge Boothby's paper in *Com. Pap.* 1862, v. 37, pp. 166-170; and Votes and Proceedings, *Leg. Assy. N. S. Wales*, Dec. 3, 1873.

³ *Hans. D.* v. 162, pp. 1338, 1340; *Ib.* v. 194, p. 1617; v. 204, p. 1500; v. 205, pp. 609-618; v. 211, p. 247. The attorney-general reads through every government bill presented to parliament, and gives his opinion upon it to the minister who has charge of it (*Com. Pap.* 1875, v. 8, Evid. 1930).

⁴ British Counter Case, *Treaty of Washington*, 1871, p. 153.

premier representing that there were three legal offices, usually parliamentary, "which have been, for the first time, suffered to go out of parliament by the present government, and which, if not restored in the next House of Commons, will be considered as lost by desuetude;" viz. "the master of the rolls, the judge advocate, and the king's advocate; all important in the highest degree to the well carrying on of the king's business in the House of Commons, and all within my memory, and till of very late years, useful and efficient supporters of the administration." After pointing out the important services that could be rendered by these officers, he concluded by a protest to his chief "against all these defalcations from the constitutional and accustomed support of the government in the House of Commons."¹ Since this letter was written, the office of king's advocate, though continuing to be held during pleasure, ceased to be accounted political, and therefore disqualified the incumbent for the House of Commons.² The master of the rolls, though not legally disqualified until 1873, was not previously required or expected to find a seat in parliament. It therefore rests with the attorney and solicitor-general, and other officers above enumerated, to represent the legal element of the administration in the popular chamber.

The secretary for Scotland and keeper of the great seal is charged with the business of the crown in parliament relating to Scotland.

Prior to the Union, and for a short period subsequently, the office of secretary of state for Scotland was in existence. It was abolished in 1725, when the Duke of Roxburghe was removed from office. It was again restored in 1731, and the appointment was last held in 1745 by the Marquis of Tweeddale.³

But during the past half-century the progress of Scotland in wealth and population has been so remarkable, that circumstances demanded additional facilities for transacting Scottish business in parliament, and repeated efforts were made in the Lower House to revive the office of a minister for Scotland; and, in 1885, Lord Rosebery introduced a bill in the House

¹ Stapleton, *Canning and his Times*, p. 611; and see Walpole's *Life of Perceval*, v. 1, p. 87.

² But the office itself was abolished in 1872.

³ Smith's *Secretary for Scotland*, p. 10.

of Lords which, as amended in 1887,¹ transferred to the secretary for Scotland² the whole of the duties performed by the secretary of state, the privy council, the treasury, and local government board concerning Scotland, with the following exceptions: Factory and Workshop Act, 1878; Coal Mines Regulation Act, 1872; Metalliferous Mines Regulation Act, 1872; Explosives Act, 1875; Cruelty to Animals Act, 1876; and Reformatory and Industrial School Acts, 1866-1879.

The office of secretary, which may be filled by a member of either House, is held during pleasure, and the salary attached to it is £2000.

The lord-advocate is still charged with the legal business of the crown in the House of Commons regarding Scotland.

3. *The Responsibility of Ministers of the Crown to Parliament.*

Notwithstanding the modern rule of parliamentary government, whereby responsibility is attached to the whole administration for the acts of the several members of which the same is composed, the ancient rule "that the constitution of this country always selects for responsibility the individual minister who does any particular act"³ continues to hold good, and is directly applicable in cases of personal misconduct, for which the collective administration decline to be answerable.

Complaints
against
particular
ministers.

The growth of the principle of collective ministerial responsibility was, as we have seen, very gradual, and its entire acceptance as a constitutional dogma of but recent date.⁴ So lately as in the year 1806, Mr. Fox, when secretary of state, repudiated the notion of considering the whole cabinet to be responsible for every ministerial act, claiming that there was a greater security against wrongdoing in holding each particular minister directly if not exclusively responsible to parliament for the management of his own department. But the fallacy of this position was exposed by Lord Castlereagh, who showed that the proceedings of the House of Commons in regard to the partition treaties, in 1698, proved that even at that early period all the prominent members of the ministry were equally

¹ 50 & 51 Vict. c. 52.

² 48 & 49 Vict. c. 61.

³ Lord Grey, in *Parl. Deb.* v. 18, p. 3075.

⁴ See *ante*, v. i. p. 248.

held accountable for a particular act of public policy, and not merely the minister who had been instrumental in giving effect to the same.¹

The true doctrine on this subject was afterwards enunciated by Lord Derby, in the following terms: "The essence of responsible government is that mutual bond of responsibility one for another, wherein a government, acting by party, go together; frame their measures in concert; and where, if one member falls to the ground, the others, almost as a matter of course, fall with him."²

But the application of this principle would be often partial and insufficient for the ends of justice, were it not for the exception implied in Lord Derby's definition, and which admits of a definite and unqualified responsibility being exclusively attached to a minister of the crown who is proved to have done anything which renders him personally liable to the censure of parliament, or to punishment by legal process. While the general responsibility of the whole administration would not suffice to screen such a one from the consequences of his own misdeeds, it would not necessarily follow that his colleagues should be made accountable for the wrongful acts of a minister in a matter which peculiarly concerned his own department, unless they voluntarily assumed a share of the responsibility, or should prove to have been implicated therein.³

The extent to which the responsibility of a minister of the crown for misbehaviour in office remains in operation after his retirement from the cabinet, and the appropriate proceedings to bring such an offender within the reach of parliamentary censure and punishment, were the subjects of discussion in the House of Commons in 1855, after the report of the Sebastopol committee, which exposed a grievous amount of mismanagement on the part of certain ministers who held office during the stages of the Russian war. The following conclusions arrived at upon that occasion, viz. that a new ministry

Does not extend to personal misconduct.

Past misconduct of ministers, how dealt with.

¹ *Stapleton v. l. Deb.* v. 6, pp. 310-327.

² *Hans. D.* v. 134, p. 834.

³ Serious cases may be cited, in which an administration did not assume responsibility for the conduct of one of its members, e.g. Lord Melville's *Perceval*, v. 1, *Deb.* vols. 3, 4, 5, and Mr. Stanfeld's case, *ib.* v. 174, pp. 250, 283.

⁴ But the offices, it will be observed, have reference to the personal conduct, *Smith's Secretaries*, it will be observed, have reference to the personal conduct, public policy, of the minister concerned in them.—*Editor.*]

should not be held accountable for the misconduct of one of their number under a previous administration; and that the only available methods of procedure against an ex-minister of the crown were by parliamentary impeachment; or by addressing the crown to remove his name from the list of the privy council, or otherwise to proceed against him by due process of law. But where the matter complained of is less serious, and admits of justification, it is usual for the House of Commons to receive and accept from the ex-minister who advised the same an explanation of his conduct in relation thereto.¹

Responsibility to parliament permits of and ensures a greater degree of vigilance over the acts of public men than was attainable under prerogative government. Consequently, it tends to prevent the commission of political crimes, such as disgraced our history in former periods, and which compelled a recourse to the extreme measure of impeachment.² On the other hand, it has substituted the milder but more efficient punishments of censure and deprivation of office for such ministers as have justly incurred the displeasure of parliament by incapacity, misconduct, or misgovernment. Impeachments, however, though rarely necessary under our modern political system, may still be resorted to on suitable occasions.³ Since Walpole's downfall—when the last attempt was ineffectually made to impeach a minister of the crown for political offences—it has been the salutary practice, although not strictly according to the theory of our constitution, to consider the loss of office and the public disapprobation as punishment sufficient for errors in the administration not imputable to personal corruption.⁴ But, should any case of administrative

¹ Appointment of deputy-master of the mint, *Hans. D.* v. 195, p. 31; appointment of the lord-lieut. of Cumberland and Westmoreland, *Ib.* p. 731; examination of Mr. Corry, ex-first lord of the admiralty, before Com^o. on Public Accts. in 1869 (see *Second Rep.* pp. iv. 28; *Com. Pap.* 1868-9, v. 6). See proposed vote of censure upon Gladstone ministry on April 24, 1874, for advising an "abrupt" dissolution, and a "precipitate" appeal to electoral body (*Hans. D.* v. 218, p. 1101).

² The last impeachment in England was in 1805, in the case of Lord Melville, for alleged malversation in office.

³ See May, *Const. Hist.* v. 1, p. 464; May, *Prac. of Parl.* ch. 23; and see Sir W. Molesworth's speech, *Mir. of Parl.* 1836, p. 1306.

⁴ Macaulay, *Essays*, v. 1, on Hallam's *Const. History*, p. 204; and see *Am. L. Rev.* for Nov. 1882, on impeachable offences under the U.S. Const.

abuse, or malfeasance in office, either by a responsible minister of the crown or by any other high public functionary, hereafter occur, of sufficient gravity to justify a proceeding of such peculiar solemnity, it would be appropriate to resort to this ancient remedy for the investigation and redress of political offences.¹

The responsibility of the ministers of the crown to parliament, as it is now understood, is practically a Ministerial responsibility to the House of Commons. For, notwithstanding the weight and authority which is properly attached to the opinion of the House of Lords upon affairs of state, the fate of a minister does not depend upon a vote in that House.² "The Lords may sometimes thwart a ministry, reject or mutilate its measures, and even condemn its policy; but they are powerless to overthrow a ministry supported by the Commons, or to uphold a ministry which the Commons have condemned."³ But the verdict of the House of Commons itself derives its strength and efficacy from its being a true reflex of the intelligent will of the whole community. Until a vote of the Commons has been ratified by the constituent body, it will seldom be regarded as conclusively determining the existence of a ministry. When, in 1848, Sir Robert Peel was first informed of the overthrow of royalty in France, and the proclamation of a republic, he shrewdly remarked, "This comes of trying to carry on a government by means of a mere majority of a chamber, without regard to opinion out of doors."⁴

It is of the utmost importance that there should be a complete understanding between the members of a newly appointed administration and the Houses of parliament. It is, therefore, customary upon the formation of a new ministry, for explanations to be immediately given in both Houses, if they are then in session, and if not, as soon as possible after they have met.⁵ This course was pursued in 1782, upon the reconstruction of the Whig ministry under

¹ Amos, *Fifty Years of Eng. Const.* p. 345. The expediency of proceeding by impeachment against Governor Eyre was mooted in the House of Commons in 1866 (*Hans. D.* v. 184, p. 1838).

² *Hans. D.* v. 188, p. 133; v. 208, p. 487.

³ May, *Const. Hist.* v. 1, p. 467.

⁴ Cobden, *Political Writings*, v. 2, p. 232 n.

⁵ *Mir. of Parl.* 1835, p. 61.

Lord Shelburne, consequent upon the death of the late premier, Lord Rockingham, when the principles which constituted the basis whereon the new ministry was formed were communicated to the Lords and Commons on July 9 and 10.¹ In like manner, when Sir R. Peel resigned on the Corn Law question, in 1845, and, after an ineffectual attempt by Lord John Russell to form a ministry, resumed office, with enlarged powers, these events having occurred during a recess, upon the reassembling of parliament ministerial explanations were given in both Houses; voluntarily, by Sir Robert Peel, in the Commons, and, in compliance with a formal request, by the Duke of Wellington, in the Lords.² Until, however, the re-appointment of the Palmerston administration, in 1859, it was accounted sufficient if the ministerial statement was made by the premier in his own chamber, without its being needful to repeat it in the other House.³ But, owing to complaints, in 1858, of the irregularity of this course, it has since been the usual, though not the invariable, practice for ministerial statements upon a change of ministry to be addressed, simultaneously if possible, to both Houses, the consent of the crown to such disclosures having been duly obtained.⁴

But the House "has no right to ask for more than a general exposition of the main principles on which a government is formed. It has no right to inquire into all the conditions which may have taken place between the several members of the government." Any arrangements, however, which have been "specially referred to" in debate by new ministers as the "stipulations and conditions" upon which they agreed to accept office, may be suitably inquired into by other members.⁵

The most eminent authorities agree that, when a cabinet is reconstructed, it is as necessary to enter into explanations

¹ *Parl. Hist.* v. 23, pp. 152-189.

² *Hans. D.* v. 83, pp. 68, 165, 1003.

³ See Lord John Russell, *Ib.* v. 124, p. 17. When Lord Russell succeeded to the premiership upon the death of Lord Palmerston, in 1866, no ministerial statement was made to either House, upon the meeting of parliament. When Lord Derby took office in July, 1866, he made his statement in the House of Lords (*Ib.* v. 184, p. 726), and it was not repeated to the Commons. But when Mr. Disraeli replaced Lord Derby, as premier, a ministerial statement was addressed to each House on March 5, 1868 (*Ib.* v. 190, pp. 1104, 1116).

⁴ See *Ib.* v. 154, pp. 457, 478.

⁵ Mr. Disraeli, confirmed by Mr. Gladstone, *Ib.* v. 138, p. 2039.

as when a total change of government takes place; and particularly in order to avoid the imputation of intrigue.¹ But the practice in this respect is of recent origin, and has not been uniform. Up to the year 1854, repeated instances occurred of partial changes in an existing administration in relation to which no information was communicated to parliament;² while, on other and similar occasions prior to that time, such information was freely given. It is now afforded, as a matter of course, to both Houses;³ and, in 1855, Lord Derby observed that he thought it was "the duty of every public man, whether he accepts or whether he abstains from accepting office, to be prepared to give at the proper time a full explanation, both to his own friends and to the country, of the motives which may have induced him so to accept or abstain." Such explanations, however, "should never be given until a government is actually formed, and the state of affairs is decided."⁴

After what has been already stated, it will be obvious that, upon the resignation of a ministry, or of any prominent minister, explanations should be given of the causes thereof, when the fact is announced to parliament;⁵ provided that the permission of the sovereign to disclose the same has been first obtained. But, when a single member of a cabinet retires, until he has made his own statement in the House to which he belongs, the government cannot explain the grounds of his withdrawal to the other House.⁶

All ministerial explanations in the House of Commons are subject to the rule which provides that "by the indulgence of the House, a member may explain matters of a personal nature, although there be no question before the House; but such matters may not be

Rule concerning explanations.

¹ Mr. Disraeli, *Mir. of Parl.* 1840, pp. 24, 70.

² See *Mir. of Parl.* 1839, pp. 5231, 5238; *Ib.* 1840, p. 23; *Hans. D.* v. 130, p. 94; *Ib.* v. 132, p. 80; v. 134, p. 921.

³ See *Mir. of Parl.* 1839, p. 114; *Hans. D.* v. 134, p. 335; *Ib.* v. 185, pp. 1284, 1323, 1339. [The recent practice appears to be, that changes in an administration arising from difference of opinion are made the subject of explanation; changes due to other causes are not, and indeed do not require to be explained.—*Editor.*]

⁴ *Ib.* v. 136, p. 1259.

⁵ *Ib.* v. 123, p. 1698; v. 185, pp. 1312, 1323.

⁶ *Ib.* v. 136, pp. 939, 943, 960.

debated.”¹ Any debate, therefore, following upon a ministerial explanation would be irregular; and no speech on such an occasion should be concluded by a formal motion, with a view to bring on a general debate.²

In the House of Lords, the practice on such occasions is less strict.³

During the progress of ministerial negotiations, it is, as a general rule, inexpedient and objectionable to Ministerial negotiations. make inquiries in parliament as to whether particular individuals have been charged to form a ministry—or invited to form part of a ministry—and upon what conditions. Such questions are inconvenient, as tending to the premature disclosure of confidential matters.⁴ But when difficulties and delays have arisen in the formation of a ministry, and it is in contemplation to address the crown on the subject, it is not unprecedented to permit inquiries of this kind, “as tending to explain the conduct and clear the characters of public men.” It is, nevertheless, optional with those to whom such questions are put, whether they will answer them or not.⁵

We have already pointed out the reasons which would justify a sovereign in dismissing his ministers:⁶ and the circumstances that would naturally lead to the resignation or reconstruction of a ministry.⁷ It now remains to explain the nature and extent of the control over the ministers of the crown which is constitutionally exercised by the House of Commons.

As it is essential that the ministers of the crown should possess the confidence of the popular chamber, so the loss of that confidence will necessitate their retirement from office. The withdrawal of the confidence of the House of Commons from a ministry may be shown either When ministers must resign. (1) by a direct vote of want of confidence, or of censure for certain specified acts or omissions; or (2) by the rejection of some legislative measure proposed by ministers,

¹ May, *Parl. Prac.* 1883, p. 359.

² The speaker and Mr. Disraeli, *Hans. D.* v. 174, pp. 1215, 1216. But upon May 4, 1868, on a formal motion to adjourn, a debate took place after a ministerial statement by Mr. Disraeli (*Ib.* v. 191, pp. 1694–1717).

³ *Ib.* v. 191, p. 1687.

⁴ Lord Brougham, *Mir. of Parl.* 1834, p. 2715.

⁵ See *Parl. D.* v. 23, pp. 313–316. *Mir. of Parl.* May 11, 1832, p. 2001.

⁶ *Ante*, v. 1, pp. 72, 108.

⁷ *Ante*, p. 20.

the acceptance of which by parliament they have declared to be of vital importance; or, on the other hand, by the determination of parliament to enact a particular law contrary to the advice and consent of the administration.

The direct vote of want of confidence, as a procedure for the removal of an obnoxious or an incapable ministry, is of comparatively recent origin; and for its present accepted form, whereby the House declares that it has no confidence in an administration, without assigning their reasons for such declaration,¹ no precedent exists anterior to 1841.

The House of Commons is constitutionally competent to express, at any time, either its partial disapprobation of a ministry, or its general want of confidence in the policy and proceedings of the administration. The latter, however, is a right which should be sparingly exercised, and reserved for great occasions. A vote of want of confidence, though justifiable in certain circumstances, is open to serious objection if it be hastily or unreasonably entertained for mere party purposes.² For no person has a right to bring forward a resolution of want of confidence, or a vote of censure, in respect to any ministry, unless he is prepared to assume the consequences of such a proceeding, and the responsibility of placing the government in a minority. Those consequences would naturally be either a dissolution of parliament, or that the sovereign would call upon the promoters of the successful attack to assist in the formation of a new ministry. And by the return of a defeated ministry to office, after an abortive attempt on the part of their opponents to form an administration, the position of the opposition itself, relatively to the government, would be to some extent injuriously affected.³

A vote of censure upon a particular act or policy of the administration—like a vote of want of confidence—is a matter of vital concern. When passed by

¹ For a vindication of the propriety of this method, see Massey, *Hist. of Eng.* v. 3, p. 235.

² Mr. Disraeli, *Hans. D.* v. 135, p. 226; Sir G. C. Lewis, *ib.* v. 138, p. 2129; Hearn, *Govt. of Eng.* p. 219; Stanhope, *Life of Pitt*, v. 1, p. 190.

³ Mr. Gladstone, *Hans. D.* v. 214, p. 1928.

the House of Lords, such a vote, though not necessarily fatal, is, as we have seen, of very great importance, and can be counterbalanced by the distinct approval of the same policy by the other House.¹ The direct censure of a ministry, for any act or omission in the exercise of their administrative functions, by the House of Commons, will ordinarily lead to their retirement from office, or to a dissolution of parliament, unless the act complained of be disavowed, when the retirement of the minister who was especially responsible for it will propitiate the House, and satisfy its sense of justice.

It is usual to give priority over other business to a formal vote of censure, or motion of want of confidence, but not to a less direct expression of opinion adverse to the policy of ministers, however seriously such a motion may be regarded in its ultimate consequences.²

Want of confidence in an administration, or disapproval of particular acts of the executive government, may be expressed either by a direct vote of censure, or by some formal motion—as for the production of certain papers—which is distinctly intended to convey the disapprobation of the House.³ It may also be unequivocally declared in other ways, as by the refusal of the House to follow the lead of ministers upon any particular occasion.⁴ In such cases, however, it must rest with the ministry to determine upon what policy or proceeding they will take their stand; and what extent of deviation from the course they have advised parliament to pursue will be regarded as a withdrawal of the confidence heretofore reposed in them by the House.⁵ It is in the power of ministers to treat any motion that may be made in the House, even a motion of adjournment, in this way;⁶ and they will sometimes meet a motion on a question of public policy, which was not intended to be a censure on the government, with a declaration that, if agreed to by the House, they will consider it as equivalent to a vote of want of confidence.⁷

Defeat of
ministers in
parliament.

¹ Hearn, *Govt. of Eng.* p. 160.
² *Mir. of Parl.* 1841, p. 1981; Mr. Gladstone, *Hans. D.* v. 210, p. 1754; v. 211, pp. 1282; v. 228, p. 624.
³ *Hans. D.* v. 203, p. 1367.
⁴ Mr. Gladstone, *Ib.* v. 210, pp. 1754, 1813-1847.
⁵ *Ib.* v. 228, p. 1768; and see *Ib.* v. 206, pp. 173, 209.
⁶ Sir H. Cairns, *Hans. D.* v. 182, p. 1489; and see p. 1856.
⁷ Ashley, *Life of Palmerston*, v. 1, p. 334.

As a general principle, the confidence of the House of Commons in the ministers of the crown should not be asserted by any abstract resolution, but should rather be inferred from the support given by the House to the executive government, and by its mode of dealing with the measures proposed for its consideration by the ministry. There are undoubtedly occasions which would justify a government in asking for an express declaration of confidence from the House of Commons, either in reference to their general policy, or to some particular feature of it; but such occasions are very rare.¹ A direct vote of confidence may suitably be agreed to by the House of Commons, when the policy or conduct of ministers has been assailed elsewhere, in a manner calculated, unless neutralized by the action of the Commons, to impair their just authority and influence, or to lead to their resignation of office.²

An expressed opinion of either House of Parliament, and especially of the House of Commons, upon any matter—whether it be a legislative question or one that comes within the sphere of prerogative or administrative functions—even if it has been adopted by the House in opposition to the advice of ministers, is always entitled to respectful consideration. But the degree of weight to be attributed to any such resolution will be governed by the circumstances of the case. Ministers have sometimes deferred to the wishes of parliament, thus formally declared, while at other times they have taken a stand and refused, at all hazards, to comply therewith. The persistence of either House in a declaration of opinion, upon any important question, in which ministers do not concur, must ultimately assume the shape of confidence or non-confidence in the administration.

We have next to inquire, how far the inability of ministers of the crown to control the course of legislation on public questions should be taken as an indication that they have lost the confidence of the House of Commons.

It has been already shown that, whereas, by modern constitutional practice, ministers are required to initiate bills

¹ Sir R. Peel, *Mir. of Parl.* 1839, pp. 1721, 1731; *Hans. D.* v. 214, p. 1912.

² Hearn, *Govt. of Eng.* pp. 145-148.

upon all questions affecting the public welfare—it being in the power of private members likewise to introduce similar measures—it is customary and expedient that considerable latitude should be granted to the legislative chambers in amending or rejecting the ministerial measures without its being assumed by any such proceeding that they have withdrawn their confidence in the advisers of the crown.¹ Important public measures have been brought in by ministers, which have been rejected by parliament, or so amended as to lead to their abandonment.² Bills of a constitutional character have been introduced by private members, and carried through one House, notwithstanding the opposition of ministers.³ But we find no example of any bill being permitted to pass through both Houses to which ministers were persistently opposed. Where the opinion of parliament has been unequivocally expressed in favour of a particular bill, regardless of objections thereto expressed by ministers, it has been the invariable practice for ministers either to relinquish their opposition, in deference to that opinion, and to lend their aid to carry the measure, with such amendments as might be necessary to conform it to their own ideas of public policy, or else to resign.⁴ Every successive administration, under parliamentary government, has thus been enabled to maintain—with more or less adherence to their party principles, or to their political programme—the constitutional control over the proceedings of parliament in matters of legislation which appertain to their office: a control which the majority ordinarily possessed by ministers of the crown in the legislative chambers enables them to exercise without infringing upon the independence of parliament.

If, however, a bill is introduced, or an amendment carried, in either House, to which ministers are unable to agree, and they are unwilling to permit it to pass that House upon the chance of its being rejected by the other, a ministerial crisis must ensue; and ministers will either request the House to

¹ See *ante*, pp. 62, 63.

² Case of the Irish Church Appropriation question, May, *Const. Hist.* v. 2, p. 486; and see Lord Russell's comments on this case, *Hans. D.* v. 191, p. 1441.

³ *Ante*, pp. 63, 64.

⁴ Resignation of the Russell ministry in 1851, on a Franchise Bill, and in 1852, on an amendment to the Militia Bill being carried against them.

reconsider its vote, unless they are prepared to take the consequences of defeating the ministry upon a vital question,¹ or they will at once appeal to the country or retire from office.

A mere defeat, or even repeated defeats, in the House of Commons, upon isolated questions, would not necessarily require the resignation of a ministry which retains the general confidence of parliament. But, if ministers declare that they regard the passing of a particular measure, in a certain shape, as a matter of vital importance, the rejection of their advice by parliament is tantamount to a vote of want of confidence, and must occasion their resignation. For, if the ministers of the crown "do not sufficiently possess the confidence of the House of Commons to enable them to carry through the House measures which they deem of essential importance to the public welfare, their continuance in office is at variance with the spirit of the constitution."²

Defeats on financial questions. Furthermore, while questions of finance and taxation are especially within the province of the House of Commons to determine, and they should be free to act in relation to such questions without being hampered with the possible effect of their votes upon the stability of the ministry, yet, as regards the estimates, it is otherwise. When ministers assume the responsibility of stating that certain expenditure is necessary for the support of the civil government, and the maintenance of the public credit, at home and abroad, it is evident that none can effectually challenge the proposed expenditure, to any material extent, unless they are prepared to take the responsibility of overthrowing the ministry. "No government could be worthy of its place if it permitted its estimates to be seriously resisted by the opposition; and important changes can be made therein only in circumstances which permit of the raising of the question of a change of government."³

¹ *Ld. J. Russell, Hans. D. v. 116, pp. 632-634; and see Ib. v. 151, pp. 551-563; v. 192, pp. 485-494, 622, 841; v. 195, p. 540.*

² *Resol. House of Commons, June 4, 1841. See also Mr. Disraeli and Lord J. Russell's observations, Hans. D. v. 101, pp. 704-707, 710.*

³ *Mr. Gladstone, Hans. D. v. 191, p. 1747. [In 1848, however, Lord John Russell's government practically undertook to revise its estimates.—Editor.]*

After the defeat of ministers upon a vital question, in the House of Commons, there is but one alternative to their immediate resignation of office—namely, a dissolution of parliament, and an appeal to the constituent body.¹ This alternative, however, is not constitutionally available whenever a majority of the House of Commons has condemned a ministry; it should only be resorted to in certain circumstances, to be presently explained.²

While the decision of the House upon any question which is calculated to affect the relations of ministers towards the House of Commons is pending, it is highly irregular and unconstitutional to refer to a dissolution of parliament as a probable contingency, with a view to influence the conduct of members upon the particular occasion. For the Houses of parliament should always be in a position to exercise an unbiased judgment upon every question brought before them, fearing neither the crown on the one hand nor the people on the other.³

But, after an appeal to the country has been determined upon, the dissolution should take place with the least possible delay; that is to say, as soon as the necessary business before parliament has been disposed of; the opposition meanwhile aiding the ministry in completing the same, and refraining from any further attempt to embarrass them.

By necessary business is to be understood such measures as are imperatively required for the public service, or as may be proceeded upon by common consent. "It is inconsistent with all usage, and with the spirit of the constitution, that a government should be enabled to select the measures which it thinks proper to submit to the consideration of a condemned parliament," or "to exercise its own discretion, for party purposes, as to what measures it will bring forward or what it will withhold."⁴ Upon the same principle, it is customary,

¹ See Russell's *Life of Fox*, v. 2, pp. 54, 95; Gladstone, *Hans. D.* v. 192, p. 1606.

² Toulmin Smith, *Parl. Rememb.* 1859, p. 74; *Ed. Rev.* v. 128, p. 575.

³ See *Hans. D.* v. 9, pp. 346-348, 435, 449, 588; *Romilly's Life*, v. 2, p. 194; *Mir. of Parl.* 1841, p. 2113; *Hans. D.* v. 150, pp. 1076, 1085; v. 153, p. 1256; v. 198, pp. 103, 120.

⁴ Sir R. Peel, *Mir. of Parl.* 1841, pp. 2136, 2137.

when parliament is about to be dissolved, whether upon the occurrence of a ministerial crisis, or for any other reason, to restrict the grant of supplies to an amount sufficient to defray the indispensable requirements of the public service, until the new parliament can be assembled.¹

And here it may be suitable to notice the particular occasions upon which, by constitutional usage, a minister is justified in advising the crown to exercise its prerogative of dissolving parliament.

When it may be advised.

A dissolution may properly take place—

First, in order to take the sense of the country in regard to the dismissal of ministers by the sovereign, as in 1783, in 1807, and in 1834.

Second, on account of the existence of disputes between the two Houses of parliament, which have rendered it impossible for them to work together in harmony.² But happily there have been no cases of this kind since the complete establishment of parliamentary government.³

Third, for the purpose of ascertaining the sentiments of the constituent body in relation to some important act of the executive government, as in 1806, after the failure of the negotiations for peace with France, and to strengthen the hands of government in the continued prosecution of the war;⁴ or some question of public policy upon which the ministers of the crown and the House of Commons are at issue.⁵

Fourth, whenever there is reason to believe that the House of Commons does not correctly represent the opinions and wishes of the nation. Upon this ground, ever since 1784,⁶ it has been completely established, as the rule of the constitution,

¹ *Hans. D.* v. 192, pp. 1604, 1606.

² As in 1679, because of the refusal of the House of Lords to proceed with the impeachment of Lord Treasurer Danby; in 1701, because of dissensions on account of the impeachment of Somers and other ministers; and in 1705, on account of disputes in the case of the "Aylesbury men" (*Burnet's Own Time*, A.D. 1701, 1705; *State Trials*, v. 14, p. 695).

³ [Lord Brougham stated in 1846 that "where there is a difference of opinion between the two Houses of parliament, an appeal to the people is usually 'considered necessary'" (*Hans. D.* v. 83, p. 34). He omitted to observe that, so far from being usual, such an appeal had not taken place for a hundred and forty years.—*Editor.*]

⁴ *Parl. D.* v. 8, p. 27; but see *Mir. of Parl.* 1835, p. 64.

⁵ As in 1831, in 1852, in 1857, and in 1859.

⁶ See Russell, *Memorials of Fox*, v. 2, p. 245.

that, when the House of Commons refuses its confidence to the ministers of the crown, the question whether, in doing so, it has correctly expressed the opinion of the country, may properly be tested by a dissolution; and that the House of Commons cannot attempt to resist the exercise of the prerogative, by withholding the grants of money necessary for carrying on the public service till a new parliament can be assembled, without incurring the reproach of faction.¹

The prerogative of dissolution should be exercised with much discretion and forbearance. Frequent, un- When it is objectionable. necessary, or abrupt dissolutions of parliament “blunt the edge of a great instrument given to the crown for its protection,” and whenever they have occurred, have always proved injurious to the state.²

“It is not to be supposed,” says Professor Austin, in reference to the control exercised over parliament by Austin on the kingly office. means of the royal prerogative of dissolution, “that the king is powerless because this power of control is seldom exercised. As his power depends, in the long run, on the rational attachment of the people to the royal office, the permanence of the power would be put in jeopardy if it were indiscreetly exercised. The power of the crown to control the Houses operates silently. It is rarely exercised in fact; but it could be exercised in fact if the exercise became necessary, and were sanctioned by the approbation of the country.”³

No minister of the crown should advise a dissolution of parliament unless he has a reasonable prospect of securing thereby a majority of members in the new House of Commons, who will “honestly and cordially concur with him in great political principles;” in other words, unless he entertains “a moral conviction” that a dissolution will procure him a parliament “with a decided working majority of supporters.”⁴

There is no constitutional principle which requires that there should be an appeal to the country previous to legislation upon great public questions, even though they may involve organic changes in the constitution itself; for, by the true theory of representation, asserted by the highest authorities

¹ Grey, *Parl. Gov.* new ed. p. 79.

² Peel, *Memoirs*, v. 2, pp. 44, 294; *Ed. Rev.* v. 139, p. 547.

³ *Plea for the Constitution*, p. 5.

⁴ Peel, *Memoirs*, v. 2, pp. 294, 297. See also Grey, *Parl. Govt.* new ed. p. 80; Hearn, *Govt. of Eng.* p. 156.

and enforced by the uniform practice of parliament, the actual House of Commons is competent to decide upon any measure that may be necessary for the well-being of the nation.¹

A valuable security against the improper exercise of this prerogative is that, before a dissolution can take place, it must be clearly approved by the sovereign, after all the circumstances shall have been explained to him, and he shall have duly considered them.²

Duty of the sovereign in respect to a dissolution.

Upon such an occasion, "the sovereign ought by no means to be a passive instrument in the hands of his ministers; it is not merely his right, but his duty, to exercise his judgment in the advice they may tender to him. And though by refusing to act upon that advice he incurs a serious responsibility, if they should in the end prove to be supported by public opinion, there is perhaps no case in which this responsibility may be more safely and more usefully incurred than when the ministers ask to be allowed to appeal to the people from a decision pronounced against them by the House of Commons." For they might prefer this request when there "was no probability of the vote of the House being reversed by the nation, and when the measure would be injurious to the public interests. In such cases the sovereign ought clearly to refuse to allow a dissolution."³

It is the undoubted right of either House of parliament to address the crown, praying that parliament may not be dissolved, or to express an opinion in regard to the circumstances in which this prerogative has been exercised.⁴ But modern authorities are agreed in deprecating any interference by parliament with

Parliamentary interference in regard to dissolution.

¹ For example, the Septennial Bill of 1716 (Hallam, *Const. Hist.* v. 3, p. 316; Mahon, *Hist. of Eng.* v. 1, p. 301); the Unions between England and Scotland, and between Great Britain and Ireland (*Parl. Hist.* v. 35, p. 857); and the repeal of the corn laws, in 1846, by a parliament elected in the interest of their maintenance, were severally enacted without an intermediate dissolution, and the arguments of those who, upon these occasions, urged the necessity for a dissolution, were declared to be "ultra democratic," "dangerous," and "unprecedented," by Whig and Tory statesmen alike (*Hans. D.* v. 83, p. 33; v. 84, p. 464; v. 85, pp. 224-226; *Ib.* v. 191, and p. 930).

² Wellington, in *Peel's Memoirs*, v. 2, p. 300.

³ Grey, *Parl. Govt.* new ed. p. 80.

⁴ *Parl. Hist.* v. 24, p. 832; May, *Const. Hist.* v. 1, p. 459; and see Mr. Smollett's motion, *Hans. D.* v. 218, p. 1101.

the right of the crown to appeal from the House of Commons to the country whenever it may be deemed expedient ; whether the House may think such an appeal to be more or less advisable.¹ By general consent, the alternatives of resignation of office, or of dissolution of parliament, are now left to the discretion and responsibility of ministers ; and though, when they have elected to dissolve, ministers have been met with remonstrances, there has been no direct attempt, since the memorable year of 1784, to interfere with the prerogative of the crown to dissolve parliament when and for what reason it thought fit.²

A dissolution of parliament having taken place—for the purpose of taking the sense of the constituencies as to a question upon which the executive govern-^{The "cry" at the elections.}ment and the House of Commons are at issue, or for any other constitutional reason—ministers are not limited in their appeal to the country to the particular question in dispute, but are at liberty to raise any other issue, or rallying cry for the hustings, which they may consider to be consistent with their policy and principles.³

While it is usual for the ministers of the crown to appeal to the constituent bodies in regard to any given line of policy, or public measure, upon which they are desirous of eliciting the opinions of the country—an appeal which is responded to by the return of members more or less pledged as to the course they will pursue upon the particular question—the British constitution rejects the idea that a member of the House of Commons is, in any wise, a delegate.⁴ Once chosen to this high trust, he should be at liberty to act upon his own independent judgment, as belonging to a free deliberative assembly ; and though he is bound to respect any engagement that he has distinctly made, yet, if he be wise, he will be exceedingly chary of fettering himself with pledges^{Pledges.} and conditions, and will always bear in mind his paramount obligations as a member of the great council of the crown which is convened to decide upon matters of state as they arise, not for local reasons, or in accordance with local or

¹ Yonge, *Life of Ld. Liverpool*, v. 1, p. 222.

² May, *Const. Hist.* v. 1, p. 460.

³ Peel's *Memoirs*, v. 2, pp. 292-297.

⁴ See Stubbs's *Const. Hist.* v. 3, p. 485.

sectional prejudices, but with a view to promote the highest advantage of the whole community.¹

The verdict of the country having been pronounced against ministers at a general election, it is, nevertheless, competent for them to remain in office until the new parliament has met, and given a definitive and final decision upon their merits; for the House of Commons is the legitimate organ of the people, whose opinions cannot be constitutionally ascertained except through their representatives in parliament.² It is necessary, however, and according to precedent, that in such circumstances the new parliament should be called together without delay.

Upon the meeting of parliament, it is usual to take the earliest opportunity to obtain a decisive vote upon the fate of a ministry, which has been defeated at the hustings. A suitable occasion is afforded by the address in answer to the speech from the throne, to which an amendment may be moved, to declare that the advisers of the crown do not possess the confidence of the House. This motion, if agreed to, will lead to an immediate resignation of the ministry.

Whenever the Houses of parliament are notified that the ministers of the crown have resigned, or have been dismissed from their offices, and that the administration is dissolved, it is customary for them to adjourn over to some future day, until a new ministry is formed. The motion to adjourn, upon such an occasion, is usually and properly made by one of the ex-ministers, at the request of the person who has been entrusted with the formation of a new ministry.³ Any further adjournments that may be necessary before the new arrangements are complete should be proposed

New parliament decides upon the fate of ministers.

Proceedings on resignation of ministers.

¹ Upon this subject, see Lord Brougham's excellent canons of representative government, in his *Political Philosophy*, part'iii. ch. xi.; Constitutional opinion of E. Burke, J. S. Mill and T. B. Macaulay in Amos, *Fifty Years' Eng. Const.* pp. 50-55; Grey, *Parl. Govt.* new ed. p. 77; Mill, *Repres. Gov.* p. 228; Park's *Lectures*, pp. 134-138, citing a valuable article from the *Am. Jurist*, No. 8; Hearn, *Govt. of Eng.* p. 475; May, *Const. Hist.* v. 1, p. 445; *North Am. Rev.* v. 118, p. 14; and cf. *Hans. D.* v. 187, p. 719; v. 235, pp. 575, 1513.

² Russell, *Life of Fox*, v. 2, p. 89; *Mir. of Parl.* 1835, p. 47. But in 1868 and in 1880 Mr. Disraeli (Lord Peacockfield), and in 1874 and 1886 Mr. Gladstone, being defeated, resigned at once before the meeting of parliament.

³ *Hans. D.* v. 123, pp. 1705, 1706.

in a similar way.¹ For, notwithstanding their resignation, the outgoing ministers are bound to conduct the ordinary business of parliament, and of the country, so long as they retain the seals of office. They continue, moreover, in possession of their official authority and functions, and must meet and incur the full responsibility of all public transactions until their successors have kissed hands upon their acceptance of office.²

Upon this point, it has been declared by Sir Robert Peel, that, "though the members of an administration may have tendered their resignations, they were still entitled to make any appointments which the exigencies of the public service might require; and these appointments they were undoubtedly entitled to go on making until they were actually superseded by the entrance into office of their successors. It was always the practice to fill up vacancies. Peerages promised by a minister's predecessors in office had been granted, though no instrument had been signed or sealed on the subject. The moment it was proved that those peerages had really been agreed to by the outgoing minister, he having taken the pleasure of the crown on the point, that moment the ministers in power agreed to confirm the grant, and thus respected the engagements of their predecessors. Occurrences of this kind constantly took place."³

Appointments
to office by
outgoing
ministers.

Nevertheless, the political power of filling up vacancies should be used with discretion, and has not been invariably exercised by outgoing ministers. In 1782, George III. interposed to prevent it;⁴ and, when the Russell ministry resigned in 1852, they left several vacancies not filled up.⁵ But, in 1858, Lord Palmerston, after his tender of resignation and before his successor was appointed, allotted "three of the

¹ *Hans. D.* p. 1717.

² *Parl. Deb.* v. 16, p. 735; *Hans. D.* v. 5 to ratify in reference to Mr. Pitt's position in 1801, Stanhope, L^d predecessors in the 6. See also *Mir. of Parl.* Nov. 16, 1830, pp. 273, 53 rds,⁸ yet they are 120; and see Campbell's *Chanc.* v. 6, p. 566; Campb.

As to colonial practice to the same effect, see *Const. Hist.* v. 1, p. 467 pp. 53-56.

³ *Hans. D.* v. 74, pp. 68, 82. William IV. crea after the Grey ministry had resigned, acting upon the *Corresp. Will. IV. with Lord Grey*, v. 2, pp. 397, 405

⁴ Donne, *Corresp. Geo. III.* v. 2, p. 419.

⁵ *Com. Pap.* 1852-3, v. 25, pp. 344, 345; *Hans.* see ante, p. 131.

highest honours of the crown—three garters—which were then unappropriated, to three eminent noblemen, his friends and supporters.¹ And in 1866, upon the dissolution of the second Russell ministry, an office was filled up by that government, which did not become vacant until two days after their resignation had been tendered to her Majesty.² The interference of parliament with the exercise of the prerogative in such circumstances has never taken place, and would only be justifiable in circumstances of a flagrant character.³

During the interval between the resignation of a ministry and the appointment of their successors in office—
 Proceedings when ministers are out of parliament. an interval which has varied in duration, within the past century, from one to thirty-seven days—and likewise during the period which must necessarily elapse from the issue of new writs in the House of Commons on behalf of the incoming ministers and their re-election, it is not customary, by modern usage, for any important political question to be discussed in either House of parliament.⁴ It is usual to adjourn, from time to time, over these periods, meeting only in order to dispose of “business which is absolutely essential, and beyond dispute.”⁵ If the Houses continue sitting, as a general rule, “no motion on which a difference of opinion would be likely to arise” should be submitted.⁶

But this rule admits of one exception. Although it would not be regular to address the crown to ask for the production of papers whilst the sovereign was without any responsible advisers,⁷ and no answer could be given to any such address until the sovereign had a responsible minister through whom to act;⁸ yet, if a ministerial interregnum should continue for an unreasonable length of time, it would be proper for the

¹ *Hans. D.* v. 19, pt. 1, in m.

² *Ib.* v. 184, p. 751.

³ *Ib.* v. opinion of E. Burl.

⁴ *Myers' Eng. Const.* pp. 272, 337; *Hans. D.* v. 114, p. 889.

⁵ *A. Repres. Gov.* p. 228; v. 136, p. 1309; *Ib.* v. 148, pp. 1870–1892; article from the *Am. Jurist*. During a ministerial interregnum in 1866, *Const. Hist.* v. 1, p. 445; and by commission to several bills (*Ib.* p. 694). v. 187, p. 719; v. 235, of select committees at such a time, the practice

⁶ Russell, *Life of Free Mir. of Parl.* 1835, p. 847; *Hans. D.* v. 184, p. 1868 and in 1880

1886 Mr. Gladstone, 41, sess. 2, p. 250; *Hans. D.* v. 123, p. 1709.

⁷ parliament. 835, p. 819.

⁸ *Hans. D.* v. 123, pt. 1, s. D. v. 125, p. 724.

House of Commons to interpose, and by an address to the crown, endeavour to put an end to so injurious and inconvenient a delay.¹ Such addresses have been passed, or proposed to be passed, upon several occasions, and they have usually elicited from the sovereign a response in harmony with the constitutional opinions therein expressed.²

Upon the occurrence of a change of ministry, it is customary for the outgoing ministers to explain to their successors, at personal interviews, the state of the public business in their respective departments.³ And it is a familiar practice of outgoing ministers to leave behind them a memorandum on this subject or on that, and stating that, on account of the position of the government, they think it expedient to take no step in the matter, but they leave it to be dealt with by their successors.⁴ They are also bound in honour to communicate to the proper officers any private information upon public affairs that may have been forwarded to them upon the presumption that they were still in office.⁵

Interviews between the old and new ministers.

All public officers are required to leave behind them, when they retire from office, whatever public documents may have come into their possession during their term of office, in order that a complete history of all public transactions may be preserved in the archives of the department. Private letters, however, do not come within this rule, even though they may exclusively relate to affairs of state. But no ex-minister is at liberty to quote in parliament from any document which he may have received while in office, unless it has first been made public by being laid before parliament.⁶

Custody of official documents.

When an opposition comes into office, it is not expected to "abandon its own engagements and adopt those of its antagonists."⁷ And though, as we have seen, it is customary for incoming ministers to ratify and give effect to the intentions of their predecessors in the distribution of personal honours and rewards,⁸ yet they are under

The opposition when assuming office.

¹ *Hans. D.* v. 136, p. 1300.

² *May, Const. Hist.* v. 1, p. 462.

³ *Hans. D.* v. 119, p. 245; *Ib.* v. 135, p. 1226; v. 184, pp. 1344, 1606. *Lewis Administrations*, p. xviii.

⁴ Mr. Gladstone, *Hans. D.* v. 195, p. 751.

⁵ *Ib.* v. 150, pp. 404-409, 526.

⁶ *Ib.* v. 169, pp. 378, 475.

⁷ Sir G. C. Lewis, *Ib.* v. 153, p. 1424. ⁸ See *ante*, p. 131.

no such obligation in any matter which involves a question of public policy. If they disapprove of contemplated arrangements, agreed upon by their predecessors, but not fully completed when the change of ministry took place, they are justified in peremptorily overruling such arrangements; and they may properly avail themselves of any technicality to refrain from the formal completion of a grant, appointment, or commission, issuable by the crown, for which they are not willing to become responsible.¹

It is, indeed, most unusual, if not, in modern times, unprecedented, for a new ministry, in a new parliament, to attempt to pass reactionary measures, unless they had the strongest evidence that the national policy had undergone an entire change.² But, at all events, a new ministry should faithfully adhere to whatever policy has been accepted by the crown and the country in relation to other countries, notwithstanding that they may have individually expressed opinions adverse to the same when in opposition. For, on acceding to office, a statesman is constitutionally bound to do his utmost to maintain that unity of policy which is essential to the conduct of public affairs by a great nation.³ It is also necessary to maintain the principle that—whilst the government is administered by rival parties succeeding one another—the government of the queen is continuous, and is conducted without being unduly biased by political hostility.⁴

Since the establishment of parliamentary government, it has never been the use in England for any ministry, upon acceding to office, to make use of its power and influence in parliament to bring under investigation the acts of its predecessors. Those acts were open to parliamentary criticism when they were performed, and, being uncondemned at the time, must be presumed to have been sanctioned. It is, of course, competent to parliament to investigate particular matters of complaint against individual

Complaints
against ex-
ministers, for
misconduct in
office.

¹ See cases in *Hans. D.* v. 9, p. 426; v. 169, p. 777; v. 185, p. 1321; v. 198, p. 1372; v. 201, p. 574.

² Mr. Gladstone, *Hans. D.* v. 220, p. 1707. See debates in House of Commons on Endowed Schools Act Amendment Bill, July, 1874; and *Hans. D.* v. 229, p. 931.

³ Ld. J. Russell, *Ib.* v. 150, p. 759; Lord Salisbury, citing cases; *Ib.* v. 204, p. 250; and see *Ib.* v. 219, pp. 717, 724; *Quar. Rev.* v. 146, p. 93.

⁴ *Hans. D.* v. 212, p. 799; *Ib.* v. 221, p. 373.

ex-ministers, whenever facts are brought to light which call for inquiry.¹ But the power of a government should never be employed against their predecessors in office to obtain a censure upon their past policy for mere party considerations, or to promote an inquiry into the policy and justice of public measures which were undertaken by them whilst they held the reins of government,² except with a view to the reform of administrative defects or the correction of abuses.

Our sketch of the origin, development, and present state of the governmental system of England, and of its relation to the crown on the one side, and to parliament on the other, is now complete.

In reviewing the successive stages through which the constitution has passed, from the Norman conquest Review of the Past. to our own day, we observe that they exhibit, in turn, the supremacy of political power in the crown, under prerogative government; in the higher classes, from the period of the Revolution to the Reform Bill of 1832; and in the aristocratical and middle classes combined, from that epoch until 1867. By the enlargement of the representation Beginning of a new political era. in 1867 and 1884, we have entered upon a new era, wherein the democratic element is undoubtedly in the ascendant.

It seems fitting, at such a time, to point out, to those who are now entrusted with political power, the practical operation of that system, wherein the various excellences of the monarchical and aristocratical elements have hitherto harmoniously combined, with those of popular representation, to ensure a vigorous and stable government, to promote the national welfare, and to maintain the liberty of the subject unimpaired.

The continuance of these blessings to the British nation, under their extended franchises, must depend upon their holding fast their allegiance to those fundamental principles of government which form the unwritten law of the constitution, and embody the wisdom and experience of many generations.

¹ See *e.g.* the proceedings against Lord St. Vincent, ex-first lord of the admiralty, the complaints against Lord Palmerston in 1861, for alleged falsification of despatches, under a former administration, *Hans. D.* v. 162, p. 37.

² *Ld. J. Russell and Sir Robert Peel*, *Hans. D.* v. 67, pp. 147, 184; *Ib.* v. 219, p. 747.

By a recognition of these principles, the authority of the crown, and the influence of property, have each been permitted a legitimate share in controlling the deliberations of the House of Commons, which has now become the centre of supreme political power in the state. A House of Commons wherein the executive is strong—and wherein the advisers of the crown can administer the government, and guide the course of legislation, upon a definite policy, known and approved by an adequate majority of that chamber—is the last chamber of the ancient monarchy of England. But, in order to secure this result, the House of Commons itself must be free; not subservient to the fluctuating will of the people, or hampered by pledges in respect to its future actions. Otherwise, it cannot give an intelligent support to the queen's government, by whomsoever it is administered, or rightly fulfil its appointed functions. A House of Commons dependent upon popular caprice, and swayed to and fro by demagogues out of doors, will inevitably produce a ministry which will be a reflex of its own instability, and which will attempt to govern without having a fixed policy, and as the mere exponent of the will of an unenlightened and tyrannical democracy.¹

I cannot more appropriately conclude this chapter than by quoting the words of one of the most eminent expounders of representative government, whose ideas, though elaborated in the closet, have been tested and confirmed by practical experience in parliament. In one of his latest speeches in the House of Commons Mr. Mill said—

Mr. Mill's
timely advice
to the House
of Commons.

“When a public body knows what it is fit for, and what it is unfit for, it will more and more understand that it is not its business to administer, but that it is its business to see that the administration is done by proper persons, and to keep them to their duties. I hope it will be more and more felt that the duty of this House is to put the right persons on the treasury bench, and when there to keep them to their work. Even in legislative business it is the chief duty—it is more consistent with the capacity—of a popular assembly, to see that the business is transacted by the most competent persons: confining its own direct intervention to the enforcement of

¹ See an able and instructive article on “Democratic Government in Victoria,” in the *West. Rev.* v. 33, p. 481.

real discussion and publicity of the reasons offered *pro* and *con*; the offering of suggestions to those who do the work, and the imposition of a check upon them if they are disposed to do anything wrong. People will more value the importance of this principle the longer they have experience of it.”¹

¹ Mr. J. S. Mill, June 17, 1868; *Hans. D.* v. 192, p. 1731.

PART V.

PARLIAMENT.

CHAPTER I.

PARLIAMENTARY PROCEDURE.

I. *The Conduct of Business.*

THE parliament of Great Britain is composed of the king (or queen) and the three estates of the realm—the Lords spiritual, the Lords temporal, and the Commons. But it is in the crown, and not in the body which the law assigns to advise and assist the crown, that the legislative authority is vested by the constitution. In the words of the old Year Book (of 23 Edward III.) it may still be said, that “the king makes the laws, by the assent of the peers, etc., and not the peers and the commune.”¹ In its collective capacity, parliament exercises supreme authority in and over the empire, to which the constitution has assigned no limit. In the words of Sir Edward Coke, the power of parliament “is so transcendent and absolute that it cannot be confined, either for causes and persons, within any bounds.”

From the supremacy of the sovereign in a constitutional monarchy, it necessarily follows that, while regular meetings of parliament are indispensable, the legal existence of this high court results altogether from the exercise of the royal prerogative. It is summoned, by virtue of the king’s writ, to meet for despatch of business, at whatsoever time or place he may please to direct. The necessary interval between the date of summons by royal

¹ Stubbs, v. 2, p. 572; Hearn, *Govt. of Eng.* p. 51; Ld. Redesdale in Colchester’s *Diary*, v. 3, p. 47.

proclamation and the meeting of parliament was formerly fourteen days, but by a recent statute, it has been reduced to six days.¹

The statutable provision in regard to the meeting of parliament now in force merely requires that no longer ^{Assembling of} a period than three years shall elapse between the ^{parliament.} determination of one parliament and the issue of writs for another.² Nevertheless, by constitutional practice, the annual assembly of parliament has become necessary. Supplies for the public service are voted annually, and the acts for the control of the army and navy are limited in their duration to one year, and must be renewed before the expiration of that time.³

In order to give life and existence to a parliament, and to enable it to proceed to the execution of its func- ^{Opening of} tions, the personal presence or delegated authority ^{parliament.} of the crown is required for the formal opening of the session. At the beginning of every new parliament, and of every session after a prorogation, the cause of summons must be declared to both Houses, either by the sovereign in person, or by commissioners appointed to represent him, in a speech from the throne; until this has been done neither House can enter upon any business.⁴ The act of the Commons in choosing a speaker is no exception to this rule, for they are specially empowered to make choice of a presiding officer by command of the sovereign, who refrains from making known the purpose for which parliament has been convened until the Commons are completely organized, by the election of their speaker.⁵

Parliament can only commence its deliberations at the time appointed by the king, and cannot continue them any longer than he may allow. Formerly, upon the death of the reigning monarch a dissolution immediately ensued. But after the revolution an existing parliament was empowered to continue in existence, for a period of six months and no longer from the death of the sovereign. And by a clause in the Reform

¹ *Hans. D.* v. 203, p. 1146; 33 & 34 Vict. c. 81.

² 16 Chas. II. c. 1; 6 and 7 W. and M. c. 2, *Hats. Prec.* v. 2, p. 292.

³ May, *Parl. Prac.* ed. 1883, p. 659.

⁴ For the history of the speech from the throne, see *ante*, p. 52.

⁵ 2 *Hats. Prec.* pp. 308, 327; and see *Mir. of Parl.* 1833, p. 1.

Act of 1867, it is provided that it shall be no longer compulsory for a dissolution of parliament to take place at any future demise of the crown.¹ The power of adjournment is discretionary with each *House*; but the crown is empowered by law to put an end to an adjournment extending beyond fourteen days.² The deliberations of parliament may be cut short at any moment by the exercise of the royal power of prorogation,³ which quashes all proceedings pending at the time, except impeachments by the Commons, and writs of error and appeals before the House of Lords—which, being judicial proceedings, continue in *statu quo* from parliament to parliament.⁴

All trials in progress before election committees are suspended by a prorogation of parliament, but are resumed, by statutable authority, in the ensuing session.⁵ By a prorogation, all resolutions,⁶ bills, and other proceedings, pending in either House, are naturally terminated, and cease to have any further effect, except in so far as they may be continued in operation by the express authority of parliament.⁷

When once parliament has been formally opened, by the declaration of the causes of summons, each branch of the legislature has a separate and distinct juris-

Independence
of parliament.

¹ *Hans. D.* v. 189, p. 738; Act 30 & 31 Vict. c. 102, s. 51. See Anstey's Notes on the *Representation of the People's Act*, 1867, p. 22.

² May, *Parl. Prac.* 1883, p. 52; and see Colchester's *Diary*, v. 2, p. 463.

³ *Ib.* v. 2, p. 374.

⁴ *Hans. Proc.* v. 4, p. 273 n.

⁵ Act 11 & 12 Vict. c. 98.

⁶ *Com. Pap.* 1861, v. 11, p. 439.

⁷ The only apparent exception to the rule concerning resolutions is in the case of standing orders. By the custom of parliament these are accounted to be in force, in succeeding sessions, until rescinded. And in the case of private bills, relief has been repeatedly granted to the parties concerned in promoting or opposing such measures, when a session of parliament has been brought to a sudden and premature close, on account of the exigencies of political warfare. This was done in regard to all private bills,—in 1820, 1831, 1841, 1857, and in 1859—and as respects railway bills only, in 1845 and 1847, by the adoption, in both Houses, of resolutions permitting such bills to be reintroduced in the following session, and by means of *pro forma* and unopposed motions advanced to the stages at which they severally stood when the prorogation took place. So in 1871, the Tramways (Metropolis) Bills were suspended in a similar manner (see *Com. Journals*, v. 75, p. 119; v. 86, pt. 2, p. 525; *Mir. of Parl.* 1841, pp. 2303, 2346; *Hans. D.* v. 144, p. 2209; *Ib.* v. 153, pp. 1528, 1607; May, *Parl. Prac.* ed. 1883, pp. 194, 779; *Com. Pap.* 1859, s. 1, v. 3, p. 37; Com^o. on the Jews' Act, *Hans. D.* v. 152, p. 462; and see *Hans. D.* v. 192, p. 1078).

diction; and business may be entered upon by either House, in conformity with its recognized rules, usages, and customs, irrespective of the royal will and pleasure. It is an ancient and undoubted privilege of the two Houses of parliament, after the speech from the throne has been delivered, to proceed upon any matter, at their discretion or convenience, without giving priority to the discussion of the topics included in the royal speech. As a deliberate assertion of this right, both Houses invariably read a Bill a first time, *pro forma*, before they enter upon a consideration of the speech; and there are many instances of their postponing the consideration of the same in favour of other business for one or more days.¹

Formal communications between the sovereign and parliament, in the shape of royal speeches or messages, and the interposition of the authority of the crown to effect the adjournment, prorogation, or dissolution of parliament—which heretofore emanated from the mere personal will of the reigning monarch—are, under our present constitutional system, considered as the acts of the sovereign's responsible advisers. Ever since the introduction of ministers into parliament, they have been held directly responsible for every exercise of the royal authority. The recognition of this principle has produced important changes in the relations between crown and parliament. If bills are introduced into either House that are disapproved, the royal veto need not be invoked for their rejection. If it be necessary, on the other hand, to propose for the acceptance of parliament the adoption of unpopular measures, ministers are at hand to explain and defend them, upon their personal responsibility. And, if it be impossible to continue to carry on the government successfully without appealing from the House of Commons to the constituent body, ministers of the crown are themselves responsible for the act of dissolution.

Communica-
tions between
the crown and
parliament.

The opinions of either House of parliament are constitutionally expressed either by means of an address of advice or remonstrance to the crown, or by their agreement to a bill to add to, alter, or repeal an existing law. But no mere resolution of either House has any legal validity, except in so far as it records the opinion of the House upon some matter which comes within the sphere of its acknow-

Resolutions of
parliament.

¹ 2 *Hats. Prec.* p. 309; May, *Parl. Prac.* ed. 1883, p. 48.

ledged authority, as a component branch of the legislature, to determine.

Either House may declare the expediency of an alteration of the law in a given direction, but it can only give effect to its opinions by the regular method of parliamentary procedure—that is to say, by the introduction and passing of a bill, which is assented to by the other branches of the legislature. No mere resolution of either House, or joint resolution of the two Houses, can override an act of parliament,¹ or dispense with its requirements, even although it may relate to something which directly concerns but one chamber of the legislature. But provision is sometimes made by statute to declare a “resolution of the House of Commons,”² or, a resolution of “both Houses of parliament,”³ to be valid and effectual for confirming or allowing some act of government, which would not otherwise be legal.

In the ordinary course of procedure, resolutions of either House of parliament should be the embodiment of well-ascertained opinions, or facts, as a basis or preliminary step towards some proximate parliamentary action. Mere abstract resolutions upon any question, while they are too commonly regarded as allowable weapons in the exigencies of party warfare, are open to grave objection. They are generally made use of to assert a principle, perhaps undeniable in itself, but which it would be impossible or inexpedient to carry out at the time. They have, accordingly, a tendency to fetter the present action of government, to precipitate the solution of great public questions, before they are ripe for settlement, and to impede the current of useful legislation. Upon these grounds the most eminent statesmen have concurred in condemning them.⁴

¹ *Hans. D.* v. 203, p. 1115; and see debates upon a proposed new standing order, which was erroneously assumed to be in contravention of the provisions of an Act of Parliament, *ib.* v. 233, pp. 693, 1527; and see objection taken to a proposed resolution of the House of Lords, in a Scotch peerage case, that it was an infringement of the provisions of an act of parliament, *Hans. D.* v. 235, p. 957. And so the Board of Trade will not sanction a provisional order in which it is proposed to repeal any part of a general statute (see *Com. Pap.* 1877, v. 16, p. 605).

² As by Act 25 & 26 Vict. c. 78, sec. regarding contracts.

³ As by Act 21 & 22 Vict. c. 106, sec. 55, concerning the employment of Indian troops out of India.

⁴ Ld. Althorp and Ld. Stanley (Earl of Derby), *Mir. of Parl.* 1835,

2. *Parliamentary Proceedings between the Two Houses.*

For nearly seventy years, it has been a frequent and increasing cause of complaint that, owing to the late period of the session at which it is usual for bills to be sent up from the Commons to the Lords for their concurrence, sufficient time is not afforded

Legislative measures between both Houses.

to that House for the adequate consideration of legislative measures.¹ In 1848, Lord Stanley (afterwards Lord Derby) submitted to the House of Lords a bill enabling the Lords, when they saw fit, upon the receipt of a bill passed by the other House of parliament, to adjourn the consideration thereof from the period of the session at which they could not deliberately enter upon its consideration to an early day to be named at the commencement of the next session, to be then proceeded upon at the stage at which it had been postponed.² The bill, which passed the Lords, was referred in the Commons to the select committee on public business.³ It was carefully considered by this committee, but they simply reported that they did not think it advisable to recommend it for adoption by the House;⁴ a conclusion which is said to have been arrived at "in order to avoid any points of controversy between the two Houses."⁵

In 1852, a Parliamentary Proceedings Facilitation Bill, similar to that brought in by Lord Derby in 1848, was laid upon the table of the House of Lords, by Lord Lyndhurst. It was read a first time, but was afterwards dropped.⁶

In 1854, the project was revived by another committee of the House of Commons on the business of the House. In a draft report, which appears upon their minutes, the committee state that "they have considered a resolution in favour of a

p. 682; Sir R. Peel, *Ib.* 1840, p. 3524; Lord Lansdowne, *Hans. D.* v. 94, p. 177; Mr. Cardwell, *Ib.* v. 125, p. 615; Mr. Disraeli, *Ib.* v. 151, p. 125; *Ib.* v. 214, p. 1931; Mr. Gladstone, *Ib.* v. 161, p. 1448. Any attempt to obtain from ministers a premature admission of the principles to be afterwards embodied in legislative measures is equally objectionable; see *Ib.* v. 200, pp. 1130-1146.

¹ *Ib.* v. 159, p. 2145; and v. 194, p. 593.

² *Ib.* v. 98, p. 329.

³ *Ib.* v. 100, pp. 131-137.

⁴ *Com. Pap.* 1847-8, v. 16, p. 146.

⁵ *Hans. D.* v. 194, p. 619. May (*Parl. Prac.* ed. 1883, p. 338) gives a summary of the attempts, from 1848 to 1869, to pass such permissive bills and of the objections thereto.

⁶ *Ib.* v. 119, p. 317.

plan brought into the Upper House by the Earl of Derby in 1848, for facilitating public business by 'enabling either House of parliament to adjourn proceedings during the prorogation of parliament, upon certain bills passed by the other House, and to resume proceedings thereupon after such prorogation ;' and they have considered a proposal which will shortly be submitted to the House of Lords to ensure an earlier termination of the session by making a rule that no bill shall be read a second time after a certain day, except under special and urgent circumstances." "Upon these suggestions," it is added, "your committee is unprepared to offer any decided opinion." But this paragraph was omitted in the report which was finally adopted by the committee.¹

The other proposal referred to in the draft report above cited, was designed to apply to public bills a restrictive principle of a similar nature to that already enforced, with the best effect, in reference to private business. In 1854, the House of Lords, upon the motion of Lord Redesdale, agreed to a sessional order, declaring "that this House will not read any bill a second time after July 25, except bills of aid or supply, or any bill in relation to which the House shall have resolved, before the second reading is moved, that the circumstances which render legislation on the subject-matter of the same expedient are either of such recent occurrence or urgency as to render the immediate consideration of the said bill necessary."² But in the same session, after a long debate, the Lords resolved to allow a bill concerning bribery to proceed notwithstanding this order, upon the ground of urgency.³ In the session of 1855, the order was renewed, with the consent of the ministry.⁴ Certain bills were nevertheless allowed to proceed, on the ground of urgency.⁵ The order was again renewed in 1856,⁶ in 1857,⁷ in 1858,⁸ and for the last time in 1860.⁹ During this session the rule was pronounced—by Mr. E. P. Bouverie, who had filled the office of chairman of com-

¹ *Com. Pap.* 1854, v. 7, pp. 31-32.

² *Hans. D.* v. 132, p. 1188. See observations in the House of Commons concerning this order, *Ib.* v. 135, p. 417.

³ *Ib.* v. 135, pp. 943, 1182.

⁴ *Ib.* v. 138, p. 94.

⁵ *Ib.* v. 139, pp. 1850, 1895, 1923, 2023.

⁶ *Ib.* v. 142, p. 245 ; v. 143, p. 1180.

⁷ *Ib.* v. 147, pp. 419, 557, 714, 717.

⁸ *Ib.* v. 149, p. 1353.

⁹ *Ib.* v. 159, p. 550.

mittees in the House of Commons—to be “a great infringement of the privileges of the Commons;” but it was vindicated by Mr. Disraeli, who considered that “the effect of the rule; has, on the whole, been salutary.”¹ Several debates took place, in the Lords, during this session, upon motions to exempt particular bills from the operation of the rule.²

On August 13, 1860, the resolution of urgency was proposed on behalf of the Savings Bank, etc., Investments Bill, a government measure affecting the financial arrangements of the country, though not strictly a bill of supply, but on division, the numbers being equal, the motion was negatived.³ On account of the importance of the bill, and an apprehension that its being laid aside would occasion a misunderstanding between the two Houses, ministers resolved upon again taking the sense of the House upon this motion. Admitting the advantages which had resulted from the use of this order, Lord Granville (the president of the council) declared that he had often thought “that strictly and in principle that resolution could not be defended, and that, if it were thoroughly examined, it would be found not to be in accordance with our relations either with the other House or with the crown.”⁴ Accordingly, on August 20, the resolution of urgency was again proposed on behalf of this Bill and agreed to.⁵

In 1861 Lord Redesdale defended the principle of his annual resolution, but declared that he should refrain from moving it while the matter was under consideration by committees of both Houses, now sitting on public business.⁶ Subsequently (in 1869) Lord Redesdale stated that, “in deference to a feeling of jealousy on the part of the Commons, he gave up pressing for a renewal of the order; but he did so on the understanding that the principle of it would be adhered to by the governments of the day.”⁷

The select committees, appointed by both Houses in 1861 to consider alterations for the promotion of the despatch of public business, having been empowered to communicate with

¹ *Hans. D.* v. 159, pp. 1958, 1961.

² *Ib.* v. 160, pp. 346, 417, 627, 1031.

³ *Ib.* v. 160, p. 1180.

⁴ *Ib.* pp. 1347, 1445, 2145.

⁵ *Ib.* v. 160, pp. 1551–1554.

⁶ *Ib.* v. 162, p. 414; but see *Ib.* v. 164, p. 1358; v. 199, p. 424; Smith, *Parl. Rememb.* 1861, p. 9.

⁷ *Hans. D.* v. 198, p. 1474.

each other, certain conclusions arrived at therein were transmitted by letter from the chairman of one committee to the chairman of the other. The initiative was taken by Sir James Graham, the chairman of the Commons committee, who wrote to Lord Eversley, the chairman of the Lords committee, to the effect that the Commons committee were "disposed to adhere to the report of the committee in 1848," which declared "that, having considered the provisions of the Parliamentary Proceedings Adjournment Bill, they do not think it advisable to recommend it for adoption by the House."

Whereupon, the Lords committee, on the motion of Lord Grey, agreed to the three following resolutions, to be adopted by both Houses of parliament :—

1st. That it is expedient, in certain cases, to adopt an abridged form of proceeding with reference to bills which shall be again brought before this House after having been passed by it in the immediately preceding session of the same parliament.

2nd. That the bills in respect to which such abridged form of proceeding may be adopted shall be, *mutatis mutandis*, the same bills which the House may have passed and sent to the other House, and as to which that House may have resolved that there did not remain time for their due consideration in the session in which they were received.

3rd. That on a resolution being moved, that it is expedient again to pass, and to send to the other House for its concurrence, any such bill, the question shall be put whether the House will agree to the same; and, on such resolution being agreed to, the bill to which it relates shall be forthwith sent to the other House for its concurrence, without any further question being put, or any debate allowed.

The foregoing resolutions were transmitted to the Commons committee, with an intimation that, if they met with the concurrence of that committee, the Lords committee were prepared to agree to them; and to give due consideration to any amendment that might be suggested therein. It was added, that the resolutions "would not, in any degree, fetter the discretion of the House, or interfere with the passing of a bill in the ordinary manner, nor would they apply to any case where it was introduced in an amended form." In reply, the Lords committee were informed that the Commons committee would

not agree to the proposed resolutions, being of opinion that instead of furthering the prompt transactions of public business, they would have an opposite tendency; "and that, if common to both Houses, they would afford new facilities for retarding and postponing legislation."

The Lords committee, on May 7, reported these proceedings to their own House. They referred to the regret, which had been so frequently expressed, "that bills have been sent up by the other House of parliament, at so late a period of the session as to render it impossible to give them that full consideration which the public interests require;" a complaint of long standing, as is "proved by the standing order of May 5, 1668, and the subsequent proceedings of this House." But as the Commons committee had declined to agree to the plan devised by their lordships' committee, "for the reasons set forth in their report," the committee deemed it useless to prolong its sittings.¹

Meanwhile, the Commons committee made their report. After recapitulating various improvements in the method of transacting public business, which they recommended for adoption by the House, they referred to the three resolutions above mentioned, which had been communicated to them by the Lords committee, and explained the reasons for which they had been unable to agree to them. They also noticed the "proposal made in the other House that a power should be given by statute to either House of parliament of suspending (at any stage of proceeding) bills which shall have been passed by the other House, and of resuming such bills in the succeeding session at the precise stage where they had been dropped." They observed that "the objections to this proposal are grave and numerous;" for that by it efficient legislation would be retarded, and "the opportunities for re-considering, improving, and amply discussing, important measures would be inconveniently abridged."

"Moreover, this suspending power in either House of parliament, if exercised at its own discretion, would be at variance with the prerogative of the crown."² In the bill introduced in the House of Lords in 1848, there was a provision that the consent of the crown should be first duly

¹ *Com. Pap.* 1861, v. 11, pp. 422-429.

² *Ld. Colchester's Diary*, v. 1, p. 432.

signified to such suspension. This consent of the crown to the mode of dealing with the bills not perfected by the concurrence of the "other branches of the legislature, would be a novelty at variance with constitutional practice, not to be defended by any necessity. The prerogative of the crown, in all cases where the rights, interests, and property of the crown are not specially affected, is limited to assenting to or rejecting bills which have passed both Houses. It is barred from all interference during the discussion of them in either House of parliament." For these reasons, the committee agreed with the committee of 1848, in thinking it inadvisable to sanction any such enactment.¹

In 1869, Lord Salisbury revived the consideration of this question in the House of Lords, by the introduction of a Bill to enable either House of parliament to suspend proceedings on a Bill in one session and to resume the same in the next. The Bill was read a second time ;² but, a few days afterwards, a joint committee of both Houses was appointed "to consider whether any facilities can be given for the despatch of business in parliament, especially in regard to the relations of the two Houses."³

This committee considered "that considerable expedition might be made in the progress of legislation, if more bills, especially those of a legal or ecclesiastical character, were to originate in the House of Lords:" but that "the arrangement of public business between the two Houses can only be left to the discretion of her Majesty's ministers." The committee, however, submitted copies of new standing orders, framed by Lords Eversley and Redesdale, and substantially approved by Sir E. May, to provide for the postponement of bills—sent up to the Lords too late for their due consideration—until the next session ; and for the re-introduction and summary passing of bills which had passed one House in the preceding session and had been dropped in the other (without having been actually rejected).⁴

In 1871, in view of the continued delays in sending up

¹ Ld. Colchester's *Diary*, v. 1, pp. 439, 440.

² *Hans. D.* v. 194, pp. 588-620.

³ *Ib.* pp. 1309, 1560.

⁴ *Com. Pap.* 1868-9, v. 7, p. 173 ; Rep. Com^o. on Despatch of business, pp. iii. iv. 21, 23.

important bills for the consideration of the Lords, Lord Grey again urged the adoption of some plan of the sort,¹ and in 1875 a Commons committee on acts of parliament recommended that, where all the clauses of a consolidation bill cannot be got through before the prorogation, the bill should be suspended till the ensuing session, and resumed where it had been left off. But, beyond the case of such bills, parliament still regards this project unfavourably, so far as public bills are concerned.²

The same committee recommended the adoption of a series of resolutions reported by them, for referring opposed private bills to a joint committee of both Houses, a method which they considered would introduce greater simplicity, and rapidity of proceeding, and a corresponding economy. This plan was considered in 1854, but was then deemed to be impracticable, because "it was supposed to be one of the privileges of the House of Commons that on joint committees the members of that House must be double the number of the Lords." "It is now well understood that the numbers from each House serving on joint committees should be equal."³

Sir Erskine May, in his evidence before this committee, warmly advocated this novel procedure of a joint committee on opposed private bills. He said it was considered by a committee of the Commons in 1854, and had it been then introduced, "would have saved the promoters and opponents of private bills many millions in costs." If this plan should be approved, it would be necessary, at the outset, to relax the privileges of the Commons, "so that all private bills could be introduced indifferently into either House, according to the desire of the parties who petition." He then proceeded to show, with great minuteness of detail, the probable advantages of this new machinery, and the mode of giving effect thereto, in both Houses.⁴

In 1872, Mr. Gladstone expressed a strong opinion in favour

¹ *Hans. D.* v. 207, p. 1079.

² *Rep. Com. on Acts of Parl.* 1875, v. 8, p. 213; *Evid.* pp. 11, 112, 114. For papers and a discussion on this subject see *Social Science*, Trans. 1875, p. 185.

³ *Com. Pap.* 1868-9, v. 7, p. 174.

⁴ *Ib.* pp. 189, 199.

of joint committees of both Houses on private bills,¹ and in 1873, when bills for railway amalgamations of great magnitude were to come before parliament, it was agreed, between both Houses, that such bills should be referred to a joint committee. In 1876 a joint committee of both Houses was appointed to report on the expediency of making further regulations concerning the admission and practice of parliamentary agents.²

3. *The Relations between Crown and Parliament in Matters of Administration.*

Freedom of speech in parliament is an essential part of the liberties of Englishmen. This privilege was guaranteed by the Bill of Rights, and it includes a licence to discuss all matters affecting the public welfare, whether the same have been formally commended by the crown to the consideration of parliament or not. From the time of Edward III. to our own day, parliament has freely exercised the right of tendering advice to the sovereign, unasked, upon matters the final determination of which appertained to the sovereign alone. The House of Lords, as representing the ancient Great Council of the realm, always possessed this right; and, after the House of Commons arose, its position, as the Grand Inquest of the kingdom, justified it in claiming similar privileges. The two Houses of parliament collectively represent the whole community, and are the Great Council of the nation, while "ministers are merely the council of the prince."³ They are, therefore, entitled to approach the sovereign with advice or remonstrance upon all affairs of state, and in regard to every grievance under which any subjects of the realm may be suffering. But it is equally necessary to remember that parliament is designed for counsel and not for rule—for advice, and not for administration. There are some prerogatives with the exercise of which the Houses of parliament must ordinarily refrain from intermeddling, lest

Parliament
may advise
the crown in
any matter.

¹ *Hans. D.* v. 209, pp. 155, 156.

² *Ib.* v. 230, pp. 316, 1767. Certain rules, the most recent of which were sanctioned by the speaker in March, 1873, were in force in the House of Commons, though the House of Lords had no such rules (*Com. Pap.* 1876, v. 12, p. 541) until 1876 (*Hans. D.* v. 231, pp. 3, 319, 1061). For an able criticism of these rules, see *L. T.* v. 62, p. 295.

³ Rt. Hon. C. W. Wynn, *Mir. of Parl.* 1835, p. 1583.

their intrusion should be equivalent to an unwarrantable interference with executive functions.

The true responsibility of ministers depends upon their freedom in exercising the lawful authority of the crown. Without freedom of action there can be no genuine responsibility. It is this which renders it so essential to the successful working of parliamentary government that ministers should be sustained by a predominant party in the legislature, who are prepared, on general grounds of public policy, to approve their acts, and to assume a measure of responsibility for their conduct in office.¹ De Lolme, in anticipating the events that would be likely to destroy the fair fabric of the English constitution, strikingly remarks that, "when the representatives of the people shall begin to share in the executive authority," the government will be overthrown.²

Free exercise
of executive
functions.

Great weight must necessarily be attributed to the opinions of either House of parliament on public affairs; but, in ordinary circumstances, these opinions are constitutionally expressed by the degree of support they consent to afford to the ministers of the crown in the conduct of the government. If the queen's ministers possess the confidence of parliament, it is inexpedient and unwise, as a general rule, to interfere with their decisions in regard to the details of administration, except in cases wherein it may appear that the public interests have been injuriously affected by the action of ministers.

How con-
trolled by
parliament.

The abstract right of parliament, in this matter, has been asserted by the best constitutional authorities. Thus Lord Russell says: "The two Houses of parliament constitute the Great Council of the king, and upon whatever subject it is his prerogative to act it is their privilege and even their duty to advise. Acts of executive government, however, belong to the king."³ And of the House of Commons Burke says: "It is their privilege to interfere, by authoritative advice and admonition, upon every act of executive government, without exception."⁴ In 1784 the House of Commons resolved—in

¹ *Ed. Rev.* v. 108, p. 285.

² De Lolme, *Const.* pp. 439-450; and see Cox, *Inst.* p. 3.

³ Russell, *Eng. Const.* p. 151.

⁴ Rowlands, *Eng. Const.* p. 498; see also Wynn, in *Parl. Deb.* N.S., v. 2, p. 369.

conformity with the report of a select committee to search for precedents on the subject:—"That it is constitutional and agreeable to usage for the House of Commons to declare their sense and opinions respecting the exercise of every discretionary power which, whether by act of parliament or otherwise, is vested in any body of men whatsoever for the public service."¹

In 1788, on a motion for inquiring into the conduct of the admiralty in a certain matter, Mr. Pitt (the prime minister), said: "That the House had a constitutional power of inquiring into the conduct of any department of the government, with a view either to censure or punishment, was unquestionable; and, whenever a case was made out strong enough to warrant a suspicion of abuse that deserved either censure or punishment, he should ever hold it to be the indispensable duty of the House to proceed to inquire." Mr. Fox, on the same occasion, remarked, that "it was the constitutional province and the undoubted duty of the House to watch over the executive departments, and where they had cause to suspect abuse, to institute an inquiry, with a view either to censure or punishment."² In 1809, the irregular promotion of Lord Burghersh to higher military rank, contrary to the prescribed regulations, was complained of in the House of Commons, and notwithstanding the claim of the secretary for war (Lord Castlereagh) that "it was part of her Majesty's prerogative, as the undoubted head of the army, to dispense with his own regulations when he thought proper;" it was insisted, on the part of Lord Temple, that "the House of Commons had over that, as well as over every other branch of the royal power, a privilege to inquire and control." Whereupon, on a division, ministers were defeated, and compelled to cancel the objectionable promotion.³

It is now an acknowledged principle that "every act done by the responsible ministers of the crown having any political significance is a fit subject for comment and, if necessary, for censure in either House of parliament."⁴ The House of Commons, says May, "has a right to advise the crown even as to the exercise of the prerogative itself; and should its advice be dis-

Right of the Commons to advise the crown.

¹ *Parl. Hist.* v. 24, pp. 534-571.

² *Ib.* v. 27, pp. 277, 281.

³ Fonblanque, *Life of Gen. Burgoyne*, p. 458 n.

⁴ Lords Derby and Russell, *Hans. D.* v. 171, pp. 1720, 1728.

regarded it wields the power of impeachment, and holds the pursestrings of the state."¹

But it is evident that these extraordinary powers of interference ought not to be evoked except upon special When necessity requires. necessity; as a general principle, parliament should confide in the discretion of the responsible advisers of the crown, who are the trustees of the royal prerogative, for the rightful administration of the same. So long as parliament continues its confidence in ministers, it ought to be willing to leave the exercise of the prerogative in their hands, unfettered by restrictions in regard to its exercise, and should ordinarily refrain from interference therewith. The general responsibility of ministers for the wisdom, policy, and legality of the measures of government should be sufficient guarantee, in all ordinary cases, for the faithful discharge of the high functions entrusted to them. In fact, "the ministry of the day are responsible for everything that is done in any department of the state;" and, while "it is true that the House of Commons ought to have a control and supervision over every such department, its functions are those of control, not of administration."² "The House can interfere with great advantage in prescribing the principles on which the executive government shall be carried on; but beyond that it is impossible for the legislature to interfere with advantage in the details of the administration of the country."³

Any direct interference, by resolution of parliament, in the details of government is inconsistent with and subversive of the kingly authority, and is a departure from the fundamental principle of the British constitution, which vests all executive authority in the sovereign, while it ensures complete responsibility Interference by parliament in details of government. for the exercise of every act of sovereignty. Experience has uniformly demonstrated the unfitness of large deliberative assemblies for the functions of government. The intrusion

¹ May, *Const. Hist.* v. 1, p. 458.

² Palmerston, *Hans. D.* v. 150, p. 1357; and *Ib.* v. 164, p. 999; and see Prof. Austin's observations on this point, *Plea for the Constitution*, p. 24.

³ Cobden, *Hans. D.* v. 176, p. 1909. See also Lord Russell's observations in his *Life of Fox*, v. 3, p. 311; Rep. Com^o. Board of Admiralty, *Com. Pap.* 1861, v. 5, pp. 335, 363; Evid. 2612, 2905; Fitz-James Stephen on Parl. Govt. in *Con. Rev.* v. 23.

of parliamentary committees into matters which appertain to the jurisdiction of the executive government is equally to be deprecated, as it tends inevitably to the overthrow of all genuine responsibility, and the substitution instead of an arbitrary tyrannical power.¹ During the reign of Charles I. the Long Parliament assumed, on the part of its committees, various executive functions; but this is admitted to have been a usurpation, and it is now acknowledged without dispute that all acts of administration belong exclusively to the crown.

Accordingly, no resolution of either House of Parliament which attempts to adjudicate in any case that is Interference of parliament. within the province of the government to determine—or to define the mode in which any prerogative of the crown should be exercised—has of itself any force or effect. If it be intended merely to express the sense of the House upon some objectionable system, practice, or act of administration, or to complain of an existing grievance and suggest a remedy, parliament is perfectly competent to entertain and pass a resolution on the subject, or to approach the crown, by address, with advice upon the same. It then becomes the duty of the government to give respectful consideration to the matter, but nevertheless to decide upon the course to be followed on their own responsibility. Sometimes, indeed, the government themselves invite the assistance of parliament to institute, by means of select committees, inquiries into questions of administration, for the purpose of obtaining the fullest information to enable them to accomplish some desirable reform; or express their willingness to be guided in a particular matter by the general sense of parliamentary opinion. But where the government deprecate interference, or refuse to concur in any such recommendation, the persistence of the House therein would either amount to an infringement of the royal prerogative, or it would be tantamount to a vote of censure upon the existing administration. And it would be highly irregular to confer supervisory or administrative duties in matters of public concern upon private members of either House of parliament.

“The limits,” says May, “within which parliament, or either House, may constitutionally exercise a control over the

¹ See the injurious operation of Standing Com^s. in the U.S. Congress, *North Am. Rev.* v. 118, p. 12.

executive government have been defined by usage upon principles consistent with a true distribution of powers in a free state and limited monarchy. Limits of parliamentary control. Parliament has no direct control over any single department of the state. It may order the production of papers for its information; it may investigate the conduct of public officers and may pronounce its opinion upon the manner in which every function of government has been or ought to be discharged; but it cannot convey its orders or directions to the meanest executive officer in relation to the performance of his duty. Its power over the executive is exercised indirectly, but not the less effectively, through the responsible ministers of the crown. These ministers regulate the duties of every department of the state, and are responsible for their proper performance to parliament as well as the crown. If parliament disapprove of any act or policy of the government, ministers must conform to its opinion or forfeit its confidence. In this manner the House of Commons, having become the dominant power of the legislature, has been able to direct the conduct of the government and control its executive administration of public affairs, without exceeding its constitutional powers.”¹

“Every measure of the ministers of the crown,” says Lord Grey, “is open to censure in either House; so that when there is just or even plausible ground for objecting to anything they have done or omitted Ministers accountable to parliament. to do, they cannot escape being called upon to defend their conduct. By this arrangement, those to whom power is entrusted are made to feel that they must use it in such a manner as to be prepared to meet the criticisms of opponents continually on the watch for any errors they may commit, and the whole foreign and domestic policy of the nation is submitted to the ordeal of free discussion.”²

4. *Practice of Parliament in the Appointment of Select Committees.*

Of late years it has become a frequent practice in both Houses of parliament to appoint select committees Select committees on public questions. to take evidence and report upon important public questions, upon which precise information is

¹ May, *Const. Hist.* v. 1, p. 457.

² *Parl. Govt.* p. 20.

needed, with a view to legislation.¹ It is also desirable, and in accordance with constitutional practice, that select committees should be appointed, from time to time, to examine into the constitution and management of the various departments of state.² But parliament is sometimes invited to institute inquiries, by a select committee, into matters which are strictly within the province of the executive government to determine; a proceeding which tends to shift the labour and responsibility of administrative functions more and more from those to whom it properly belongs; and to increase, in equal proportion, the power and influence of the House of Commons in details of government.³

When restricted in their inquiries within constitutional limits,⁴ select committees are often very serviceable, in bringing members to a common agreement upon great public questions upon which legislation, founded upon an impartial investigation of facts, is necessary. Such committees are usually appointed either at the suggestion or with the direct approval of the government, and are composed of a fair proportion of leading men from both sides of the House, including members of the existing and of former administrations, in order that, as a general rule, the balance of parties may be maintained, and the feeling of the House represented thereon.⁵ In the appointment of select committees, it is the usage that a majority of one should be given to that side which possesses the majority in the House itself. But it is not customary "that minute attention should be paid to the representation of the three kingdoms."⁶ Men should be selected to serve on public committees who, from their abilities, experience, or the special interests they represent, are peculiarly qualified for such service.⁷ As a rule, "strong partisans on each side are know-

¹ *Hans. D.* v. 214, p. 1116.

² Mr. Gladstone, *Ib.* v. 203, p. 1613.

³ See the objections taken to the appointment of a committee of inquiry into the existence and best means of suppressing unlawful combinations in Ireland, which nevertheless was agreed to. But the order of reference was afterwards discharged, and another order substituted, more in accordance with constitutional precedent (see *Com. Jour.* 1871, pp. 66, 73).

⁴ See Mr. Disraeli, on this point, in *Hans. D.* v. 161, pp. 1866-1868; Mr. Cobden, *Ib.* v. 176, p. 1908; Mr. Lowe, *Ib.* v. 182, p. 158.

⁵ *Ib.* v. 202, p. 596.

⁶ Mr. Gladstone, *Hans. D.* v. 199, p. 795; v. 204, p. 1112; v. 206, p. 1117; v. 209, p. 1120.

⁷ *Ib.* p. 195, p. 124.

ingly and advisedly chosen, in order that truth may be elicited from the conflict of opposite and possibly interested opinions. If such committees consisted wholly of impartial men, their investigations would be most unsatisfactory."¹

After taking evidence from every available source, the committee reports the same to the House, generally with observations embodying practical suggestions, which they submit for the consideration of the government. It then becomes the duty of the administration to consider these propositions, to subject them in turn to careful scrutiny, and to decide, upon their own responsibility,² to what extent, and in what way, the proposed reforms can be carried out, in conformity with the general principles upon which the public service is conducted.³

5. *Practice in regard to the Granting or Withholding of Information by the Executive.*

The rule which forbids any encroachment by parliament upon the executive authority of the crown has a further application, to which our attention must now be directed.

Information given to parliament, or withheld.

It is imperative that parliament shall be duly informed of everything that may be necessary to explain the policy and proceedings of government in any part of the empire; and the fullest information is communicated by government to both Houses, from time to time, upon all matters of public concern. For it is in parliament that authoritative statements are made, or information given, by ministers upon public questions; and no action in parliament should be based upon declarations of policy made elsewhere.⁴

Considerations of public policy, and a due regard to the

¹ Sec^y. Sir G. C. Lewis, *Hans. D.* v. 162, p. 1012; and see *Ib.* v. 187, p. 1364. But in 1872 it was considered desirable to exclude any direct representation of railway companies upon a select committee which had to inquire into the subject of the Amalgamation of Railway Companies (*Ib.* v. 209, p. 944).

² *Ib.* v. 235, p. 1478, 1725.

³ Rep. Com^o. Diplomatic Service, *Com. Pap.* 1870, v. 7, pp. 420, 421; Evid. 1767-1770; *Ib.* 2nd Rep. 1871, v. 7, p. 359; *Hans. D.* v. 161, pp. 496, 817; *Ib.* v. 168, pp. 626-633; v. 173, p. 1239; v. 235, p. 1478. In 1850 the Commons addressed the crown to appoint a commission to follow up certain inquiries instituted by a Sel. Com^o. *Com. J.* 105, p. 85.

⁴ *Hans. D.* v. 230, p. 1814.

interests of the state, occasionally demand, however, that information sought for by members of the legislature should be withheld, at the discretion and upon the general responsibility of ministers. This principle is systematically recognized in all parliamentary transactions: were it otherwise, it would be impossible to carry on the government with safety and honour. Whenever it is declared, by the responsible servants of the crown, that any information sought for in parliament could not be supplied without inconvenience to the public service, or for other sufficient reasons, the House refrains from insisting upon its production.¹ And if the government object to produce any documents, on the ground that they are of a private and confidential description, it is not usual to insist upon their being furnished,² except under peculiar and imperative circumstances.³

In like manner, if the government declare that a discussion on any particular subject could not take place without inconvenient and injurious consequences to the public service,⁴ or without eliciting expressions of opinion from the ministry, or from members generally, which it would be premature and prejudicial to make known,⁵ the debate ought not to proceed.

It would, moreover, be highly irregular to communicate to parliament copies of despatches addressed by a secretary of state to the governor of any British dependency, until the receipt thereof had been acknowledged by the person to whom they were addressed.⁶ But it is contrary to the respect due to parliament to communicate, beforehand, to the public, through the press, important

¹ *Mir. of Parl.* 1828, p. 109; 1833, p. 626; 1836, p. 971; 1837-8, p. 658; and see Ld. Derby in *Hans. D.* v. 173, p. 1055.

² *Mir. of Parl.* 1834, p. 2774; 1835, p. 1634; 1838, p. 5999; 1840, p. 1130; *Hans. D.* v. 163, p. 822; *Ib.* v. 230, p. 422.

³ See Ld. Hatherton's *Memoir* on the occurrences in 1834, pp. 93-95; *Mir. of Parl.* 1831, p. 524.

⁴ *Hans. D.* v. 128, pp. 1420-1429.

⁵ *Mir. of Parl.* 1831, pp. 1109, 1184; *Hans. D.* v. 195, p. 1533.

⁶ *Mir. of Parl.* 1838, p. 5824; 1840, p. 1710; *Hans. D.* v. 208, p. 954; but see *Ib.* v. 87, p. 669. In 1854 the government consented to lay before parliament copies of instructions that had been, "or hereafter might be issued," to commanders of the Arctic Searching Expedition (*Ib.* v. 132, p. 438).

information intended for the use of parliament.¹ Although it is not unusual to furnish the press with advance copies of official reports, with a view to give early publicity to such documents.²

“The system of laying upon the table of the House reports from officers addressed to particular departments of the executive government is most objectionable.”³ And the House ought not to insist “upon the production of papers and correspondence which concerned the preparation and preliminary consideration of measures.”⁴ If the House were to insist upon the production of such documents, “instead of the government getting, what we get now, confidential reports, containing the most minute details of the opinions of officers, given frankly and freely, for the heads of departments, we shall have a system of reports framed for laying upon the table of the House of Commons, and those will be accompanied by ‘confidential reports for the head of the department alone.’”⁵ “There have been cases in which reports of a confidential character from officers of the government have been laid upon the table of the House, to prepare the public mind, and also that of parliament, to consent to some large measure, or perhaps some considerable vote of public money; but, generally, I think it is a course which the House ought not to sanction.”⁶

Departmental reports confidential.

The administration have refused to concur in motions for the production of papers, whether by order or upon an address to the crown, on the ground that there was no public officer whose duty it was to furnish the required information.⁷ In these circumstances, “it is particularly desirable that the House should make no such orders without, at the same time, determining by what means they shall be carried into execution.”⁸

When papers are refused by ministers.

Returns are sometimes refused on account of their voluminous character, and the length of time it would take to prepare

¹ *Hans. D.* v. 131, pp. 637, 641, 759, 875.

² *Ib.* v. 231, p. 972.

³ Lord C. Paget (Sec. to the Admir.), *Hans. D.* v. 177, p. 961.

⁴ Mr. Disraeli, *Ib.* v. 193, p. 1273.

⁵ *Ib.* v. 177, p. 1402; and see p. 1455.

⁶ Mr. Disraeli, *Ib.* v. 178, p. 154.

⁷ *Mir. of Parl.* 1830, p. 24; 1830-31, p. 50; 1831-32, p. 3254.

⁸ The Speaker, *Ib.* 1836, p. 887.

them.¹ In order to obviate this objection, "it is very desirable that members, before moving for very voluminous returns, should communicate with the department possessing the information, when it might be supplied in a much smaller compass." Sometimes returns which are not of sufficient general importance to be supplied at the public expense are granted when the member asking for the return, or others interested therein, undertakes to defray the cost of obtaining, or of printing, the same, or both charges.² It is not customary, however, to

Cost of
furnishing
returns to
parliament.

object to motions for returns merely on account of the trouble and expense to individuals that would be occasioned by their production, notwithstanding that there may be no funds available for the remuneration of the persons employed in the execution of the order.⁴ In fact, it has been the practice of parliament to order from public officers, of various grades, returns which they were not required by law to furnish, and for which no remuneration was provided. "That might be considered a customary right exercised in the public interests;" and although, upon rare occasions, some remuneration has been given to the parties employed, in order to accelerate their labours, yet "no public officer has any right to refuse to obey an order of the House until he shall be paid; the question of remuneration must not be raised between him and parliament." "Every public officer holds his situation under the control of parliament, and he is bound to give information." It is for the executive government afterwards to decide whether he has any claim for compensation for such a service.⁵

The queen's ministers are not only the rightful guardians of the prerogatives of the crown in parliament, but it also devolves upon them to protect the liberty of the subject, and the interests of private individuals and associations, who have no direct representation therein, from the assumption by parliament of arbitrary and unjusti-

Papers con-
cerning private
affairs.

¹ *Mir. of Parl.* 1837, p. 601.

² *Ib.* 1829, p. 1900.

³ *Hans. D.* v. 197, p. 1887.

⁴ *Mir. of Parl.* 1830, sess. 2, p. 501. To pay the expense of preparing returns to the secretary of state or to parliament out of county rates has been declared to be illegal (*Ib.* v. 1834, p. 3331; 1835, p. 245; *Ib.* 1841, p. 2014.

⁵ *Ib.* 1841, p. 2199; 1835, p. 1700; *Hans. D.* v. 182, pp. 1644, 1775.

fiable authority.¹ On this principle the government uniformly resisted all attempts, on the part of either House to obtain, whether by their own order or through an address to the crown, any documents or information concerning the affairs of private individuals,² or to sanction the appointment of committees to inquire into private and personal affairs,³ unless presumptive proof of delinquency, calling for parliamentary investigation, could be shown.⁴ This rule includes the case of private educational institutions not being in the receipt of public money.⁵ It has even been held to apply to the affairs of private companies, and of "public institutions which are not in receipt of assistance from public funds."⁶ But it was distinctly laid down by Sir Robert Peel and Lord John Russell, in the case of the Royal Academy, that the inquisitorial jurisdiction of parliament could not be limited to such "public institutions" only as were the recipients of public money; but that "when an institution is established to assist in promoting the cultivation of the arts, or other strictly public object, it could not be denied that the House had a right to inquire into its affairs, even though it did not receive public aid."⁷ And on a later occasion it was declared by Sir Robert Peel that, "where parliament has given peculiar privileges to any body of men [as,⁸ for example, banks or railway companies], it has a

Private companies, etc.

Parliament and private corporations.

¹ See the debate in the House of Commons on the Ancient Monuments Bill, *Hans. D.* v. 218, pp. 579-595. For the constitutional doctrine in the United States as to the sacredness of private rights, see Judge Miller's decision, in 1874, 20 *Wallace Sup. Ct. Rep.* p. 662.

² *Mir. of Parl.* 1830, p. 449; 1831, p. 193; 1833, p. 1614; 1836, p. 125; *Hans. D.* v. 199, p. 998. Ministers will often require motions asking for information affecting a particular class of individuals to be made numerical, instead of nominal, in order to screen private persons from unnecessary publicity (*Ib.* v. 169, p. 1581; *Ib.* v. 218, p. 2025; v. 232, p. 634).

³ *Ib.* v. 201, p. 71.

⁴ *Mir. of Parl.* 1831-2, p. 1237; 1840, p. 2053.

⁵ *Ib.* 1836, p. 873; 1840, p. 1772.

⁶ *Ib.* 1837-8, p. 3672; *Hans. D.* v. 73, p. 1759. See debates in the House of Commons on May 23, 1876, on a motion for an address for detailed statements of the property, income, and expenditure of the City of London Guilds or Companies; and on April 10, 1877, on a motion in favour of the introduction, by ministers, of some bill to empower the crown to inquire into the same.

⁷ *Mir. of Parl.* 1839, pp. 4238, 4503; *Hans. D.* v. 229, p. 295.

⁸ See the proceedings in the House of Lords, in regard to an order that

right to ask that body for information upon points which it deems necessary for the public advantage to have generally understood." The great point to be aimed at in such inquiries, he considered to be "that, while you extract all the information the public require to have, you should, at the same time, avoid all vexatious interference in the details of the business of the respective undertakings."¹

Again, no motion for papers should contain argumentative matter, or should assume facts of which the House was not officially cognizant.²

It is "the rule of parliament, that no papers shall be laid on the table of either House, unless some sufficient reason has been stated for their production."³ It is irregular to move for the production of papers merely to further the interests or views of private persons, or except for the purpose of founding, or facilitating, parliamentary proceedings.⁴ Government have refused to grant papers, "unless it be intended to found some proceedings upon them."⁵

The foregoing pages, it is hoped, will serve to explain more clearly the constitutional position of parliament in regard to the prerogative of administration. Without denying the abstract right of either House to address the crown, or to institute inquiries by select committees, upon any matter, they will show the great public in-

the corporation of the City of London should lay before the House a detailed account of their income and expenditure between certain years; the corporation having applied to parliament for an act to enable them to increase their revenues, by imposing a tax on coals (*Mir. of Parl.* 1829, pp. 1805, 1834).

¹ *Ib.* 1840, p. 4840; and see *Ib.* 1828, p. 825. See further, in regard to the principle in question, showing the respect entertained by both Houses for private rights, *Ib.* 1837, pp. 787, 997, 1030; 1838, p. 5400; 1839, p. 3421; *Hans. D.* v. 74, p. 25; v. 131, pp. 135, 785; v. 156, p. 1103. And on the general question of the power of parliament to compel the production of documents, see Smith's *Parl. Remembrancer*, 1860, p. 29.

² *Hans. D.* v. 218, p. 2023.

³ *Ld. Melbourne, Mir. of Parl.* 1838, p. 5387.

⁴ *Ib.* 1831, p. 2248; 1833, p. 547.

⁵ *Ib.* 1839, p. 4422. But see the following cases, wherein members of parliament, being in possession of valuable statistical or other information, obtained orders, or addresses, for the production of the same, to one or other Houses of parliament (*Ib.* 1830, sess. 2, p. 416; 1838, p. 5273; 1839, p. 4372).

Parliamentary
ground for
ordering
papers.

Summary in
regard to this
prerogative.

convenience attending an attempt on the part of parliament to interfere with the ministers of the crown in the details of government, the inexpediency of applications for documents which the responsible advisers of the crown consider it imperative to withhold, and the unwarrantable nature of any intrusion by parliament into the private affairs either of individuals or of corporate bodies, without just cause. So long as any existing government retain the confidence of parliament, it is unsafe and unwise, as a general principle, to interfere with them in matters of administration. Those who are directly responsible for the conduct of public affairs are they who possess the necessary information for the proper discharge of the same. Parliament exercises a direct control over the ministers by whom all public affairs are transacted. It has a right to inquire into every grievance or abuse of power, whether on the part of those ministers or of any other public functionary. It may also express its opinion in regard to any act of government; and it not unfrequently happens that the mere declaration of opinion in parliament upon some objectionable departmental regulation, unaccompanied by any formal motion, suffices to induce the government to modify their plans, conformably to the views entertained by the House.¹ But all this is very different from an attempt on the part of the legislature to usurp the functions of the executive, or from the endeavour by the House of Commons to compel the adoption of their opinions upon a question of administration, irrespective of those of the government or of the other chamber; a proceeding which must tend to destroy the harmony which should exist between the different powers in the state, and to transfer the executive authority from the hands of responsible ministers to those of an irresponsible and uncontrollable democracy.²

¹ See the case of the treasury warrant respecting unpaid letters, discussed in the House of Lords on February 22 and 24, 1859,

² See remarks on this head in Stockmar's *Mem.* v. 2, pp. 449, 545.

CHAPTER II.

THE CONTROL OF PARLIAMENT OVER THE EXECUTIVE.

WHILE parliament is constitutionally debarred from interfering, by order or resolution, with the ordinary routine of government, except for the purpose of expressing an opinion as to the expediency of any particular proceeding, or line of policy, it is otherwise if the crown itself attempts to encroach upon the functions of parliament, and endeavours to accomplish by its own action that which cannot lawfully be effected, except with the sanction and co-operation of parliament. It is then the duty of parliament to interpose, and to call to account the ministers of the crown who are responsible for the abuse or excess of executive authority. In like manner, if any individual minister is guilty, in his official capacity, of any illegal or oppressive act, it is the privilege of the injured party to apply to parliament for redress; and the matter of complaint being substantiated, parliament will hold the offending minister personally responsible for his misconduct.

There are certain forms of procedure, of ordinary occurrence in the administration of public affairs by the ministers of the crown, which need to be strictly confined within constitutional limits, lest they should become the instruments of oppression or misgovernment. These are: (1) The issue of orders in council and royal proclamations; (2) the issue of minutes of committees of council, and other departmental regulations; (3) legislation by public departments; and (4) the entering into contracts by government departments for the public service. The proper limits of executive authority in relation to each of these administrative acts will be briefly explained. We shall then proceed to define the responsibility which attaches to individual ministers of state for personal acts of misconduct in their official capacity.

I. *Authority of the Crown in the Issue of Orders in Council and Royal Proclamations.*

The legislative function properly belongs to parliament, and no single branch thereof may legislate without the concurrence of the other two. The executive has a limited power of legislation by order in council and rules framed by departments of state, but only where the exercise of such power has been authorized or sanctioned by parliament. It is a fundamental law of the English constitution, that the sovereign can neither alter, add to, nor dispense with, any existing law of the realm.¹

This important point was first established beyond dispute in the reign of James I., by the proceedings in parliament upon the case of Bates, an English merchant, who refused to pay a duty on currants imported into the country from abroad, which duty was sought to be levied by the sole authority of the king. The Court of Exchequer, in 1606, sustained the claim of the crown; but, when the matter was discussed in the House of Commons, it was shown that this decision was contrary to the provisions of the Great Charter, and therefore void. It was further alleged that the sovereign could not, without the assent of parliament, impose a duty on any article of merchandise imported into or exported from the country; or, in fact, any duty whatsoever either upon foreign or domestic commodities, whether in time of war or peace. The conclusions arrived at upon this occasion were embodied in a petition of grievances, which was addressed by the House of Commons to the king, in the year 1610, and favourably received by his Majesty.²

This important doctrine was confirmed, in the following reign, by the celebrated case of *Rex v. Hampden*, wherein, notwithstanding that the contrary doctrine was asserted by a majority of the judges, parliament annulled the judgment, and by the Statute 16 Car. I. c. 14 declared that the sovereign cannot, without the consent of parliament, assess or levy ship-money upon the subject.³

¹ Thomas, *Leading Cases in Const. Law*, pp. 5, 11.

² Broom's *Const. Law*, pp. 247-305. ³ See *Ib.* pp. 306-370, 404-408.

Following the example of the Church of Rome, the sovereigns of England, from an early period, claimed the right to dispense with the laws of the land, by the issue of proclamations, and by making grants or decrees, "*non obstante* any law to the contrary." In this way they assumed a power, *virtute coronæ*, to dispense with existing laws, or with the penalties consequent upon a breach of them; or else they undertook to dictate to the people in respect of matters indifferent, and in regard to which perfect liberty of action ought to have been allowed.¹ The current of authority indicates that the prerogative of dispensing by *non obstante* with Acts of Parliament was, subject to certain restrictions, recognized in former times as vested in the crown, and was repeatedly exercised during the sixteenth and seventeenth centuries. The use and abuse of this prerogative occasioned repeated conflicts between the crown and parliament and the courts of law, and eventually cost King James II. his crown.² This branch of the royal prerogative was finally annihilated by the Bill of Rights, which declared that "the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal;" and that "the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal." "Since then no one has presumed to advocate the existence of a dispensing power, in any circumstances whatever, as inherent in the crown."³

From the epoch of the revolution of 1688, whenever the crown has ventured, upon occasions of public emergency, to issue royal proclamations or orders in council, which appeared to sanction any departure from the laws of the land, the necessity for such a proceeding on the part of government has been narrowly investigated by parliament; and when it has been shown to have been illegal, although justifiable, acts of indemnity have been passed, to exonerate all persons who have advised or carried into execution the same.⁴ Legislation of this kind is a parliamentary acknowledgment of the principle that, in times of danger or

¹ Cases cited, Broom, pp. 375-396.

² *Ib.* pp. 494-507; Stubbs's *Const. Hist.* v. 2, p. 580.

³ Broom's *Const. Law*, pp. 507, 508. ⁴ *Ib.* pp. 379 n. 508 n.

emergency, the crown, acting under the advice of responsible ministers, may properly anticipate the future action of parliament, by a temporary suspension of certain classes of statutes.¹ Although the crown has no constitutional right to issue any such orders or proclamations, yet, in the words of Sir Robert Peel, "Governments have assumed, and will assume, in extreme cases, unconstitutional power, and will trust to the good sense of the people to obey the proclamation, and to parliament to indemnify its issuers."²

Nevertheless, with the important limitations above referred to, considerable powers are still inherent in the sovereign in council; and express authority for the issue of orders in council is frequently conferred upon the crown by legislative enactment. "A large proportion of what may be called the details of legislation rests upon the authority of orders in council, some of which are issued by her Majesty in virtue of her prerogative, while others derive their force from the provisions of acts of parliament." It is competent to a court of justice to inquire into the validity—or accuracy, in the statement of alleged facts—of an order in council, duly passed and gazetted.³ As examples of the variety and importance of the subjects to which this form of quasi-legislation is applicable, it may be stated that orders in council, or royal proclamations which are usually issued in pursuance of the same, are promulgated for the assembling, prorogation, and dissolution of parliament; for declaring war; for confirming or disallowing the acts of colonial legislatures; for giving effect to treaties; for extending the terms of patents; for granting charters of incorporation to companies or municipal bodies; for proclaiming ports, fairs, etc.; for deciding causes on appeal; for creating ecclesiastical districts or circuits for judicial purposes; for granting exemptions from the law of mortmain; for the regulation of the Board of Admiralty, and of appointments to offices in the various departments of state; for creating new offices, and defining the qualifications of persons to fill the same; and for declaring the period at which

¹ Cox, *Eng. Govt.* p. 29; Campbell's *Chanc.* v. 5, p. 267.

² Peel's *Mem.* v. 2, p. 131.

³ Attorney-General v. Bishop of Manchester, *L. R.* 3 Eq. p. 436; and see Judge Ritchie in Windsor and Annapolis Ry. case, *Nova Scotia Equity Decisions*, v. 1, p. 307.

certain acts of parliament (the operation of which has been left by the legislature to the discretion of the queen in council) shall be enforced.¹

It is difficult to draw the line between what may and what
 When they
 require the
 sanction of
 parliament.
 may not be accomplished by an order in council, without special legislative sanction. As a general rule, all orders in council restricting trade, unless issued under the authority of an act of parliament, or justified by reference to cases coming within the prerogative of war—and all orders suspending the operation of any statute—would require an act of indemnity. But, when duly informed by the crown of the proceedings had upon any such occasion, parliament has always been willing to indemnify the government for the timely exercise of authority for the public welfare, although it may have led to an overstepping of the constitutional limits of executive power.²

So far as proclamations, as distinct from orders in council,
 Proclamations.
 are concerned, it is an indisputable branch of the royal prerogative to issue proclamations in reference to the existing state of the law, warning those who may be likely to commit offences, encouraging respect for the law, and offering rewards for the apprehension of offenders. These documents are regarded as solemn expressions of the royal will, and are invariably issued upon the advice of responsible ministers. They are usually based upon orders in council, and are intended to promulgate decisions arrived at by the sovereign in council. Their exact force has been a matter of dispute, which even now cannot be precisely determined, since it labours under the uncertainty which affects all questions bearing on the limits of the prerogative. It is clear, however, that, while a proclamation cannot make a law, it can add force to a law already made.³ When the sovereign declares war against a foreign power, proclamations are usually issued,

¹ Rep. on the Privy Coun., *Com. Pap.* 1854, v. 27, p. 253; Rep. on Misc. Exp. *Ib.* 1847-8, v. 18, pt. 1, pp. 371, 377. The duration of the Endowed Schools Act, 1869, was limited to three years, with authority to her Majesty in council to renew it for another year without applying to parliament. The power was exercised by order in council in 1872 (*Hans. D.* v. 212, p. 340; and see 40 & 41 Vict. c. 38).

² See cases cited in Lieber's *Hermeneutics*, 3rd ed. 1880, p. 67 n.

³ See Forsyth, *Const. Law*, p. 180 n.; Hallam, *Const. Hist.* v. 1, p. 337.

materially altering the ordinary laws relating to trade, and imposing rules for the conduct of trade with neutrals or belligerents.¹ Proclamations are also issued to fix the mode, time, and circumstances of putting into execution certain laws, the operation of which has been left to the discretion of the executive government ;² or for the purpose of making formal declaration of existing laws and penalties, and of the intention of government to enforce the same ; or to appoint and direct the keeping of a day of observance, whether as a fast or thanksgiving. But "proclamations have only a binding force when they are grounded upon and enforce the laws of the realm."³ And to be valid in law they must be published in the official gazette of the kingdom.⁴ The king cannot authorize by proclamation the creation of an offence which is not a crime by the existing law ; "for, if so, he might alter the law of the land by his proclamation."⁵

2. *The Issue of Orders and Minutes of Council, and other Departmental Regulations.*

The responsibility of ministers to parliament necessarily implies the right of either House to express its Minutes of council opinion as to the legality or expediency of any particular act of administration ; and to proceed to call to account any minister of state who may have exceeded the limits of constitutional authority in the execution of public duty.⁶

In the working of constitutional government, experience has proved that certain subordinate powers of legislation must

¹ See Cox, *Inst. Eng. Govt.* 28 ; *Ed. Rev.* v. 100, p. 192.

² *Ex. gra.* 6 Geo. IV. c. 78 ; *Municip. Corp. Act* of 1835 ; *Health of Towns Act* of 1848 ; *Royal Titles Act* of 1876.

³ Coke, 3 *Inst.* 162. See *Lords Debates*, May 2, 1876, on the terms of the proclamation issued pursuant to the *Royal Titles Act*.

⁴ Act 40 and 41 *Vict. c.* 41.

⁵ Bowyer, *Const. Law*, p. 173 ; *Att.-Gen. Collier, Hans. D.* v. 203, p. 1370.

⁶ See the debates, in 1817, upon the circular letter of the secretary of state for the Home Department (Lord Sidmouth) to the lords lieutenants of counties, respecting the authority and duties of magistrates, in regard to blasphemous or seditious libels ; which letter was alleged to have been an interference with the ordinary course of justice, and an assumption by the executive of legislative power (*May, Const. Hist.* v. 2, p. 188).

be entrusted to almost every leading department of state. So long as these powers are exercised with the knowledge of parliament, and in direct subjection to its control, they can be more advantageously discharged by responsible ministers than if it were obligatory that they should emanate from parliament itself.¹ For all such regulations are framed by a responsible minister, for the sanction of the crown. And no premature interference therein ought to be attempted by either House.² Minutes of council, departmental regulations, and other authoritative directions emanating from the heads of the principal executive departments, must needs be frequently issued in regard to particular matters of administration, which require to be determined by competent authority, but it is essential that all acts of quasi-legislative authority, which may be performed by any department of state, shall be within the limits defined and prescribed by parliamentary enactment; and also that, whenever either the expenditure of public money, or other great public interests, are concerned in the matters thus disposed of, an opportunity should be afforded to parliament of expressing its opinion upon the same, before the government proceed to take action thereon.

Departmental regulations.

Departmental legislation subservient to parliament.

3. *Legislation by Public Departments.*

(a) *Public Legislation.*

The constitutional control of parliament over the exercise of legislative powers by ministers of state, executive departments, and other public bodies, being admitted, it is evident that there is an undeniable advantage in the practice itself. The proper limits within which such powers may be exercised having been prescribed by statute with directions that all such minor or provisional legislation shall be duly submitted to parliament—either for tacit approval or direct ratification—it is often expedient to entrust the settlement of details of practical legislation, requiring special or local knowledge, to the public

Control of parliament over executive legislation.

¹ See the Evid. of the Rt. Hon. R. Lowe, H. A. Bruce, and C. B. Adderley, and of Lord Granville, before the Com^o. on Education, *Com. Pap.* 1865, v. 6, pp. 54, 55, 68, 71, 72, 76, 153.

² *Hans. D.* v. 157, p. 342.

department immediately concerned. By this means the benefit of local experience is obtained in the determination of such questions, and—especially where the consent of parties interested has been freely given—parliament is relieved from the consideration of matters which may be troublesome to decide, without infringing upon local interests.

In Mr. Gladstone's address to the electors of Greenwich on January 23, 1874, announcing the dissolution of parliament, and again offering himself for re-election, he remarks that "the duties of parliament have reached a point where they seem, for the present, to defy all efforts to overtake them. I think we ought not only to admit, but to welcome, every improvement in the organization of local and subordinate authority which, under the unquestioned control of parliament, would tend to lighten its labours and to expedite the public business."¹

Within the past thirty years numerous acts have been passed, to confer and regulate the exercise of such powers, in subordination to general principles established by law.

Thus, in 1845, by the Act 8 & 9 Vict. c. 118, the Inclosure Commissioners were constituted, and empowered, Inclosure commissioners. in certain cases, to complete inclosures, and in other cases to make provisional orders for the inclosure of lands, to be ratified by public acts of parliament.² Thus, by the Contagious Disorders of Animals Act of 1848, the privy council were empowered to make orders and regulations to carry out the intent of the act, the same to be laid before both Houses of parliament within a specified time;³ and thus, in 1866, upon the outbreak of the cattle plague in Great Britain, it was determined to enlarge the powers conferred upon the privy council by the act of 1848, and to empower any two lords of the council to frame orders to meet the emergency in particular parts of the country, such orders to be afterwards communicated to parliament. Under this authority nearly 150 separate orders in council were issued.⁴ The act was continued in the following session, with enlarged powers.⁵

¹ *London Times*, Jan. 24, 1874, p. 8.

² May, *Parl. Prac. ed.* 1883, p. 760.

³ 11 & 12 Vict. c. 107, secs. 4-6.

⁴ *Hans. D.* v. 187, p. 864; Act 29 Vict. c. 15; *Com. Pap.* 1866, v. 59, pp. 213-297; *Ib.* 1867, v. 59, p. 1.

⁵ 30 & 31 Vict. c. 125.

The orders issued under the authority of the statutes aforementioned, though enjoined to be laid before parliament, were not required to be directly or indirectly sanctioned by either House. But this did not prevent them from being questioned.

The mode of questioning these orders is shown by a proceeding in the House of Commons on June 21, 1867, when, as an amendment to going into committee of supply, it was moved to resolve that a particular order respecting the importation of cattle "is inexpedient."¹ But, after an explanation by a minister, the motion was withdrawn.

It is customary to provide that orders in council, departmental regulations, representations, rules of court, or tables of fees, framed and issued under the authority of particular acts of parliament, shall be laid before both Houses, within twenty, thirty, or forty days (as the case may be) after the making thereof,—or after the re-assembling of parliament, should they have been issued during a recess,² before they became operative and binding. But sometimes this restriction is omitted;³ and it is sometimes expressly enacted that in the event of an order, or rule, being annulled in consequence of the disapproval therefore, by either House of parliament, the rescinding thereof shall be "without prejudice to the validity of any proceedings which may in the meantime have been taken under the same."⁴ If a scheme has been upon the table of both Houses for the prescribed time, without any address against it, it passes out of the hands of government, who can no longer delay its operation.⁵

It was laid down as a principle—by the commissioners appointed in 1864, to inquire into the management of endowed schools in England—"that parliament is the only body that can be considered as the supreme trustee of endowments, and that in some form or other the approval of parliament ought to be obtained to all schemes for the re-settlement of educational trusts."⁶

¹ *Hans. D.* v. 188, p. 349.

² Acts 28 & 29 Vict. c. 112, sec. 3; c. 124, sec. 11; c. 125, sec. 26; 32 & 33 Vict. c. 42, sec. 8; 38 Vict. cc. 5 and 28.

³ See 39 & 40 Vict. c. 57; and 40 & 41 Vict. c. 23.

⁴ 38 & 39 Vict. c. 77, sec. 25; and c. 91, sec. 7.

⁵ *Hans. D.* v. 234, p. 857.

⁶ *Com. Pap.* 1867-8, v. 28, pt. 1, p. 635.

Pursuant to this report, the act of 1869 was passed, which provided for the appointment of a small commission to draw up schemes and trust deeds for the re-constitution of the endowed schools. These draft were schemes to be submitted to the governing bodies of the particular schools; and, after due inquiry, to the committee of council on education, for their sanction. An appeal is allowed, in certain cases, to the Privy Council. Finally, all such schemes (unless objected to, by a petition) must be laid before both Houses of parliament for "forty days."¹ If within that time either House address her Majesty to withhold her consent from any scheme, or any part thereof, the crown can only assent to so much of the same as may not have been objected to.²

By the Public Schools (England) Act of 1868, the governing bodies of the seven great public schools enumerated therein, are empowered to make or amend any existing statutes or regulations relating to such schools, under certain restrictions and limitations defined by the act. These statutes are to be approved by the special commissioners appointed under the act, and afterwards by the queen in council, before coming into operation. If within a certain time the governing bodies of any of those schools shall fail to make the necessary statutes and regulations for the management of the same, the commissioners shall frame them, and submit them for the approbation of the crown; but, with this proviso, that the approval or disapproval of the crown to any statute, etc., made by the commissioners shall not be signified until the same "has been laid before both Houses of parliament for not less than forty days." So that if the governing body and the commissioners agreed as to a particular scheme it would not be necessary to submit the same to parliament; but, if they did not agree, any scheme framed by the commissioners must be laid before the two Houses.³

The General Inclosure Act of 1845,⁴ first empowered com-

¹ Extended to "four months" in the case of certain specified schemes which were submitted to parliament in 1873 by Act 36 & 37 Vict. c. 7; amended and extended to "two months" in all other cases by Act 36 & 37 Vict. c. 87, sec. 15.

² Act. 32 & 33 Vict. c. 56, sec. 41; *Hans. D.* v. 207, p. 300; *Ib.* v. 213, p. 551.

³ Act 31 & 32 Vict. c. 118, sec. 19; and see *Hans. D.* v. 201, p. 188; v. 203, p. 1047.

⁴ 8 & 9 Vict. c. 118.

missioners to issue provisional orders for authorizing the inclosure of commons, subject to the ratification of parliament,¹ instead of the method previously resorted to of obtaining private acts for such a purpose. In the execution of their powers, however, the commissioners did not sufficiently consider the general convenience and comfort of the neighbourhood interested in the preservation, as commons, of the lands in question, but were too ready to grant all applications for inclosures, on compliance with certain fixed conditions. Accordingly, in 1869, the House of Commons appointed a committee to investigate the matter, which recommended that no further inclosures should take place until a revised Inclosure Act had been passed. Whereupon, several years elapsed before the House again passed an act to give effect to provisional orders for inclosures. And, in 1872, the inclosure commissioners reported that they had suspended their operations, until parliament should have agreed upon a definite policy in regard to inclosures,—the government, meanwhile, making repeated attempts to pass a new Inclosure Act, but without success.² At length, on February 10, 1876, the home secretary brought in a General Inclosure Bill, which was agreed to by parliament. Under this act provisional orders may be issued for the regulation or inclosure of commons, after affording to all parties interested an opportunity of being heard for or against the proposal: such provisional orders to be afterwards subjected to the investigation of a standing parliamentary committee, who shall consider the details of the schemes, report thereon, and remit for the consideration of the inclosure commissioners any proposed modifications therein. Then the bill to confirm the orders is to be introduced and passed.³ Such a committee was first appointed by the House of Commons (upon the first report of the inclosure commissioners under the new act) on February 26, 1877. It reported in favour of the confirmation of the proposed inclosures, subject to certain conditions, but not requir-

¹ [The orders issued under this act did not require parliamentary confirmation till 1852 when the 15 & 16 Vict. c. 70, declared that all such provisional orders must be confirmed by parliament before they are pro-

² *Hans. D.* v. 212, p. 488; v. 210, p. 433; v. 225, p. 1941.

³ *Ib.* v. 229, p. 1533; v. 230, p. 1034; Act 39 & 40 Vict. c. 56.

ing the reconsideration of the schemes by the commissioners.¹

The select committee on commons (to consider reports of the inclosure commissioners) appointed in 1877, was nominated in part by the House, and in part by the committee of selection. The inclosure commissioners appeared before the committee, and explained their course of proceedings under the new act, and the mode in which their reports are investigated and dealt with by this committee.² All the necessary forms to be used under the act are appended to the report of this committee.³

In 1877 ministers having proposed that rules to be made pursuant to the Prisons Act should not come into operation until they had laid for forty days before ^{Prisons Act.} both Houses of parliament—an amendment was moved to require such rules to be distinctly approved by resolution of each House. It was urged that, in the present pressure of business, it would be difficult for an unofficial member to get an opportunity of moving adverse resolutions to these rules. On the other hand, it was stated that, if special approval was obligatory, the House might be the whole session discussing rules on very trivial points. After much debate, the amendment was negatived and the ministerial proposal agreed to.⁴

By the Electric Lighting Act, 1882, the Board of Trade is empowered to grant provisional orders authorizing the supply of electricity for any public or private purpose at their discretion, subject to confirmation by parliament.⁵

This act has given occasion to much criticism on the provisional order system. It is evident "that the system can only be worked efficiently in conjunction with thoroughly comprehensive general acts applicable to each object for which provisional orders are recognized."⁶

These examples will suffice to show that the practice of entrusting legislative powers, under certain restrictions and limitations, to executive departments is increasingly resorted to by parliament. But, admitting its obvious advantages, it is

¹ *Com. Pap.* 1877, v. 10, p. 39.

² *Ib.* Evid. p. 7.

³ *Ib.* App. Nos. 1, 2, 3.

⁴ *Hans. D.* v. 233, pp. 515-528; and see v. 234, p. 1801.

⁵ See also the Educational Endowment (Scotland) Act, 1883.

⁶ See further *L. T.* v. 75, p. 251.

liable to serious abuse. It has been well observed that there
 “is no modern innovation which needs to be
 watched with more jealousy than the practice of
 delegating the authority of parliament (even in
 small and local matters), with no better check than
 the chance that some unusually vigilant legislator
 may move an address to reject the scheme of law before it has
 had time to mature into an indefeasible enactment. The
 whole scope and genius of our legislative system is to afford
 by the forms of parliament every possible security that no law
 shall be made which has not been deliberately and repeatedly
 affirmed in all its details, and it would be alien to the essence
 of free government to substitute for this a system in which the
 relations of the crown and parliament should be reversed, and
 statutes should be *octroyés* by the government, and nothing but
 a bare veto left to the Lords and Commons.”¹

Necessary
 caution of
 parliament in
 entrusting
 legislative
 powers.

(b) *Private Legislation.*

Nevertheless, since 1845 there has been a gradual and
 successful extension of the principle of provisional
 legislation to matters of local concern.² This has
 contributed very materially to relieve the imperial
 parliament from the great and growing pressure of local business,
 and to ensure the determination of such questions after previous
 inquiry by tribunals more competent for their satisfactory settle-
 ment.³ By various acts of parliament authority has been given
 to the Home Office, the Board of Trade, the Local Government
 Board, the Inclosure Commission, the Charity Commission,
 the Commissioners of Public Works (Ireland), the Education
 Department, and other departments of state, to grant pro-
 visional orders or certificates, and to approve of schemes for
 the construction, improvement, or management of particular
 works, or local affairs, which have hitherto required the direct
 sanction of parliament; or else have been undertaken by the
 executive government upon its own responsibility.⁴

Growth of
 provisional
 legislation.

¹ *Sat. Rev.* May 7, 1870, p. 602; and see *Hans. D.* v. 187, p. 69.

² *Com. Pap.* 1877, v. 68, p. 169.

³ Fitz-James Stephen on *Parl. Govt.* in *Cont. Rev.* v. 23, p. 1.

⁴ *May, Parl. Prac.* ed. 1883, pp. 760-767, 787; Mr. Bruce, *Hans. D.* v. 210, p. 320.

By the use of such machinery legislation is simplified, while the supervision and control of parliament is maintained. For the enabling statutes invariably require the departments, from whence a provisional order, certificate, or scheme may issue, to lay the same before both Houses of parliament for confirmation.¹

Simplifies
parliamentary
legislation.

There will always remain a large number of applications, e.g. where compulsory powers are sought, or where there are strong competing interests, which will be initiated and proceeded with in the ordinary manner by bill. But it is a manifest advantage to permit the promoters of schemes locally approved, and involving no serious principle, to have recourse to provisional orders—which can be obtained at a comparatively moderate cost—thereby lightening materially the burden of private business before parliamentary committees, while the hearing and adjudication of all important questions, and the final decision in all cases, are still reserved to parliament.² The sanction of parliament is given to provisional legislation by an act which in its progress through parliament is treated as a public bill. Such bills either refer (as in the case of provisional orders under the Public Health Acts or Inclosures Acts) to the particular orders in the body of the confirming act, and enumerate them in a schedule; or (as in the case of orders issued in relation to fisheries, harbours, or railways) set them out at length in the schedule of the confirming act. When the orders are merely referred to in the acts, and not set out, they are rarely discussed in detail, but are confirmed or rejected without change.³

Advantages of
provisional
orders.

All persons aggrieved by any provisional orders have a right to petition parliament against them, as they would against a private bill. Their objections will be carefully considered by the House, wherein the petition is presented, before the order is confirmed.⁴

¹ For a return of the several acts, authorizing the issue of provisional orders, etc., by any public department, see *Com. Pap.* 1871, v. 58, pp. 397, 403.

² *Com. Pap.* 1872, v. 54, p. 314; and see the evidence of Mr. Wyatt, an experienced parliamentary agent, as to the working of the provisional order system, with suggestions for an amended procedure, *Ib.* 1877, v. 16, pp. 581, 638.

³ *Ib.* 1867-8, v. 28, pt. 1, p. 635.

⁴ See Mr. Coates' evidence before Com. Com^o. on the Tramways Bill; VOL. II.

Ample power is thus secured to parliament to control and amend all provisional legislation ; a power which is sometimes exercised to alter or to reject particular orders.¹ But even if no formal confirmation by parliament is required on behalf of a local scheme, authorized by executive authority, a mere direction in the enabling statute, that the same shall be laid before both Houses of Parliament, will justify legislative interposition, if need be, to ratify or amend it.²

Hitherto the provisional orders made by government departments have dealt only with matters in which the capital at stake was small, the parties affected generally, agreed, and the opinion of the locality specially interested could be easily ascertained. But on March 15, 1872, Mr. Dodson (the chairman of committees) submitted to the House of Commons a series of resolutions, to provide for substituting, as far as possible, an extended and improved system of provisional orders for the present system of legislation on local and personal bills. Such orders to be obtained on application to a permanent tribunal of a judicial character, which should hold its sittings in various parts of the United Kingdom, and before which promoters and opponents should be heard in open court ; the decisions of this tribunal to be submitted for the confirmation of parliament. In case of either House admitting an appeal against any decision of this tribunal, the same to be referred to a joint committee of both Houses, to be composed in the manner recommended in 1869, by the joint committee on the despatch of business in parliament. After a brief debate on these resolutions, their further consideration was adjourned.³ Upon a resumption of the debate, it appeared that, while members were generally in favour of a further extension of the system of provisional orders, they were scarcely prepared to depute to any body outside parliament the determination of such questions. Finally, the House agreed to resolve, that

Com. Pap. 1870, v. 10, p. 691 ; S.O. House of Commons, 1871, No. 146 ; Act 35 & 46 Vict. c. 79, § 45 ; and see Mr. Wyatt's evidence before Com. Com^o. on Tramways in *Com. Pap.* 1877, v. 16, p. 581.

¹ See Act 34 Vict. c. 3, to empower committees on Bills confirming provisional orders, to award costs and examine witnesses on oath ; and see Acts 27 & 28 Vict. cc. 58 and 93 ; 28 & 29 Vict. c. 59.

² See the Huddersfield Burial Ground Act, 15 & 16 Vict. c. xli ; May, *Parl. Prac.* ed. 1883, p. 788.

D. v. 210. pp. 17-30.

the system of private legislation calls for the attention of parliament and of government, and requires reform.¹

4. *Contracts entered into by Public Departments.*

An important question—akin in principle to that which has been just considered—has arisen of late years with regard to contracts, to be entered into between ^{Public} any department of the executive government and other parties, ^{contracts.} for the performance of any work or service, the undertaking of which has been, or may afterwards be, authorized by parliament. It is manifest that the responsibility of entering into such contracts properly rests upon the executive alone. But it is equally clear that the government have no constitutional authority to make a contract which shall be binding on the House of Commons,² by whom the necessary funds for carrying on the contract must be supplied; and that the consent of parliament should be first obtained to all new contracts.

The principle of the control of parliament, and especially of the House of Commons, over contracts, was first established, in the years 1859 and 1860, by a committee of the House of Commons appointed to inquire into certain transactions arising out of existing contracts for postal services; and by a standing order, adopted by the House of Commons on March 4, 1861, it is provided that “the chairman ^{Standing order concerning contracts.} of the committee of ways and means shall make a report to the House previously to the second reading of any private bill, by which it is intended to authorize, confirm, or alter any contract with any department of the government, whereby a public charge has been or may be created; and such report, together with a copy of the contract, and of any resolution to be proposed in relation thereto, shall be circulated with the votes two clear days at least before the day on which the resolution is to be considered in a committee of the whole House, which consideration shall not take place until after the time of private business; nor shall the report of any such resolution be considered until three clear days at

¹ *Hans. D.* v. 210, pp. 507-529.

² See Smith's *Parl. Rememb.* 1860, p. 75; judgment of the Court of Queen's Bench in the Churchward case, 1865.

least after the resolution shall have been agreed to by the committee.¹

Moreover, in all new contracts for the conveyance of mails by sea, or for the purpose of telegraphic communications beyond sea, it has been resolved by the House of Commons that a condition shall be inserted that they shall not be binding until they have been approved by a resolution of the House.²

Mail and
telegraph
contracts.

It is understood that all contracts should come before the House in such a state that the House should be free to express its opinion thereupon, without incurring any pecuniary responsibility to the contractors.³ But it is undesirable to fetter the government, or the House, by the adoption of an abstract resolution in regard to the terms upon which all postal subsidies shall be granted hereafter.⁴

In the years 1863 and 1867 special resolutions were passed by the House of Commons, approving contracts which had been laid upon the table, before the expiration of the month.⁵ But this was done in peculiar and exceptional circumstances. As a general rule, it has been agreed that "the House should not be asked to share in the responsibility of the details of mail contracts," and that it is "far better that they should come into legal force on the sole responsibility of the executive, after an opportunity of rejecting them (by their remaining for one month upon the table) had been afforded to the House, than that the House should be called upon to affirm them by a positive vote."⁶

In the event of any such contract being disapproved, it is of course necessary that a substantive resolution should be proposed in relation thereto.

Although at present these rules merely extend to the case of certain specified contracts, it has been admitted, by the highest authority, that the executive has no constitutional right to make a contract which shall be binding on the House

¹ *Com. Jour.* 1861, p. 89; S. O. House of Commons, 1862, No. 78.

² *Com. Jour.* July 13, 1869.

³ See debates on a proposed contract for the conveyance of the India, China, and Australia mails, *Hans. D.* v. 189, pp. 658-702, 1561.

⁴ *Hans. D.* v. 190, pp. 2010-2020.

⁵ *Com. Jour.* 1863, pp. 389, 404; *Hans. D.* v. 190, p. 450.

⁶ The chanc. of the ex. (Mr. Gladstone), *Hans. D.* v. 172, p. 1201.

of Commons.¹ It may, therefore, be safely assumed that hereafter no contracts, involving any considerable amount of public expenditure beyond that which has been granted for the service of the current year, will be carried out until the sanction of parliament has been obtained on behalf of the same.

In 1862, the control of the House of Commons over contracts received a still more extended application, Contracts for and was embodied in an act of parliament. In a military works. In a previous session (that of 1860), the House had resolved to grant the sum of two million pounds to construct necessary works for the fortification of the British coasts; and, in 1862, a bill was brought in to provide for a large portion of this expenditure. On July 10, in committee on the bill, a clause was proposed by Sir Stafford Northcote to declare that any contracts to be entered into by government for this service which involved the expenditure of a greater sum than that which had been already voted by parliament must be previously approved by the House of Commons. The ministry, at first, opposed this clause. The chancellor of the exchequer remarked that "the practical wisdom and the good or bad economy of such contracts was a matter on which the House of Commons, as a deliberative assembly, had not the opportunity of forming an opinion in the same way as the executive government; and it was not according to usage that the government should be able to relieve itself of its special responsibility with regard to these contracts by a resolution of the House of Commons. The responsibility of the government would be better preserved by giving the House the power of interfering with these contracts before they became valid than by asking the House to approve each of them by a resolution."² On a division the clause was negatived by a majority of five. On July 14, however, the ministry announced their acceptance of this provision;³ and a clause was introduced What contracts require the approval of the House of Commons. into the bill, declaring that, whenever a contract shall be entered into by government which involves the expenditure of a greater amount than had been actually granted for such service, such contract shall not be

¹ Mr. Gladstone in *Hans. D.* v. 157, p. 1412; and *Ib.* v. 189, p. 702.

² *Ib.* v. 168, p. 199.

³ *Ib.* pp. 290, 635; 25 & 26 Vict. c. 78, § 2. See Smith's *Parl. Rememb.* 1862, p. 149.

binding until it has lain for one month on the table of the House of Commons without disapproval, or has been formally approved by resolution, within that period. This clause was agreed to by both Houses, and forms part of the statute.¹

But, in 1874, ministers declined to present to parliament a copy of the contract for building the new courts of justice, on the ground "that it would be injurious to the public service and unjust to the contractor."² In reply, however, to a question, the House was informed of the amount of the contract."³

5. *The Remedy against Illegal or Oppressive Acts by Ministers of the Crown.*

If a minister of the crown be guilty of any abuse of authority, or dereliction of duty, he is personally liable, under the law and constitution, for his conduct.⁴ But, in determining the liability of a public functionary for damage caused by his act to a fellow-subject, a seeming conflict between principles is noticeable, and an anxiety in the breast of the law on the one hand to assist the suitor, who perchance complains of wrong, and on the other to protect the officer who, inflicting an apparent injury, has perchance but done his duty.⁵ Any direct infringement of the law of the land by a minister or officer of the executive government would render the offender liable, in a court of justice, to precisely the same consequences as if he were a private person. Nor would it be any justification, in an English court of law, to plead the command of the sovereign as the warrant for an unlawful act. It may be stated, as a general principle, that, in assuming on behalf of the crown a personal responsibility for all acts of government, ministers are privileged to share, with the crown, in a personal immunity from vexatious proceedings, by ordinary process of law, for alleged acts of oppression or illegality in the

Responsibility
of ministers
for illegal acts.

Immunity of
ministers in
courts of law.

¹ 25 & 26 Vict. c. 78, § 2. See Smith's *Parl. Rememb.* 1862, p. 149.

² *Hans. D.* v. 218, p. 345.

³ *Ib.* p. 628. For previous debates in the House of Commons in regard to the erection of the Law Courts, see *Ib.* v. 210, v. 216, and v. 217.

⁴ Att.-Gen. in *Ib.* v. 176, p. 2121.

⁵ Broom, *Const. Law*, p. 525.

discharge of their official duties, and are responsible to parliament alone for acts of misconduct in their official capacity. Nevertheless, the courts of law have established certain rules which, so far as they go, afford protection to the subject against the irregular exercise of executive authority. Thus it has been determined that general warrants, issued by a secretary of state to search for and seize the author

General warrants.

—or the papers of an author—of a seditious libel, are illegal.¹ Also, that a warrant issued by a secretary of state, to seize the papers (generally) of the author of a seditious libel, is illegal.²

By a decision of the Superior Court of Lower Canada, in 1875 it was ruled, that an act of government cannot be set aside in a court of law, on the allegation that a majority of cabinet ministers had sanctioned it, upon the representation and influence of particular ministers, and (as it was afterwards alleged) upon insufficient grounds; for "there is no division of responsibility in a cabinet," and "the crown must be held to have known what it was about."³

Unity of responsibility in the cabinet.

Apart from the security afforded to the subject by these decisions, the law accords to persons who are clothed with an official character a peculiar protection. On grounds of political expediency all such persons are preserved from liability to actions at law. Whether the alleged liability arises out of contract or out of tort, or from any matter of private and individual complaint against a minister of the crown, for acts done, or directed to be performed by him, in his official capacity, the ordinary tribunals of justice will afford him special immunity and protection.⁴

Protection to officials.

¹ *Leach v. Money*; 19 State Trials, p. 1001; *Wilkes v. Wood*, *Ib.* p. 1153.

² *Entick v. Carrington*, *Ib.* 1030; Broom's *Const. Law*, 525-617. See the proceedings in relation to general warrants, *Parl. Hist.* v. 16, p. 207; *Hans. D.* v. 77, pp. 905, 960.

³ *Att.-Gen. v. Middlemiss*, *L. Can. J.* v. 19, p. 263; *Ib.* v. 21, p. 319. See also *Molson v. Chapleau and Lynch*, *Montreal Legal News*, v. 6, p. 222.

⁴ Broom, *Const. Law*, pp. 617-623, 726. See also the case of *Sullivan v. Lord Spencer*, showing that the Lord-Lieutenant of Ireland was not to be held liable at law for an act done by him in his official capacity (*Irish L. T. Rep.* v. 6, p. 25; *Hans. D.* v. 236, p. 611); also *Palmer v. Hutchinson*, before the Privy Council on appeal from Natal, 6 *L. R. App.* p. 619; and see cases cited in Forsyth, *Const. Law*, pp. 84-88.

But, if ministers of the crown think fit, for reasons of public policy, to take upon themselves the responsibility of directly infringing an existing law, they are bound to apply to parliament for an Act of Indemnity, to relieve themselves, and those who have followed their directions in the particular matter, from the legal consequences of their conduct. On the same principle, the government is bound to compensate all subordinate officers for losses incurred, or damages awarded against them, in the execution of their duties.

The constitutional remedy against an executive government for political crimes, or misdemeanours, which may operate injuriously to private individuals—or against a minister of state who may be guilty of injustice or oppression in the exercise of his administrative functions—is an appeal to parliament; and more especially to the House of Commons. Attempts to obtain redress, in such circumstances, by resort to the courts of law are unavailing; inasmuch as such complaints are not properly cognizable by these tribunals, which have no jurisdiction to coerce or otherwise control high public functionaries.¹ Whereas, the House of Commons, as the grand inquest of the nation, is fully competent to investigate every case of ministerial abuse or misconduct, and to visit upon the offender the consequence of his misdeeds.²

In theory of law, the judgment and decision upon every matter of state is that of the sovereign, who acts, according to his discretion, upon advice given him by a responsible minister, who is sworn to keep the king's counsel secret, and who may not disclose elsewhere the nature of the advice given, without his sovereign's express permission. Nor is this secrecy enjoined merely as a personal privilege or protection to the sovereign or the minister, to be waived as they may think fit; it is founded upon constitutional principle and public policy which unite in recognizing the importance of entire and unfettered freedom in any advice to

¹ See Cooley's article in *Inter. Rev.* v. 3, p. 326.

² See Judgment of Court of Queen's Bench in case of *The Queen v. The Lords of the Treasury*, *L. T. Rep.* N.S. v. 26, p. 65; and debates thereon in *Hans. D.* v. 210, pp. 51-72; v. 211, pp. 504, 1868; and see *Wallace et aliter v. Ross*; 2 Russell and Chesley, *N. Scotia Rep.* p. 190. See *Hans. D.* v. 180, pp. 1019-102

be given to the sovereign, and the necessity for preserving the king's counsellors from being harassed by actions on false pretences of malice or corruption.¹

Every minister is directly responsible to parliament for his conduct in office, and for the advice he tenders to his sovereign; but he is responsible to no other tribunal. If he be put upon his trial by parliament, it is right that he should be at liberty to disclose the secrets of the council chamber, so far as they may affect his personal responsibility for the acts under review; and permission to that end is invariably accorded by the sovereign. But it is not right for a minister to disclose before a jury, or before an ordinary court of law, the counsels of the crown, because these tribunals have no power to follow up the matter, and to sit in judgment upon the advice given to the sovereign by her ministers, or upon the acts of the sovereign consequent upon such advice. And even if, on any particular occasion, permission to divulge the advice given by a minister should have been granted by the sovereign, for the purpose of evidence in a court of law, it is very doubtful whether the court would be justified in allowing the disclosure to be made. In the case of *Irwin v. Grey*, where the secretary of state for the home department had been summoned as a witness, the court would not permit him to be questioned as to the advice he had given to his sovereign; and the case was stopped by the judge.²

Council secrets
not to be
divulged in a
court of law.

¹ See the American practice, to the same effect, in *Am. Law. Rev.* v. 11, p. 164.

² 3 Fost. and Fin. p. 636.

CHAPTER III.

SUPPLY AND TAXATION.

Prerogative in regard to supply and taxation. "THE crown, acting with the advice of its responsible ministers, being the executive power, is charged with the management of all the revenues of the country, and with all payments for the public service. The crown, therefore, in the first instance, makes known to the commons the pecuniary necessities of the government, and the Commons grant such aids or supplies as are required to satisfy these demands; and provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which are granted by them. Thus the crown demands money, the Commons grant it, and the Lords assent to the grant. But the Commons do not vote money unless it be required by the crown; nor impose or augment taxes unless they be necessary for meeting the supplies which they have voted, or are about to vote, and for supplying general deficiencies in the revenue. The crown has no concern in the nature or distribution of taxes; but the foundation of all parliamentary taxation is its necessity for the public service, as declared by the crown through its constitutional advisers."¹

In entering upon a more detailed investigation of the relative functions of the crown and of parliament in the matter of supply, it is proposed to divide the subject into three parts, and to consider, first, the constitutional restrictions upon parliament in respect to (a) supply and (b) taxation; second, the rights and privileges of parliament, and especially of the House of Commons, in the grant of money for the public service; and third, the oversight and control of the public expenditure.

¹ May, *Parl. Prac.* pp. 650, 651, ed. 1883. See also Mill, *Rep. Gov.* p. 90.

1. (a) *The Restrictions upon Parliament in Matters of Supply.*

According to ancient constitutional doctrine and practice, no moneys can be voted by parliament for any purpose whatsoever, except at the demand and upon the responsibility of ministers of the crown.¹

No supply to be granted but on demand of the crown;

In former times, when any aids and supplies were required for the public service, the crown made known its wants to the House of Commons by message; this message was taken into consideration by the Commons, and the necessary supplies were voted by that House, according to its discretion. This mode of procedure in obtaining grants of money admitted of no exception. It therefore left no opportunity to any private member to introduce any scheme of his own whereby any charges would be made upon the people. But in the beginning of the last century a specious evasion of this constitutional rule crept in. The wholesome system of exchequer control in the custody of public moneys—which afforded protection alike to the crown and to parliament against illegal appropriations—was made the occasion of attempts to induce the crown, by the exercise of parliamentary influence, to sanction expenditures that were extravagant and unjustifiable. Finding that there was generally a balance of public money remaining in the exchequer, as yet unappropriated to any specific service, there was a growing disposition on the part of private members to regard this money as available for any purpose they might be disposed to favour. Petitions were presented to the House from various persons claiming pecuniary assistance or relief; which being often promoted by members who were friends to the parties, and carrying with them the appearance of justice or of charity, induced the House to approve, or at utmost to be indifferent to, their success. By this means large sums were granted to private persons improvidently, and sometimes upon insufficient grounds.² In the year 1705 this abuse became so notorious that, early in the next session, on

or petitions for pecuniary relief received;

¹ *Hats. Prec.* v. 3, p. 168; Hearn, *Govt. of Eng.* pp. 349–351; Mr. Gladstone's speeches, *Hans. D.* v. 181, p. 1131; *Ib.* v. 182, p. 597.

² *Hats. Prec.* v. 3, p. 242; Mr. Ayrton's speech on proposing the new supply order, on March 20, 1866; *Hans. D.* v. 182, p. 591.

December 11, 1706, before any petitions of this sort could be again offered, the House resolved, "That they would receive no petition for any sum of money relating to public service, but what is recommended from the crown." This resolution was made a standing order on June 11, 1713, and amended June 25, 1852, to bring it into conformity with existing practice, by the substitution of a new order to declare, "That or motions for grant of money entertained; this House will receive no petition for any sum of money relating to public service, or proceed upon any motion for granting any money, but what is recommended from the crown."¹

The uniform practice of the House has construed this rule to extend to any motion which involves the expenditure of public money, even though it may not directly propose a grant.²

And, although the House is not precluded from appointing a select committee to inquire into an alleged grievance or or reports of committees. matter of complaint against the government,³ it has been held that a select committee cannot recommend that public compensation should be made to individuals for losses incurred, unless the same had been previously sanctioned by the crown.⁴ This is a striking proof of the strictness with which this rule is enforced; as the mere report of a committee, though entitled to respectful consideration, does not bind the House to anything, unless it be formally agreed to by the House itself.

But, while the House of Commons has invariably maintained the principle embodied in the foregoing standing order, so far as it was directly applicable, the ingenuity of members has discovered a way of practically evading it. Of late years it

¹ For cases illustrating the strictness with which the House of Commons adheres to this rule, see *Mir. of Parl.* 1837, p. 259; *ib.* 1837-8, p. 2026; 1839, p. 123. The standing order of June, 1852, was extended to charges upon the Indian revenues, by standing order of July 21, 1856.

² May, *Parl. Prac.* 1883, p. 652. The recommendation of the crown is signified either by a message under the sign-manual, or by a formal notification by a minister of the crown (*Hans. D.* v. 105, p. 471; 3 *Hats. Prec.* pp. 169, 196).

³ Fourdrinier's Patent, *Com. Jour.* v. 92, p. 309; *Mir. of Parl.* 1837, p. 1888; claims of J. Clare, *Hans. D.* v. 174, p. 1460.

⁴ Fourdrinier's case, *Com. Jour.* June 15, 1837; and see *Hans. D.* 166, p. 710.

has become customary to permit the introduction of bills by private members, which, though not professedly in the nature of money bills, do yet necessitate, to a greater or less extent, the imposition of new charges upon the people, the precise extent of which cannot always be estimated at the outset. These bills have been either for the construction of certain public works, or for the establishment or encouragement of certain new institutions, or they have proposed to grant new salaries to officials to be appointed under the bills, or to grant compensation or aid to individuals, or associations for various causes assigned. But, whatever may be the precise object of these bills, inasmuch as they establish grounds of expense, they are an evasion of the constitutional rule which forbids the grant of money by parliament, except on the application of the crown. In order to admit of the proposed grant without a direct violation of constitutional practice, bills of this description invariably contain a clause to the effect that the necessary expenses to be incurred thereby should be "defrayed out of moneys hereafter voted by parliament." The facilities attending the introduction of such bills has frequently induced ministers themselves to take advantage of this mode of obtaining the sanction of parliament to their legislative measures. Moreover, in certain circumstances, and with a view to facilitate the progress of public business, bills of this class have even been permitted to originate in the House of Lords.¹

While it is obvious that the introduction of such bills by ministers of the crown is not open to the same objections as when they are brought in by private members, yet it is most desirable that measures of this description should be subjected to careful scrutiny, and that the probable expense they would entail should be duly estimated, and made known to the House

¹ Provided that any clauses which infringe upon the privileges of the Commons are formally struck out of the bill before it is sent to that House. But for the sake of convenience, and to make the measure intelligible, such clauses may be either written, or printed in red ink, in the copy of the bill which is sent down from the Lords; in which case they are understood not to form part of the bill, but to be merely suggestions, to be offered for the acceptance of the Commons in committee (see Rpt. of Joint Com. on Despatch of Business with Evidence, *Com. Pap.* 1868-9, v. 7; and proceedings on Divorce Court Bill, *Hans. D.* v. 160, pp. 1628, 1734, 1765).

by a responsible minister, before it is called upon to sanction them.¹ Where such bills have originated with private members, they have, as a general rule, been productive of great abuse, by encouraging injudicious and extravagant expenditure. If the principle of the bill obtains the sanction of parliament, the faith of parliament becomes pledged to the outlay involved, and ministers are obliged to include, in future estimates, distinct provision for it; and, when the particular grant that is required to carry out any such measure is brought forward in committee of supply, any objection to its principle is commonly met by the assertion that it is useless, if not unfair, to oppose it at this stage, inasmuch as parliament has already agreed that the proposed expenditure ought to be incurred. So long as private members are permitted to initiate measures which involve the expenditure of public money without the previous consent of the crown, it would be in vain to expect an economical administration of the public funds. These considerations were brought under the notice of the House of Commons by a private member (Mr. Ayrton), who proposed, in 1866, that, "The standing order of June 25, 1852, relating to applications for public money, be repealed, and, in lieu thereof, that this House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund, or out of moneys to be provided by parliament, unless recommended from the crown;" and that the further standing order of the same date, relating to public aids or charges upon the people, be repealed, and that, in lieu thereof, it be resolved, "That if any motion be made in the House for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund, or out of moneys to be provided by parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the House shall think fit to appoint; and then it shall be referred to a committee of the

have been
productive of
great abuse.

New standing
orders to
require the
previous con-
sent of the
crown to such
bills or
motions. i

¹ The Kensington Road Bill, and British Museum Bill, Smith, *Parl. Rememb.* 1862, pp. 25, 101. See the debate in the Commons, on the Public Offices (Site and Approaches) Bill, on March 7, 1865.

whole House, before any resolution or vote of the House do pass therein." The proposed new orders were accepted by the government, approved of by experienced members, and agreed to by the House.¹

Under these rules a bill by which it is intended to authorize a charge upon the public revenues may be introduced upon motion, provided that the money clauses are printed in italics. Thus they form no part of the bill, but are treated as blanks. Before they are discussed the queen's recommendation must be signified, and a committee of the whole House appointed to consider, on a future day, the resolution authorizing the charge.² But, whilst private members are not precluded from introducing bills of this description, it is obvious that it is most desirable that such legislation should, as a general rule, be initiated by ministers of the crown.³

And here it may be noticed that the practice of the House of Lords, in these particulars, is less stringent than that of the House of Commons. There is no rule or usage of the House of Lords to forbid the presentation, discussion, and reference to a committee of a petition for pecuniary redress or compensation; or for the expenditure of public money in the construction of particular public works, or for grants of money to particular institutions.⁴ And, although the House of Lords has no right to initiate measures of taxation, or propositions for increasing the pecuniary burdens of the people, yet they are not constitutionally debarred from instituting inquiries, by their own committees, into financial matters, or into questions which involve the expenditure of public money.⁵

Practice of
House of
Lords less
stringent.

¹ *Hans. D.* v. 182, pp. 591-603. Notwithstanding the increased stringency of these new orders, the ingenuity of members has succeeded in evading them by a form of motion not directly contrary to the words of the standing order (see *Ib.* v. 209, pp. 1966, 1996).

² The speaker, *Ib.* v. 209, p. 1952.

³ *Ib.* v. 218, p. 590; also *Ib.* v. 220, p. 854.

⁴ Baron de Bode's case, *Ib.* v. 173, p. 1622; v. 174, p. 962.

⁵ See May's *Parl. Prac.* ed. 1883, p. 647. Lords committees were appointed in 1847, to inquire into the receipts and charges of the post office, and into the manner of keeping the accounts thereof; in 1858, on spiritual destitution in populous places; and in 1860, on the levying and assessment of church rates.

Should any case arise, wherein it may appear to be the duty of the House of Commons to point out to the government public charges which ought to be incurred, they have still undoubted authority to do so, either by the adoption of a resolution, expressing an abstract opinion in favour of a proceeding which will necessitate a future grant of money, or by agreeing to address the crown to incur certain expenditure, with an assurance of their readiness to make good the same. An abstract resolution does not finally bind the House to make the grant, and it imposes upon the government the responsibility of either accepting or rejecting the recommendation. But this is a right which the House exercises, and should exercise, with very great reserve, and only in peculiar and exceptional circumstances. Moreover, the adoption of an abstract resolution, for the express purpose of evading a wholesome rule in matters affecting the public expenditure, should be discouraged as much as possible.¹

Addresses from the House of Commons to the crown, requesting an issue of public money for some particular purpose, with the assurance "that this House will make good the same," are required, by standing order, to originate in a committee of the whole House.² This "ancient and truly constitutional method of expressing the desire of the House, that some public charge shall be incurred," remains unimpaired, notwithstanding the increased restrictions imposed upon the initiation of money charges in 1866.³ But such addresses are only justifiable when there is no reason to apprehend that the supposed advance would be disapproved by the other House of Parliament, whose concurrence is necessary to give legal effect to any measure of supply or appropriation. Addresses have generally been

¹ See May (citing precedents), *Parl. Prac.* ed. 1883, p. 654; *Hans. D.* v. 197, p. 1807; v. 205, pp. 340, 663, 1871; v. 211, p. 1238; also Mr. Gladstone's speech on Mr. Ayrton's motion, March 20, 1866; Hearn, *Govt. of Eng.* p. 350.

² May, *Parl. Prac.* ed. 1883, p. 691.

³ Mr. Gladstone, *Hans. D.* v. 182, p. 598; address concerning transit of Venus in 1874; *Com. Jour.* v. 124, p. 404. By the Brit. N. Am. Act, 1867, sec. 54, the Canadian House of Commons is debarred from adopting an address for the advance of public money without a previous recommendation from the governor-general.

adopted upon occasions of urgency which have arisen after the committee of supply has closed its sittings—as, in order to submit to the crown a proposal to confer a pecuniary benefit on a particular person; or to show respect to the memory of some illustrious person lately deceased, by the erection of a monument to his honour; or for the purpose of obtaining the co-operation of the crown in a matter affecting the privileges of the House.¹

If a proposition be submitted to the House of Commons, on behalf of the crown, for a supply for a particular service, and an opinion should be generally expressed by the House in favour of a more liberal appropriation on this behalf than that which has been asked for by the government, while it is confessedly beyond the power of the House to vote a larger sum of its own accord, the ministry, in deference to the opinion of members, will sometimes agree to submit a motion for the increased amount suggested;² or will undertake to reconsider the matter, and to apply to parliament for a further grant, at a future period, should it appear expedient so to do.

The Commons sometimes in favour of a larger grant than that recommended by the crown.

(b) *The Restrictions upon Parliament in Matters of Taxation.*

As no supply can be voted, so no taxes can be imposed upon the subject, by parliament, for purposes of public revenue except upon the recommendation of the crown. Accordingly any proposition for the levy of a new tax or duty—or for the increase of particular taxes—should emanate from the government.³ But

Proposition concerning taxes should emanate from ministers.

¹ 3 *Hans. Prec.* p. 178–180 n.

² See case of the provision on behalf of the widow and children of Spencer Perceval, Walpole's *Life of Perceval*, v. 2, p. 303; the proposed grant for purchase of an annuity for the Duke of Wellington, when government recommended a vote of £300,000; but, in deference to the wishes of the House, consented to ask for £400,000 for this purpose (*Hans. D.* v. 27, p. 831). See also case of Sir H. Havelock, *Ib.* v. 151, p. 2355; and that of Lady Mayo, *Ib.* v. 210, p. 1479; v. 212, p. 1576. But no grant can be recommended, salary proposed, or other item in estimates increased, except upon recommendation of the crown (May, *Parl. Prac.* ed. 1883, p. 673). It may be reduced in committee of supply, or by the House itself, as in case of Prince Albert's annuity (*Mir. of Parl.* 1840, pp. 364, 380, 449).

³ *Hans. D.* 182, p. 592; v. 228, p. 1781; May, *Parl. Prac.* ed. 1883, p. 674.

there is a distinction in this respect between imperial and local taxes. "No private member is permitted to propose an imperial tax upon the people ; it must proceed from a minister of the crown, or be in some other form declared to be necessary for the public service. But any member may bring in a bill to impose heavy local burdens."¹

It should be observed, however, that the rule confining the initiation of all taxation to ministers of the crown is one of constitutional practice merely, and is not enforced by any standing order. Accordingly it has not been invariably insisted upon.² But, if not positively forbidden, it is nevertheless highly inexpedient for a private member to introduce a measure affecting the public revenue. It is only when such measures are in the hands of ministers that legislation upon them can be successful.³

It is also an invariable rule of constitutional practice that ministers are not required to answer questions involving an explanation of their intentions as to matters of taxation, until they may deem it expedient to the public interests to declare them.⁴

The general question of a revision of a certain class of duties having been submitted to the House by the crown, it is perfectly competent for any member, in committee of ways and means, or in committee of the whole House upon the Customs or Inland Revenue Acts, to offer an amendment to a particular rate of duty proposed to be levied, either for the increase or diminution of the same : it may even be proposed to insert in the schedule a new rate of duty, provided it relates to an article which is already included therein.⁵ And, when the House resolves itself into a committee of ways and means to consider of raising supplies for the service of the current year, it is competent for any member to propose another scheme of taxation of equivalent amount as a substitute for the government plan.⁶ But a

¹ Sir T. E. May's evidence before Joint Com^e. on Despatch of Business, *Com. Pap.* 1868-69, v. 7, p. 185 ; *Hans. D.* v. 215, p. 1676.

² *Ib.* v. 115, pp. 660-668.

³ *Ib.* v. 186, pp. 160, 1849.

⁴ *Mir. of Parl.* 1840, p. 1203 ; *Hans. D.* v. 158, p. 1879 ; v. 181, p. 963.

⁵ *Com. Jour.* 1842, p. 367 ; *Hans. D.* v. 75, p. 1020 ; v. 218, p. 1041.

⁶ May, *Parl. Prac.* ed, 1883, p. 675. And see a case on June 20, 1836, where a member proposed a reduction of the soap duties in lieu

proposition made by the chancellor of the exchequer, in committee of ways and means, to require licenses to be taken out by brewers, cannot be amended, upon the motion of a private member, by extending such licenses to other manufacturers, iron-masters, and coal-owners; inasmuch as this would be a new and distinct tax, and not the mere increase of a duty upon an article already recommended by government for taxation.¹

On July 1, 1853, in committee of the whole House on the stamp duties, the opponents of a proposed rate of duty on advertisements succeeded in negating the government proposition altogether.² And on May 12, 1862, in committee on the Customs and Inland Revenue Bill, so much thereof as imposed a tax for brewing beer in private houses was struck out; the government agreeing to the same, in deference to the wishes of the House.³ And, if a proposed tax which has been announced in the budget excites general dissatisfaction, it is not unusual for the government to acquaint the House, at a subsequent stage of proceeding, that they have resolved to abandon it.⁴

The introduction of a bill or resolution for the reduction or repeal of an existing rate of taxation, whether for fiscal purposes or for the regulation of trade, is a parliamentary question, in which the crown has no direct concern.⁵ The strict right of a private member to take the initiative in such a proceeding cannot therefore be denied, and has been acknowledged of late years by leading statesmen.⁶ It is nevertheless in the highest degree inexpedient under parliamentary government for private members to assume the responsibility of proposing such questions to parliament. It is an important financial principle, that "the House should not be called upon to condemn taxes

Inexpedient for private members to introduce such questions.

of the government scheme for a reduction of the duty on newspaper stamps (*Mir. of Parl.* 1836, p. 1963; Mr. Gladstone, *Hans. D.* v. 223, p. 389).

¹ *Ib.* v. 202, p. 307.

² *Ib.* v. 128, p. 1129.

³ *Ib.* v. 166, p. 1574.

⁴ Proposed duties on club-houses, and on charities in 1863, *Ib.* v. 170, pp. 846, 1102, 1125, 1365, 1395; and on matches, *Ib.* v. 205, pp. 1418, 1528, 1585-1659.

⁵ Hearn, *Govt. of Eng.* p. 351; May, *Parl. Prac.* ed. 1883, p. 684; *Hans. D.* v. 211, p. 1903.

⁶ By Mr. Disraeli, *Ib.* v. 125, p. 1174; by Mr. Gladstone, *Ib.* v. 161, p. 1667.

which they are not prepared on the instant to repeal,"¹ as by so doing they unsettle the minds of commercial men in their business transactions, and occasion embarrassment to the government in their plans for the regulation of the public finances. Abstract resolutions advocating changes in the scheme or distribution of taxation, or the imposition of new duties;² or the reduction of particular branches of taxation, have been not infrequently submitted to the House of Commons by private members, but they have been generally resisted by the government as being inexpedient and impolitic.

Abstract resolutions on particular taxes.

2. *The Rights and Privileges of Parliament, and especially of the House of Commons, in the Grant of Money for the Public Service.*

From a very early period in the history of England the principle has been established, that the right of taxation and the granting supplies for the public service belong exclusively to parliament.

Grant of supplies by parliament.

The old prerogative claim of the sovereign to levy taxes on the subject at his own will and pleasure, was first expressly restrained by the declaration, in Magna Charta, that "no scutage or aid shall be imposed in our kingdom unless by the general council of our kingdom;" with certain exceptions peculiar to the person and family of the king himself.

This concession lies at the foundation of our parliamentary institutions, and especially of the House of Commons as a distinct branch of the legislature. The growth of the Commons in power and influence was strikingly exemplified by the statute *De tallagio non concedendo*, in the 25th Edward I., by which it was declared, "That no tallage or aid shall be taken or levied without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land."³

Concurrently, however, with parliamentary taxation, other imposts used to be levied by royal prerogative,⁴ independently

¹ Mr. Gladstone, *Hans. D.* v. 125, p. 1149; v. 173, p. 1462.

² *Com. Jour.* v. 88, p. 336; v. 94, p. 510; v. 102, p. 580; v. 103, p. 886; *Hans. D.* v. 229, p. 778.

³ Stubbs, *Const. Hist.* v. 2, pp. 142, 564.

⁴ Cox, *Inst.* pp. 600-603.

of the action of parliament; but none of these survived the revolution of 1688. It was guaranteed by the Bill of Rights that henceforth "no man be compelled to make any gift, loan, or benevolence, or tax, without common consent by Act of Parliament." And it was finally established by the Act of Settlement, "That levying money for or to the use of the crown by pretence and prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal."

Since that memorable period the crown has been entirely dependent upon parliament for its revenues, which are derived either from annual grants for specific public services, or from payments already secured and appropriated by acts of parliament, and which are commonly known as charges upon the consolidated fund.¹

No supplies to be used unless granted by parliament.

While the crown is not at liberty to invite or receive gifts or loans of money for any public service without the consent of parliament, no person may voluntarily lend money to the crown, or to any department of state, for public purposes, without the sanction of parliament, under penalty of a misdemeanour.² The charter of the Bank of England contains a clause forbidding money transactions between the bank and the treasury, that have not received express parliamentary authority.³

Consent of parliament necessary to receive gifts or loans.

The constitutional principle of parliamentary control is also applicable to advances or loans of public money, to foreign powers, corporations, or private persons; to the remission of debts due to the crown by any

Loans.
Debts due to the crown.

¹ Broom, *Const. Law*, pp. 398-402. [The statement in the text is practically, but not literally correct. At the time of the revolution the crown enjoyed—as it still enjoys—certain hereditary revenues, but the hereditary revenues formed so small a portion of the whole that the crown was practically dependent on parliament.—*Editor*.]

² See debates in the Commons on Mr. Sheridan's motion respecting voluntary aids for public purposes without the consent of parliament, *Parl. Hist.* v. 31, pp. 83, 97; and in the Lords, *ib.* p. 122. See Lord Brougham's comments on this case, *Hans. D.* v. 83, p. 37; Mr. Massey's observations in his *George III.* v. 4, p. 77; Clode, *Mil. Forces*, v. 1, p. 101; *Com. Pap.* 1868-9, v. 35, p. 963.

³ *Hans. D.* v. 162, p. 887; and see Report of the Comptroller of the Exchequer, in *Rep. Com^o. on Public Moneys*, *Com. Pap.* 1857, sess. 2, v. 9.

such persons or powers ;¹ and even to the sale of property by one department of the state, and its purchase by another department for public uses. It equally applies to the gift of public money, or public stores, in the name or on behalf of the crown.² Public departments are not now at liberty to give away stores without the direct sanction of parliament. The rule, that no public property should be disposed of in kind, has been "one of the most difficult achievements of financial reform during the last half-century." Before the establishment of this rule the public never knew when anything was given away, or what was the value of the gift.³ But by a treasury minute, issued on May 13, 1871, pursuant to the First Report of the Committee of Public Accounts in that year, every public department is now required to notify the treasury whenever it is proposed to relinquish a claim due to the public, whether of cash or stores.

Advances out of the public funds, for whatsoever purpose, should ordinarily be made only by express authority of parliament.⁴

In urgent cases, requiring immediate relief, or when, on grounds of public policy, secrecy is advisable, the government can have recourse in the first instance to the "civil contingencies," or the "treasury chest" funds, the nature of which will be hereafter explained. But they are strictly accountable to parliament for all such transactions, and the advances so made out of these funds must be replaced out of moneys voted by parliament for that service.⁵ Upon this principle the surrender of the rights of the crown in cases of "treasure trove," by relinquishing the same to the finders,

¹ S. O. House of Commons, March 25, 1715, and March 29, 1707, compounding debts due to the crown, *Com. Jour.* v. 75, p. 167; v. 81, p. 66; case of the Crinan Canal Co., *Ib.* v. 83, pp. 213, 219, 251.

² *Hans. D.* v. 193, p. 1279; Clode, *Mil. Forces*, v. 2, p. 445.

³ Mr. Gladstone, on an address for the grant of gun-metal to erect a statue to Visct. Gough, *Hans. D.* v. 203, p. 779.

⁴ See Act 57 Geo. III. c. 34, appointing Public Works Loan Commissioners, and several Acts since passed extending powers of that board; also Acts 29 & 30 Vict. c. 72; 30 Vict. c. 32.

⁵ See Mr. Pitt's advance to Messrs. Boyd, Benfield & Co. in 1796, *Parl. D.* v. 5, pp. 385-424; also *Hans. D.* v. 63, pp. 1139, 1314; Peel's *Memoirs*, v. 2, p. 174; Knight's *Hist. of Eng.* v. 8, p. 548; Rep. on Pub. Moneys, *Com. Pap.* 1857, sess. 2, v. 9, p. 615.

would be unjustifiable, had it not been authorized by the Civil List Act.¹

Directly the House of Commons have agreed to the address in answer to the speech from the throne, the committee of supply is at once appointed, for a ^{Grant of} supply. future day, by virtue of a standing order of July 28, 1870. As it is the duty of this committee to consider the estimates for the current year, the House then orders the estimates for the army and navy to be laid before them, and addresses the crown to give directions accordingly.²

3. *The Control of Parliament over the Revenue.*

We may now proceed to state the various sources from whence the public revenue is derived, and the extent ^{Public} to which the revenue is subjected to the periodical ^{revenues.} revision and control of the House of Commons.

The revenues of the crown in Great Britain were anciently derivable from the hereditary lands of the crown, and from the operation of various prerogative rights. But, since the establishment of parliamentary government, these revenues have been mostly surrendered to the control of parliament, in exchange for a permanent civil list. The public revenues of the country are now chiefly obtained from taxes and other imposts, which are levied under the authority of acts of parliament.³ The whole revenue, from whatever source derived, is now (with some trifling exceptions) paid into the Bank of England or Ireland to the account of her Majesty's exchequer. The old system of retaining public money at the exchequer itself has been entirely abolished, and this great department remodelled, by recent legislation, as will hereafter appear, when we consider the manner in which the control of parliament is exercised over the issue of public money.

¹ 1 & 2 Vict. c. 2, § 12; *Hans. D.* v. 180, p. 440. In regard to the prerogative of treasure trove, see Forsyth, *Const. Law*, p. 178.

² *Com. Jour.* Nov. 25, 1867.

³ For an historical account of the several branches of the public revenue, see *Public Income and Expenditure of Gt. Britain, 1801-1869 (Com. Pap. 1868-9, v. 35, p. 889, et seq.)*, presented to parliament in 1869. As to the distinction between direct and indirect taxation, and the proportion contributed by each to the public revenue, see Mr. Lowe's and Mr. Disraeli's observations, *Hans. D.* v. 206, pp. 625, 976, 983.

The revenues which are thus paid into the Bank of England, to the account of the exchequer, comprise all the principal revenues of the kingdom, including the customs and inland revenue, and the receipts from the post office.

Formerly, the proceeds of parliamentary taxes constituted separate and distinct funds; but, by the Act 27 Geo. III. c. 13, § 47, it was directed that the various duties and taxes should be carried to and constitute a fund, to be called "The Consolidated Fund."¹

When the annual revenue raised by taxes is found insufficient, as in the case of war, to meet the annual expenditure, parliament grants authority to raise money by loan to cover the deficiency. All moneys so raised are dealt with like the ordinary revenue, and are paid to the account of the exchequer for the credit of the consolidated fund.²

Until the year 1854, the charges of collection and management of the revenue of customs, inland revenue, and the post office, were payable out of the gross receipts of these imposts, respectively, and only the net revenue, after these and other deductions, was paid into the consolidated fund. The constitutional objections to this practice were repeatedly pressed upon the attention of successive administrations without effect. At length, on April 29, 1847, Dr. Bowring submitted to the House of Commons a series of resolutions—based upon the report of the commissioners of public accounts in 1831—recommending the adoption of an approved system for the security of the public revenue, and for ensuring greater accuracy, simplicity, and completeness, in the public accounts; and requiring that the gross revenue of the country, without any deduction whatever, should be paid into the public chest, and be subjected to the surveillance and control of parliament. After some debate, the motion was withdrawn. But, on April 30, 1848, the discussion was again renewed, and Dr. Bowring succeeded in carrying his resolutions by a bare majority. When questioned upon the subject in the following session, the chancellor of the exchequer informed the House that steps had been taken by the

¹ *Com. Pap.* 1868-9, v. 35, pp. 811-931. The consolidated funds of England and Ireland were united by 56 Geo. III. c. 98; and by 1 Vict. c. 2, various hereditary revenues of the crown were carried to this fund.

² Second Rept. Com^o. Pub. Accts. *Com. Pap.* 1873, v. 7, p. 207.

government to carry out in part the reforms proposed by the resolutions.¹ But it was not until 1854 that the great object aimed at by Dr. Bowring was sought to be accomplished by the passing of a bill, which was introduced into parliament by Mr. Gladstone, "to bring the gross income and expenditure of the United Kingdom, etc., under the more immediate review and control of parliament."² By this act, it was intended that the whole of the gross revenues of the country, derived from the customs, excise (with the exception of certain drawbacks, discounts, and repayments), and other taxes (not including the land revenues of the crown, which are otherwise provided for), should be paid into the exchequer, and the cost of collection be defrayed out of votes of supply.³ Besides the cost of collection, the revenue was formerly chargeable with certain judicial and other salaries, pensions, and other payments, under the authority of various acts of parliament. By Mr. Gladstone's act, these charges were transferred either to the consolidated fund or to the annual supplies to be voted by parliament.⁴ Under the authority of this act a very large number of charges, previously paid out of the consolidated fund, were placed, thenceforth, in the annual estimates.⁵ And, by the Act 19 & 20 Vict. c. 59, certain superannuations and other charges which still remained payable out of the gross revenues were directed to be removed from the same, and placed upon the consolidated fund, etc. The only payments remaining which could be legally charged upon the gross revenues were the charges on the land revenues of the crown—the net receipts only of which are payable to the consolidated fund, under the statute 10 Geo. IV. c. 50, § 113, and the Civil List Act of 1 & 2 Vict.—and the drawbacks, bounties, repayments, and discounts, aforesaid.

But, notwithstanding the acts of 1854 and 1856, the intentions whereof were clearly to require the payment of the

¹ *Hans. D.* v. 102, p. 499.

² Act 17 & 18 Vict. c. 94.

³ Mr. Gladstone's speech, in *Hans. D.* v. 130, p. 216; see also *Ib.* v. 135, p. 301.

⁴ As to the results which have followed from this improved system, see Peto on *Taxation*, ch. ix. "on the Collection of the Revenue;" and Northcote on *Financial Policy*, p. 238.

⁵ Mr. Gladstone, in *Hans. D.* v. 169, p. 1943.

Gross revenues payable to exchequer.

whole revenue, minus the drawbacks, etc., above mentioned, into the exchequer, this result was not obtained, owing to an omission in the acts of any provision to render such a course compulsory. Accordingly, the attention of the committee on public moneys, in 1857, was directed to the matter, and they recommended the passing of a law to make it imperative on the government to pay the gross revenues to the exchequer, without any deductions than those above-mentioned, in order that all issues for the public service might receive the previous sanction of parliament. They also suggested that, if possible, the charges on the land revenues should be brought under the same parliamentary control.¹ By treasury minutes, dated February 15 and December 23, 1858, the government agreed to this recommendation, excepting so far as the land revenues were concerned, which, for reasons stated, could not be carried out until a new civil list should be under consideration.² But, although the treasury undertook to submit to parliament a bill to effect this desirable improvement, no such measure was brought forward, and this great reform remained partially uncompleted until the passing of the Exchequer and Audit Departments Act, in 1866, the tenth clause of which has made the practice obligatory. Before the passing of this act, the cost of collection was still deducted in some cases from the gross revenue; in other instances part of the cost was paid out of the gross revenue, and another part voted by the House of Commons in the supplies of the year.³

For considerations of public convenience, it is customary, in the case of the revenue departments generally, to pay the salaries of employés, in the first instance, out of revenue receipts, and afterwards to repay these advances to the exchequer out of the parliamentary votes for the said departments. This practice has been tacitly approved by the committee of public accounts, and is sanctioned by the tenth clause of the Exchequer Act.⁴

Salaries in
revenue
departments.

¹ Rep. Com^o. Pub. Moneys, p. 4; *Com. Pap.* 1857, 2nd sess. v. 9.

² *Ib.* 1857-8, v. 34, p. 380; and 1860, v. 39, pt. i. p. 174.

³ Peto on *Taxation*, p. 210. But see Earl Grey on *Parl. Govt.* (new ed. pp. 85-90) for remarks on evil effects attending this change.

⁴ Fifth Rep. Com^o. Pub. Accts. *Com. Pap.* 1871, v. 11, p. 435; 2nd Rep. *Ib.* 1873, v. 7, p. 250; Treasury Minute, *Ib.* 1867, v. 39, p. 337.

With this exception, therefore, the whole public revenue of the country, together with moneys received from loans, is placed to the account of the consolidated fund, out of which all public payments are made. Such payments are twofold: 1. By authority of permanent grants, under acts of parliament. 2. Pursuant to annual votes in committee of supply, payable out of the consolidated funds by ways and means annually provided.

4. *The Control of Parliament over Expenditure.*

The services provided for by permanent grants are in the proportion of about thirty millions to seventy millions of revenue. They are as follows:—

1. The National Debt,¹ including the funded and unfunded debt; 2. The civil list; 3. Annuities to the royal family, and pensions; 4. Salaries and allowances of certain independent officers; 5. Courts of justice; 6. Certain miscellaneous services, comprising interest and sinking fund of the Russian, Dutch, and Greek loans, compensations, etc. These charges are made payable out of the consolidated fund, by permanent statutes, from year to year, without any renewal of parliamentary authority.²

The annual charges for the maintenance of the naval and military forces, for the collection of the revenue, and for the various civil services, are prepared in the respective departments of state to which they severally belong, are afterwards revised and approved by the treasury, and are then submitted to the House of Commons³ by command of the crown.

¹ Amos, *Primer of Eng. Const.* ed. 1875, p. 222. For origin of national debt, see Macaulay, *Hist. of Eng.* v. 4, p. 319. For particulars regarding several sinking funds established since 1716, and progressed opinion in parliament on question of sinking fund for reduction of national debt, see *Com. Pap.* 1868-9, v. 35, pp. 1194-1214; 38 & 39 Vict. c. 45; treasury minute of July 23, 1881, on Mr. Gladstone's scheme for further reducing the national debt, *Com. Pap.* 1881, v. 17, p. 307. For precautions taken to secure punctual payment of interest to the national creditor, and also payment of other fixed charges by the Bank of England, on behalf of government, see *Shilling Mag.* v. 4, p. 44.

² For financial history of these great heads of expenditure, see *Com. Pap.* 1868-9, v. 35, pp. 996-1134.

³ It is not customary to send the estimates to the House of Lords. In 1786 they applied for a copy, and were refused by the Commons. In 1839 they succeeded in obtaining a copy, "almost for the first time in their history" (*Hans. D.* v. 159, pp. 1140, 1503).

In order that the House may be informed, as early as possible, of the expenditure for which they will have to provide, the following resolution was agreed to on February 19, 1821, and has ever since been complied with:—

“That this House considers it essentially useful to the exact performance of its duties, as guardians of the public purse, that, during the continuance of the peace, whenever parliament shall be assembled before Christmas, the estimates for the navy, army, and ordnance departments should be presented before January 15 then next following, if parliament be then sitting; and that such estimates should be presented within ten days after the opening of the committee of supply, when parliament shall not be assembled till after Christmas.”

The estimates for civil services, commonly called the miscellaneous estimates, together with those for the revenue departments and packet service, were usually presented somewhat later in the session. Since 1857, the committees on public moneys, on miscellaneous expenditure, and [on public accounts, have all recommended that these estimates should be laid on the table every session, as soon as possible after the meeting of parliament, but the government experienced great difficulty in expediting their delivery.¹ On March 21, 1862, the House of Commons was informed by the chancellor of the exchequer (Mr. Gladstone) that, while it was most desirable to carry out this recommendation as strictly as possible, these estimates could not be presented with the same regularity as those for military and naval services; inasmuch as their complete preparation depended not merely on other public departments, but upon members of commissions, governing bodies of institutions, and even on others who gave gratuitous services to the public; and that, if the House laid down any fixed rule on the subject it would be complied with, “but the effect would be that the miscellaneous estimates would be imperfect, and the practice of presenting supplementary estimates—one of the greatest financial evils the House could endure—would of necessity prevail.”²

The objection urged by Mr. Gladstone in the foregoing

¹ Treasury minute of Dec. 23, 1858, in *Com. Pap.* 1860, v. 39, pt. i. p. 176.

² *Hans. D.* v. 165, p. 1930.

remarks against the practice of supplementary estimates is one that he has repeatedly pressed upon the attention of parliament. In 1862 he stated that he regarded such estimates "with great jealousy. Though very plausible in theory, he thought that in practice nothing tended so much to defeat the efficacy of parliamentary control as the easy resort to supplementary estimates. To render this control effectual, it was necessary that the House of Commons should have the money transactions of the year presented to it in one mass, and in one account. If it is to be a set of current transactions, with a balance varying from time to time, the House would never know where it was. If supplementary estimates were easily and frequently resorted to, the House would be obliged, in self-defence, to appoint a permanent finance committee."¹

The gradual augmentation of the general administrative business of the country, which has taken place since the peace of 1815, and which is a proof of growing national prosperity, is unavoidably accompanied by a proportionate increase in the demands of nearly every department of the civil government—an increase moderate in each instance, but amounting to a considerable sum in the aggregate.²

The increase in the civil service estimates is also attributable to additional duties imposed upon government by recent legislation in the supervision and control of various branches of industry; to increased grants in aid of education, for the prevention of crime, and for the relief of local rates; and to the transference to the annual estimates of large items of expenditure previously charged upon the consolidated fund or the civil list, and not directly cognizable by the House of Com-

¹ Com. on Pub. Accts. *Com. Pap.* 1862, v. 11, Evid. 1571; also *Hans. D.* v. 169, p. 1860; and debate on supplementary estimates submitted by Mr. Disraeli, in 1866, *Ib.* v. 184, pp. 1292, 1673; v. 185, p. 499. But in regard to supplementary estimates submitted early in a session, to make good deficiencies in grants of a previous year—a practice now invariable—see Mr. Ayrton's observations, *Ib.* v. 194, p. 539.

² See statement of votes and expenditure for civil services from 1835 to 1869, *Com. Pap.* 1868-9, v. 35, p. 1138; *Ib.* 1868-9, v. 42, p. 627, etc. For a comparison between the civil service estimates in 1853 and in 1877, see *Hans. D.* v. 233, p. 659; H. Mann, Cost of Civil Service, *Statist. Soc. Jour.* [v. 32, pp. 40-47; Remarks on increase of navy estimates, *Hans. D.* v. 192, p. 48.

mons.¹ These additional expenditures of government have often given rise to imputations of extravagance which probably, in some cases, have not been unfounded, and have naturally led to various expedients, on the part of financial reformers, to effect reductions in the same. The constitutional course of appointing a committee of public accounts will be noticed in its proper place. Such committees, however, are necessarily limited to the investigation of past transactions, and to the consideration of questions arising out of the management of financial matters by the executive government.

Proposed reduction in the public expenditure.

Not content with legitimate inquiries into past expenditure, attempts have occasionally been made to induce the House of Commons to appoint select committees to revise the estimates before they should be submitted to the committee of supply; but these attempts have been uniformly unsuccessful. In one or two instances, during the reign of William III., we read of the estimates, with other accounts, being referred to a select committee;² but since the doctrine of ministerial responsibility has been properly understood, no such proceedings have been permitted.³

Committee to revise the estimates.

The estimates of the supplies required by government for the service of the year are divided into separate votes, or resolutions, which appropriate specified sums for services specially defined, and for the period of one year. Some of the votes are for very large amounts, but, practically, there is no more difficulty in dealing with such votes than with any others, inasmuch as each vote is accompanied, in the printed estimates, with a list of the particular items, or heads, of expenditure, which are intended to be defrayed out of the same. In addition to the information thus afforded in regard to the proposed expenditure, the printed estimates contain numerous explanatory tables and notes, in relation to particular branches of expenditure; and preliminary abstracts, lists of accounting departments, and

¹ *Com. Pap.* 1868-9, v. 35, pp. 1138-1141; *Hans. D.* v. 233, pp. 659-662.

² *Ib.* v. 165, p. 1325.

³ [The statement in the text is too strong. The estimates were referred to a select committee in 1848, and the precedents for this course were

² *Hans.* v. Sir C. Wood in *Ib.* v. 96, p. 1063.—*Editor.*]

statements of grants in aid of local taxation and expenditure. The estimates are now submitted to the House of Commons in much greater detail than formerly, in order to meet the increasing demand for full and accurate information upon all matters which concern the public expenditure.¹

The estimates for miscellaneous civil services² are now arranged under seven heads, or classes, of subjects, Civil service] estimates.
viz. 1. Public works and buildings; 2. Salaries and expenses of public departments; 3. Law and justice; 4. Education, science, and art; 5. Colonial, consular, and other foreign services; 6. Superannuation and retired allowances, and gratuities for charitable and other purposes; 7. Miscellaneous, special, and temporary objects. Then follow, as a separate class, estimates for the revenue departments, post-office, packet and telegraph services. And a general index to the entire estimates is appended.

The treasury expressed an opinion, in 1866, that hereafter it would be more convenient, not only as a means of facilitating discussion on the estimates in the House of Commons, but also in the subsequent preparation and audit of the appropriation accounts of the expenditure incurred, that the services conducted under the responsibility of distinct departments of the government should, as far as possible, be grouped together in a distinct series of votes. This opinion was concurred in by the committee of public accounts,³ and has since been carried out.⁴ The civil service estimates are now preceded by a statement showing the services in each class for which the several departments will be required to account, and to each vote is appended the sub-heads under which it will be accounted for. Moreover, pursuant to the Act 31 Vict. c. 9, in regard to extra receipts, votes for the precise amount required for each department are taken, while the receipts, heretofore applied in reduction of said amounts, are now paid into the exchequer.

¹ *Hans. D.* v. 167, p. 56; *Ib.* v. 171, p. 322.

² For account of miscellaneous civil service estimates, their classification, gradual increase and revision, with view to reduction, see Peto on *Taxation*, p. 310; Rpts. of Com^o. on Misc. Exp. in 1847-8, and Pub. Accts. in 1861 and 1862, Mr. Gladstone, *Hans. D.* v. 174, p. 538.

³ Treas. minute, June 22, 1866, *Com. Pap.* 1866, v. 39, p. 143, etc.; Rep. Com. Pub. Accts. 1866, v. 7, pp. 557, 564; Special Rep. (Exch. and Audit Bill), *Com. Pap.* 1866, v. 7, Evid. 193, 194, 207.

⁴ *Hans. D.* v. 197, p. 1191; Civ. Serv. Est. 1868-9, and 1869-70.

This system has caused a considerable increase in the nominal amount of the votes, but it enables the House to exercise a greater control over the expenditure of the various departments.¹

When the estimates have been presented to the House, they are ordered to be printed for the use of members, and are referred to the committee of supply.

The sittings of the committee of supply then commence.²

When the navy or army estimates are under the consideration of the committee, it is customary to permit members to animadvert upon the whole estimates, or upon naval or military matters generally, before the first vote is moved; and this opportunity is usually taken by the mover, to review the whole policy of the estimates. But, after the first vote, the discussion is strictly confined to the particular vote before the committee.³ The civil service estimates used to be considered to be of too miscellaneous a description to be dealt with in a general statement;⁴ but in 1877, in deference to opinions expressed in the House of Commons, the chancellor of the exchequer undertook that the secretary of the treasury, before moving these estimates, should give some general explanations upon the progressive increase of civil service expenditure.⁵

Each resolution of supply is proposed from the chair in the following words: "That a sum not exceeding £——⁶ be granted to her Majesty" for the object specified in the particular vote in the printed estimates. This motion may be either agreed to or negatived, but it is not competent for the committee to make any alteration therein which could change the destination of the vote,⁷ or increase the amount proposed,⁸ because the

¹ *Hans. D.* v. 191, p. 1161; *Civ. Serv. Est.* 1869-70, *Com. Pap.* 1868-9, v. 42, pp. 3, 12.

² But in 1869 a vote on account was taken before the presentation of the estimates.

³ *Hans. D.* v. 181, pp. 1321, 1525; v. 223, p. 656.

⁴ *Ib.* v. 181, p. 1783; v. 191, p. 984; and see *Rep. Com^o. on Parl. Business*, *Com. Pap.* 1871, v. 9, p. 29; *May, Parl. Prac.* ed. 1883, p. 677.

⁵ *Hans. D.* v. 232, p. 1040; v. 233, p. 125.

⁶ Votes of parliament are not taken for fractions of a pound.

⁷ The speaker, *Hans. D.* v. 71, p. 295; *Ib.* v. 169, p. 1774; v. 173, p. 1282.

⁸ *Mir. of Parl.* 1834, p. 615; *Hans. D.* v. 148, p. 392. So a motion to

House of Commons can only vote money pursuant to the recommendation of the crown. In like manner, it is irregular to move an instruction to the committee of supply, as it is only competent for the committee to consider the estimates which have been submitted to the consideration of the House by the crown.¹

The votes in committee of supply are usually proposed for large sums for particular heads of service; but, as ^{Votes in supply.} the separate items for which the supply is required are detailed in the estimates, the practice of the House (as altered in 1857) permits of a question being put that any item objected to "be omitted from the proposed vote," or, "be reduced by the sum of £—," as the case may be. Where a general reduction of a particular vote is proposed, the question is first put upon the smallest amount proposed to be granted; and, in like manner, if more than one amendment be offered, conformably to the ancient order of the House, "That where there comes a question between the greater and lesser sum, or the longer and shorter time, the least sum and the longest time ought first to be put to the question."² After a motion for the reduction of a particular item in a vote has been proposed from the chair, it is not competent to propose a motion in relation to, or to debate, a previous item,³ but any question in regard to the same may be raised upon the report of the resolutions to the House.

Formerly, when a motion had been put from the chair to omit or reduce an item in a vote, it was no longer ^{Reduction of a vote.} competent to move for a reduction of the vote.

increase the number of men in a vote on the army estimates, though professedly intended merely to rectify an error in the calculations of ministers, was declared to be irregular (*Hans. D.* v. 169, p. 1267).

¹ The speaker, *Mir. of Parl.* 1828, p. 1972; but see proceedings in case of Capt. Ross, the Arctic navigator, to obtain for him a grant of £5000. Upon his petitioning the House of Commons, with the consent of the crown: his petition was referred to a select committee, reported upon favourably, and then, his petition having been previously referred to the committee of supply, a vote was agreed to in supply on motion of a private member, to grant him the sum recommended by the select committee (*Ib.* 1834, pp. 608, 797, 843, 2864). And see a similar case in regard to a vote proposed by Mr. Hume, in committee of supply, for the purchase of 1250 copies of Marshall's *Digest of Statistics*, *Ib.* 1834, p. 1513.

² May, *Parl. Prac.* ed. 1883, p. 671; *Hans. D.* v. 172, p. 1026.

³ *Ib.* v. 179, p. 1286.

generally.¹ But in 1868 this practice was altered, and a rule adopted to permit an amendment for a reduction of the whole vote, after a decision of the committee upon a particular item, on the ground that members ought to be always free to adopt the more constitutional course of moving the general reduction of a vote, leaving it to ministers to determine in what way the retrenchment could be best carried into effect. But after a question had been put for a reduction of the whole vote no motion can be made to omit or reduce any item.² But a motion for the reduction of a vote by a particular amount, if negatived, may be followed by another for a smaller reduction, provided only that a distinct and separate issue is thereby submitted.³

It is irregular to move in committee of supply for the adoption of a general resolution in regard to any particular vote,⁴ or to move that a particular vote be referred to a select committee. But a vote can be reduced, with the ulterior object of moving in the House for the appointment of a select committee to inquire into the question connected therewith.⁵

A vote proposed in committee of supply may not, in point of form, be postponed, because there is no period to which it can be postponed.⁶ But the mover may, with the consent of the committee, withdraw it, and submit it again on another day, with or without alteration, and either as a distinct vote, or in separate items.⁷

The committee of supply considers the money to be voted for the current year. Where the proposed grant is not part of the service of the current year—as, for instance, a permanent increase to judges' salaries—it is more regular to propose it in any other committee of the whole House than the committee of supply, provided the queen's recommendation is first signified, and on their report a bill is ordered, or a clause inserted in a bill already before the House.⁸

The entire sums proposed to be granted for particular

¹ *Hans. D.* v. 148, p. 1083; v. 191, pp. 1009-1013.

² *Ib.* pp. 1025-1033, 1464-1466.

³ *Ib.* v. 236, p. 592.

⁴ *Mir. of Parl.* 1831, p. 1826; 1831-2, p. 3472.

⁵ *Hans. D.* v. 172, p. 131.

⁶ *Ib.* v. 159, p. 549.

⁷ *Mir. of Parl.* 1839, p. 1408; 1840, p. 1867.

⁸ See May's *Prac.* ed. 1883, p. 693.

services are not always voted at the same time, but a certain sum is occasionally voted either "on account" or as a vote of credit.

Votes of credit are usually asked for on behalf of contemplated war expenditure, when it is necessary to have ample funds on hand, and impossible to determine beforehand the exact amount required.¹ Nevertheless, they should be strictly limited both as to their amount and object. In two or three instances only between the revolution and 1735 were unlimited votes of credit given to the ministers of the crown for army or navy purposes. Ever since, when the Commons have granted a vote of credit, they have named a specific sum in the Appropriation Act, and have prescribed the purpose to which it must be applied.²

Votes "on account" were formerly restricted to occasions of unexpected emergency, arising out of ministerial changes, when it was desirable to place at the disposal of government funds for the public service without specifically appropriating the same to particular items of expenditure. In such cases it is usual to vote a portion only of the yearly estimates, and in the following session to inquire into the expenditure thereof, in order to ascertain that it was duly appropriated to legitimate purposes.³ When parliament is about to be dissolved, upon a ministerial crisis, it is obviously improper to call upon the House of Commons to vote either the full amount or all the details of the proposed estimates, and so commit the country to the financial policy of ministers whose fate is about to be determined by a general election. The duty of finally deciding upon these estimates should be reserved for the new House of Commons. Meanwhile the supply of credit should be restricted to such an amount as may be absolutely required for the public service, until the reassembling of parliament, and the vote "on account" should not be regarded as in any degree pledging the House to an approval of the entire estimates.⁴

¹ May's *Prac.* ed. 1883, p. 680; *Hans. D.* v. 203, p. 1440.

² Clode, *Mil. Forc. of the Crown*, v. 1, pp. 124-127; *Com. Pap.* 1868-9, v. 35, p. 1171.

³ See 3 Hatsell, pp. 213-215.

⁴ *Hans. D.* v. 144, p. 2170; *Ib.* v. 158, p. 1667. This course was followed, upon pending ministerial changes, in 1841, 1857, and 1859 (see May's *Prac.* ed. 1883, p. 678).

Within the last few years, however, the practice of taking votes "on account" has become general.¹ This is owing to the introduction of a new rule, making all grants in supply applicable only to "payments to be made within the financial year," and requiring the government to surrender into the exchequer, at the end of the year, all unexpended balances. This change of system was completely effected at the expiration of the financial year terminating on March 31, 1863, when, "for the first time in our financial history, all the services were required to surrender the balances standing to their credit," an arrangement which has necessitated an application to parliament, before the close of the first quarter of the new financial year, for a vote "on account," to meet the ordinary charges accruing therein.² But the balances are not surrendered until the public accounts committee have reported upon the various appropriation accounts of the past financial year, and decided what is the right sum to surrender. Meanwhile they are available to meet expenditure of the said year, which has been actually incurred, but which has not yet been brought to account.³ It is an established rule that a vote "on account" should involve no new principle, but should merely provide for the continuation of services which had been sanctioned in the previous year; and it is the practice not to take more than two or three months' supply, except in certain particular cases of public emergency; so that the committee, in agreeing to votes "on account," are not pledged to the estimates for the year, in anticipation of the opportunity to be afterwards afforded of voting them in detail.⁴

While the government are solely responsible for the propriety and extent of any application to the House to grant supplies, the Commons are themselves responsible for voting the same.⁵ The House looks to the executive to state what is wanted, and to

¹ *Com. Pap.* 1868-9, v. 35, p. 142.

² *Chanc. of Exch.* in *Hans. D.* v. 170, p. 209; *Ib.* v. 195, p. 524; v. 210, p. 607.

³ 5th Rep. Com^o. Pub. Acc. *Com. Pap.* 1871, v. 11, p. 613.

⁴ *Hans. D.* v. 181, p. 1780; and see *Ib.* v. 195, p. 523; v. 197, p. 1440; v. 200, p. 1583; v. 205, p. 1034; v. 211, p. 1049.

⁵ *Ib.* v. 191, pp. 1192, 1748, 1770.

make known to them all that is necessary to satisfy them of the expediency of the grant. If the information communicated be not full and satisfactory, it is always in the power of the House to withhold the grant of any particular item until they are satisfied with the reasons given for it.¹

It is the peculiar province of the government to decide upon the several amounts required to carry on the public service and to maintain the credit of the country at home and abroad. None others are equally competent to form a judgment on this question. On the other hand, the vigilant oversight which is constitutionally exercised by the House of Commons over the public expenditure is a continual check upon ministers, and serves to prevent profligate and extravagant outlay,² which, in times past, when this control was less stringently applied, was of too frequent occurrence. The debates on the estimates, though generally but thinly attended, have been productive of incalculable public advantage. For, while it is impossible for a numerous representative assembly to scrutinize details of expenditure, and to form an accurate opinion in regard to all the items embraced in the estimates, equally devoid of extravagance or parsimony, nevertheless the moral influence which is exercised over the government by criticizing the votes submitted for adoption in committee of supply is a more efficient and desirable restraint upon improper expenditure than even the formal rejection of particular votes.³

Effects of debates in supply on the public expenditure.

The function of the House of Commons, in matters of supply, is to exert a watchful but general control over the executive government, with a view to prevent unnecessary outlay, and to check abuses in the public expenditure; leaving to the ministers of the crown the responsibility, which properly belongs to their position, of asking for such supplies as the necessities of the state require, and of enforcing to the utmost a strict economy in the use of the funds entrusted to them.⁴

Controlling influence of the House.

In point of fact, since the introduction of parliamentary

¹ Smith's *Parl. Rememb.* 1862, p. 111.

² See *Ib.* 1861, p. 154; and *Ib.* p. 146, Chatham Dockyard.

³ Sir S. Northcote, in *Hans. D.* v. 165, p. 890; Mr. Childers, *Ib.* v. 192, p. 938.

⁴ See Grey, *Parl. Govt.* new ed. p. 88.

government, it has only been on rare and comparatively unimportant occasions that the demands of the crown for supplies for particular services have not been complied with. As a general rule, whatever sums ministers have stated to be required for the use of the state, the Commons have freely granted.

Items in the estimates rejected by the Commons.

Independently, in the first instance, of the committee of supply, there is another mode of initiating proceedings for the grant of public money—namely, by the introduction of bills for the construction of public works, the establishment of new institutions, or for other purposes, which necessitate, to a greater or less extent, new charges upon the people. Sometimes the government is authorized by such bills to undertake the construction of certain public works, the cost of which is to be defrayed out of the consolidated fund.¹ But usually such bills contain a clause providing that the charges in question shall be defrayed “out of moneys to be voted by parliament.” Hitherto it has been customary to permit bills of this description to be introduced by private members, without reference to the government; but this practice led to so much irregularity, that, in the session of 1866, a new standing order was adopted, requiring the recommendation of the crown to be given before the House will entertain any motion that will involve a charge upon the public revenue, whether direct or out of moneys to be provided by parliament.² This order is intended to place the responsibility for such bills, if not their initiation, in the hands of the government. But, in any circumstances, it is incumbent upon the House of Commons to exercise a strict oversight and control over measures of this kind, as well as over the direct financial propositions of ministers.

must be recommended by the crown.

There still remains an undisputed right, on the part of the House of Commons, to withhold altogether the supplies asked for on the part of the crown. Before the introduction of parliamentary government, this formidable instrument of attack was often made use of to wrest from an arbitrary monarch the redress of

Right of the House to refuse the supplies.

¹ See the Fortifications Expenses Acts, passed in 1860 and following years to 1869.

² See *ante*, p. 190.

grievances. But now there is no longer any need to resort to such an extreme measure, and this once dreaded weapon "lies rusty in the armoury of constitutional warfare." "The precedent of 1784,¹ on the first formation of Pitt's administration, is the solitary instance in which the Commons have exercised their power of delaying the supplies. They were provoked to use it by the unconstitutional influence of the crown, in dismissing the Coalition ministry. But the dissolution showed that the country was with George III. and Pitt, and opposed to his opponents, and the new House of Commons accordingly failed to take notice of the matter. Since that time the experiment of delaying the supplies has not been repeated. Their responsibility, indeed, has become too great for so perilous a proceeding. The establishments and public credit of the country are dependent on their votes, and are not to be lightly thrown into disorder. Nor are they driven to this expedient for coercing the executive, as they have other means, not less effectual, for directing the policy of the state."²

The resolutions of the committee of supply are reported to the House on a future day; they are then agreed to, disagreed to, or re-committed, as the case may require. If, on consideration of the report, it be

Resolutions of
committee of
supply.

¹ In 1784 the prime minister, Mr. Pitt, was in a minority in the House of Commons, and it was well known that he was only waiting for the supplies in order to dissolve parliament. The estimates had passed through the committee of supply, when, on January 12, the House of Commons resolved that any public officer who, in reliance upon the votes in supply, should cause to be paid any sums of money for the public service, after the prorogation of parliament, and without the express authority of an Act of Appropriation, would be guilty of "a high crime and misdemeanour, a daring breach of a public trust, derogatory to the fundamental privileges of parliament, and subversive of the constitution." Nevertheless, the prorogation and dissolution of parliament took place before the passing of the Appropriation Act. The new House of Commons was favourable to Mr. Pitt's administration, and it appearing, by returns furnished to the House, that ministers had abstained from using any moneys not actually granted by law, but such as the exigencies of the state imperatively required, no further proceedings were had upon the matter (5 *Hatsell*, 206-209. See the comments and explanations of Mr. Perceval, chancellor of the exchequer in 1807, on this case, *Parl. D.* v. 9, p. 631). The supplies in question were, however, re-voted in the next session, and included in the Appropriation Act, 24 Geo. III. sess. 2, c. 44.

² May, *Const. Hist.* v. 1, pp. 470-472; and see Hearn, *Gout. of Eng.* pp. 357-360.

thought necessary to increase the sum granted by the committee of supply, the resolutions proposed to be increased must be re-committed. The House may indeed lessen the sum proposed to be granted without re-committal, but to increase the amount would be to impose a charge not previously sanctioned by the committee.

“But these resolutions, although they record the sanction of the House of Commons to the expenditure submitted to them, and authorize a grant to the crown for the objects specified therein, do not enable the government to draw from the consolidated fund the money so appropriated. A further

Votes in
committees of
ways and
means.

authority is required, in the shape of a resolution in committee of ways and means, which must be embodied in a bill, and be passed through both Houses of Parliament, before practical effect can be given to the votes in supply, by authorizing the treasury to take out of the consolidated fund, or, if that fund be insufficient, to raise by exchequer bills¹ on the security of the fund, the money required to defray the expenditure sanctioned by such votes. The votes in committee of supply authorize the expenditure; the votes in committee of ways and means provide the funds to meet that expenditure.

“The manner in which this provision is made is as follows: As soon after the commencement of the session as possible, when votes on account of the great services have been reported, a resolution is proposed in committee of ways and means for a general grant out of the consolidated fund towards making good the supply granted to her Majesty.

“This grant never exceeds the amount of the votes actually passed in committee of supply; upon this resolution a bill is founded, which passes through its various stages, and finally receives the royal assent, at a very early period of the session; and then, but not before, the treasury are empowered to direct an issue of the consolidated fund to meet the payments authorized by the vote in supply of the House of Commons.² The constitutional

¹ For the origin, history, and practice in regard to exchequer bills, see *Hans. D.* v. 161, p. 1309; v. 165, p. 131; v. 180, p. 285; Report on Public Monies, *Com. Pap.* 1857, 2nd sess. v. 9, pp. 532-538.

² May, *Parl. Prac.* ed. 1883, p. 683; *Hans. D.* v. 136, pp. 1310, 1395; Second Rep. Com^o. of Pub. Accounts, *Com. Pap.* 1863, v. 7, p. 479; see

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effect of this proceeding is that, until the queen and the House of Lords have assented to the grant of ways and means, the appropriation of the public money directed by the vote in supply of the House of Commons is inoperative. These general grants of ways and means, upon account, provided by successive Acts of Parliament during the session, in anticipation of the specific appropriations embodied in the Appropriation Act passed at the close of the session, may be viewed as the form in which parliament considers it most convenient to convey their sanction to the ad interim issue of public money upon the appropriation directed by the Commons alone, relying upon their final confirmation being obtained at the close of the session. The final grant of ways and means to cover the whole of the supplies voted in the session is always reserved for the Appropriation Act; thus, although the House of Commons at an early period of the session might have voted the whole of the supplies of the year, they could still hold their constitutional check upon the minister by limiting the grant of ways and means to an amount sufficient only to last such time as they might think proper to give him the means of carrying on the public service, and they are by such limited grants at all times enabled to prevent the minister from dissolving or proroguing parliament." ¹

Ad interim
advances of
money.

When the first report of the committee of supply has been received by the House, and agreed to, a day is appointed for the House to resolve itself into a committee "to consider of ways and means for raising the supply granted."

Committee of
ways and
means.

Exchequer Act, 4 Will. IV. c. 15, § 11; and for examples of Sessional Ways and Means Acts, see 13 Vict. c. 3, § 7; 21 Vict. c. 6, etc.

¹ Report on Public Moneys, *Com. Pap.* 1857, sess. 2, v. 9; Memo. on Financial Control, pp. 26, 27. See the Chanc. of Excheq. observations in *Hans. D.* v. 136, pp. 1310-1326, 1395. Parliament was dissolved in 1807, before the Irish Money Bills had been passed, but the public expenditure was maintained out of moneys appropriated by parliament (*Ib.* v. 9, pp. 618, 631). On the death of George III., in 1820, the dissolution took place before the Appropriation Bill was passed. The Lords at first resented, but ultimately acquiesced in, this arrangement. Again, in 1831, during the Reform Bill crisis, parliament was dissolved before the Appropriation Bill was passed. But the estimates were re-voted, and the moneys formally appropriated by the new parliament (*Ib.* v. 4, pp. 1631, 1635; May, *Parl. Prac.* ed. 683, p. 640, n.)

It is in the committee of ways and means that the financial statement of the chancellor of the exchequer is usually made. The introduction of the budget has been thus described: "Before, or soon after the close of each financial year¹ [which ends on March 31], the chancellor of the exchequer submits to the House of Commons a general statement of the results of the financial measures of the preceding session, and gives a general view of the expected income and expenditure of the ensuing year; he intimates at the same time whether the government intends to propose the repeal of any taxes, or the raising of money by the imposition of taxes, or by loan, or otherwise.

This exposition of the state of the finances for the past and ensuing year gives the House of Commons all the necessary information to enable them to exercise an important check upon the minister, by limiting his means of raising money to the sums actually required for the public expenditure. If his statement shows a larger surplus revenue than the House of Commons considers it prudent to leave as a margin to the government, pressure is immediately brought to bear upon it to procure a reduction of taxation;² if, on the other hand, the minister shows that the revenue will be insufficient to meet the expenditure, it rests exclusively with the House of Commons to grant or to refuse the demands which may be submitted to them for meeting that deficiency. The intention of this budget statement is not only to lay before the House of Commons the scheme of taxation for the ensuing year, but to satisfy them that the public income to be raised in the year will be sufficient, and no more than sufficient, to meet the expenditure which the government proposes to incur within the year."³

After the chancellor of the exchequer has concluded his financial statement, it is customary for members to rise and put questions to him with respect to any point which may require further explanation.

Questions
upon the
budget.

¹ Changes have been made from time to time in the termination of the financial year (see *Com. Pap.* 1868-9, v. 35, p. 813).

² Remarkable instances of yield of revenue in excess of estimate, *Hans. D.* v. 210, p. 615; v. 218, p. 640.

³ Rep. on Public Moneys, *Com. Pap.* 1857, sess. 2, v. 9; Memo. on Financial Control, by Sir G. C. Lewis (*Chanc. of Excheq.*), *Ib.* p. 519. For the derivation of the word "Budget," see *Statistical Jour.* v. 29, p. 325.

This is a convenient practice, and is much to be preferred to that of raising, at once, a general debate upon the budget, as it enables the whole ministerial scheme to be laid before the country in a complete and intelligible shape.¹

As a general rule, all propositions directly dealing with the revenue derivable from customs, excise, or assessed taxes, whether by way of increase or diminution, ought to be treated in connection with the financial measures of the year, and should form part of the budget of the chancellor of the exchequer; so as to admit of the House exercising its constitutional control over all such measures at one and the same time, viewing them as parts of one comprehensive plan.² But cases will sometimes arise wherein a departure from this rule is expedient: as, for instance, when there are reasons that make it desirable that a proposed duty should take effect from an earlier period of the year than that at which the financial statement is made;³ or, where the object to be attained has no special reference to the revenue, but is for the regulation of trade.⁴

Measures
considered in
the budget.

It is a recognized parliamentary rule, that no important measure can be advantageously considered by the House immediately after the statement of its principles by the minister of the crown. Thus the chancellor of the exchequer submits the financial statement, but never asks the assent of the House thereto until a future day; or if, for financial reasons, the affirmation is asked of any particular proposition, it is always considered a mere formal affirmation, and the merits of the question remain open to further consideration.⁵ But the budget submitted on April 4, 1867, was an exception to the general rule. Being simple, concise, and generally acceptable, the resolutions of ways and means were moved, debated, agreed upon, and ordered to be reported to the House at the same sitting.⁶

¹ Gladstone (Chanc. of Excheq.), *Hans. D.* v. 183, pp. 165, 411.

² *Ib.* v. 185, p. 499.

³ Duty on Dogs Bill, *Ib.* v. 185, p. 474.

⁴ Sugar Duties, *Ib.* pp. 348, 355; May, *Parl. Prac.* ed. 1883, p. 693.

⁵ Mr. Gladstone, *Hans. D.* v. 185, p. 489; *Ib.* v. 186, p. 1130; *Ib.* v. 195, p. 433; v. 205, p. 1531.

⁶ *Ib.* v. 186, pp. 1110-1159.

All taxes are not necessarily proposed in the committee of ways and means. Though the distinction is not always observed, it is the usual practice to confine the deliberations of this committee to such taxes as are more distinctly applicable to the immediate exigencies of the public income; and to consider, in other committees of the whole House, all fiscal regulations, and alterations of permanent duties, not having directly for their object the increase of revenue.¹ Accordingly, it is irregular to move, in committee of ways and means, a general motion concerning taxation—as “that it is expedient to equalize the duties levied on the descent of real and personal property;” or, an amendment deprecating an addition to the funded debt—though it is quite competent for a private member to propose a scheme of taxation, to raise the supplies required for the service of the year, by way of amendment to the government proposition.²

It is the invariable course, in committee of ways and means, to submit to the House resolutions which alter or impose taxation before those which are intended simply to repeal taxation.³ Upon the moving of the first resolution, though it may refer to but one specific proposal, members may discuss the whole financial statement.⁴

Duties are either annually voted, upon the recommendation of the chancellor of the exchequer, in his budget, or they are imposed for a term of years, or made permanent, by special Acts of Parliament.⁵ Occasionally certain duties heretofore voted annually are made permanent;⁶ but while it is in the discretion of government to propose to parliament a greater or less amount of permanent taxation, from time to time, it is not desirable “to vary the constitutional practice of always maintaining some large amount of taxation to be annually voted by the House.”⁷ It is right, however, that the great bulk of the revenue arising from taxation should be levied under permanent or *quasi*

Taxes voted in committee of ways and means, or otherwise.

Annual and permanent taxation.

¹ May, *Parl. Prec.* ed. 1883, p. 693.

² *Mir. of Parl.* 1840, p. 3042; and *Ib.* 1841, sess. 2, p. 468.

³ *Hans. D.* v. 162, p. 1330. ⁴ Mr. Gladstone, *Ib.* v. 224, p. 290.

⁵ Northcote, *Financial Policy*, *passim*.

⁶ *Hans. D.* v. 162, p. 1981; v. 174, pp. 1986, 2021; Smith's *Parl. Rem.* 1864, p. 77; Hearn, *Govt. of Eng.* p. 357.

⁷ *Hans. D.* v. 90, p. 1343.

permanent Acts, in order to maintain the public credit on a firm footing, and for the security of the commercial interests of the country, which would suffer if existing imposts were liable to frequent change.¹

It is an important privilege of the House of Commons that sufficient time should be allowed for deliberation upon any proposition submitted by government relative to taxation or public expenditure.² No resolutions of the committee of ways and means should be reported to the House on the same day on which they are agreed upon in committee, except upon "urgent occasion."³ When reported, they may be agreed to, negatived, or re-committed.⁴ It is customary to report such resolutions, and move the concurrence of the House therein, upon the day following that upon which they have been agreed to in committee, in order to avoid loss to the revenue by further delay.⁵ Bills are then ordered to be brought in to give effect to the same, and every exertion is made by the Government to pass such bills with as little delay as possible; consistently with a due regard to the rules of parliament regulating the procedure in matters of taxation.⁶

Time to be allowed to consider all financial questions.

Pending the ultimate decision of parliament upon any bill for the imposition or alteration of taxes, it is customary for the executive government, upon their own responsibility, to give immediate effect to resolutions altering existing rates of duty, or imposing new duties, as soon as they have been reported from the committee, and agreed to by the House;⁷ unless, of course, the resolutions have been agreed to *pro forma*, and with a view that substantially the judgment of the House may be taken at a future stage.⁸ But this does not prevent

New rates of duty immediately enforced.

¹ *Hans. D.* v. 128, p. 951; Lord Derby, *Ib.* v. 163, p. 724; Sir S. Northcote, *Ib.* v. 166, p. 1361. But see Mr. Disraeli's observations on this point, *Ib.* v. 159, p. 1489.

² *Ib.* v. 137, pp. 1639, 1648.

³ *Ib.* v. 158, pp. 1161, 1208; Smith, *Parl. Rememb.* 1860, p. 123.

⁴ 3 *Hats. Prec.* 180.

⁵ *Hans. D.* v. 133, p. 46.

⁶ See case of Income Tax and Inhabited House Duties Bill, withdrawn for certain irregularities of procedure, *Ib.* v. 206, p. 631.

⁷ *Ib.* v. 170, p. 636.

⁸ *Ib.* v. 195, pp. 479, 631.

the substance of such resolutions from being again discussed, at future parliamentary stages, with a view to their amendment or rejection.¹

Meanwhile, the new taxes are authorized to be collected by government, from the day named in the resolution, or from the date of passing the same, because it is not doubted that the bill which imposes them will become law, by the concurrence of the two other branches of the legislature. If such concurrence be withheld, the resolution becomes inoperative, and the duties levied by anticipation must be repaid to the parties from whom they had been collected.²

It is the invariable practice, when the duty on any particular article is raised, to levy the new rate of duty on stocks in bond, and cargoes afloat, when they are entered for consumption. This sometimes operates prejudicially to the interests of merchants who have imported largely of the article in question, with the expectation that the duty will remain unchanged. But the hardship is unavoidable, as it would not be consistent with usage, or with the policy of government, to announce beforehand their intentions in such a matter.³

Whenever the duty on spirits is increased by resolution of the House, it is customary to charge the increased rate of duty upon all spirits in the hands of distillers, whether they hold it in bond or duty paid; but not to charge the additional rate on spirits which have passed into the hands of wholesale dealers, even though they may have taken large and unusual quantities out of bond in anticipation of the increased duty. In 1855 the government desired to subject the article in the hands of dealers to the increased rate of duty; but precedents were against it, and they abandoned the attempt.⁴

On the other hand, if the duty on any foreign commodity be reduced, it is customary for the reduction of duty to come into operation the day after the adoption of the resolution by the House; and it is entirely contrary to the usage of parliament to allow any

New rates of duty: how levied.

Duties on spirits.

Duties on foreign commodities.

¹ *Hans. D.* v. 117, p. 1416; *Ib.* v. 158, p. 930, etc.

² See the Att.-Gen. observations, *Ib.* v. 99, p. 1316; also *Ib.* v. 156, p. 1274; v. 160, p. 1827.

³ *Chanc. of the Excheq.* *Ib.* v. 99, p. 1315.

⁴ *Ib.* v. 137, p. 1789; *Ib.* v. 140, p. 1853.

drawback upon stocks of the article in the hands of dealers, wholesale or retail; or to allow them time for the disposal of their stock before the new duty is enforced.¹ But a distinction has been drawn between manufacturers and dealers; and in 1870, upon the reduction of the sugar duties, ministers agreed to allow a drawback of duty on sugar remaining in any bonded warehouse, or under process of manufacture on the premises of refiners, and on stocks of manufactured sugar "in quantity not less than 100 cwt., and in packages unbroken in the hands of refiners," when the reduction of duty took place.²

The financial operations of government are not confined to propositions concerning supply and taxation, but necessitate various proceedings in the money market for raising the supplies voted by parliament, as well as for the regulation and management of the public debt. But the spirit of the constitution requires that all important operations which a finance minister may undertake for the public service should come under the review of parliament before they are carried into effect. Until the year 1861 the government had the power, through the medium of the commissioners for the reduction of the national debt, of funding and re-funding exchequer bills of every description (including supply exchequer bills, deficiency bills, and ways and means bills), without the cognizance of parliament; thus converting an instrument which had been issued, under the sanction of parliament, for a temporary purpose, in anticipation of the produce of the ordinary public revenue for the year, into a part of the funded debt of the country. In 1861, however, a measure was passed, at the instigation of the government, and in conformity with the recommendations of the public moneys committee of 1857, which has deprived the government of the power of making any addition to the funded debt without the authority of parliament;³ and it virtually requires the chancellor of the exchequer to submit to the judgment of parliament all his

All financial operations to be laid before parliament.

¹ *Hans. D.* (Chanc. of the Excheq.) v. 178, p. 1241; v. 195, p. 585; v. 200, pp. 1680, 1720; v. 201, p. 1787.

² *Ib.* v. 201, pp. 1409, 1789.

³ 24 Vict. c. 5, as amended by 25 Vict. c. 3; and see Mr. Gladstone's speech on introducing the bill, in *Hans. D.* v. 161, p. 1309.

financial transactions which may effect any change in the condition of the funded or unfunded public debt.¹

The government have no right to fetter the judgment of the House of Commons in any matter involving a pecuniary liability upon the exchequer.² But whenever a loan, or financial contract, which has been entered into by government upon its own responsibility, is submitted for the approval of parliament, the sense of the House in regard to the same should be expressed with as little delay as possible.³

Loans and
financial
contracts.

In the exercise of their constitutional functions, the House of Commons not infrequently dissent from the financial propositions of ministers. Thus, in 1711, a duty on leather was proposed, and rejected on a division by a majority of the House. But ministers did not give up their point. They brought forward a motion for the same amount of duty upon "skins and tanned hides"—that is, leather under another name—which was agreed to by the House.⁴ In 1767, on a proposal to continue the land tax of four shillings in the pound for one year, an amendment, to reduce the tax to three shillings, was carried. This was the first occasion, since the revolution, on which a minister had been defeated on any financial measure.⁵ Throughout the French war the Commons, with singular unanimity, agreed to every grant of money, and to nearly every new tax and loan, proposed by successive administrations.⁶ But in 1796 Mr. Pitt proposed a succession duty upon real property, which, being agreed to only by the casting vote of the speaker, he was reluctantly obliged to abandon.⁷ Again, in 1805, Mr. Pitt's budget was amended by the rejecting of the duty upon husbandry horses, against which the landed gentry combined.⁸ In 1816, after the close of the war with France, when the government were desirous of continuing the property tax for a longer term, the feeling of the House was so strongly opposed to the continuance of war taxes after peace had been obtained, that the chancellor of the exchequer

Budgets
rejected or
amended by
the House.

¹ Mr. Gladstone, in *Hans. D.* v. 170, p. 104; *Ib.* v. 186, p. 751.

² *Ib.* v. 186, p. 751.

³ *Ib.* v. 132, p. 1490.

⁴ *Ib.* v. 16, p. 362.

⁵ Stanhope's *Pitt*, v. 2, p. 369.

⁶ *Parl. Hist.* v. 6, p. 999.

⁷ May, *Const. Hist.* v. 1, p. 471.

⁸ *Ib.* v. 4, p. 267.

was defeated on the 18th of March, in committee of ways and means, upon his motion for the renewal of the property tax. After this, he voluntarily abandoned the war duties upon malt, amounting to about £2,700,000. Altogether it has been computed that the government lost, on this occasion, about twelve millions of anticipated revenue.¹

It is somewhat remarkable that the great ministerial defeat, recorded in the preceding paragraph, was so quietly accepted by the government, and did not lead to a ministerial crisis. But the true doctrine on this point is that which was expressed by Lord John Russell, in 1851, after the government had sustained a defeat on some financial proposition. He remarked that "questions of taxation and burdens are questions upon which the House of Commons, representing the country, have peculiar claims to have their opinions listened to, and upon which the executive government may very fairly, without any loss of its dignity—provided they maintain a sufficient revenue for the credit of the country and for its establishments—reconsider any particular measures of finance they have proposed."² To the same effect, Mr. T. Baring, the under secretary for war in Lord Palmerston's administration, said, in 1861, after the rejection by the House of Lords of the bill for the repeal of the paper duties—which formed part of the financial measures of government for that year—"I am happy that we live at a time when experience has shown that a budget may be modified or rejected without any change in the position of the ministry. I am glad that we have seen budgets withdrawn, and fresh ones introduced. We have seen taxes remitted, or taxes the remission of which, when proposed, has been refused, without any effect upon the cabinet. In fact, a change of the budget does not involve a change of ministry; and I rejoice that it is so, because I think it would be most unpardonable obstinacy on the part of public men to adhere to the terms of a budget which was opposed to the wishes and feelings of parliament. It would be unfortunate for the free exercise of the judgment of this House, if the rejection of any

Do not
necessitate a
change of
ministry.

¹ *Hans. D.* (1816), v. 33, p. 451; Knight, *Hist. of Eng.* v. 8, p. 53; Yonge, *Life of Ld. Liverpool*, v. 2, pp. 270; etc.

² *Hans. D.* v. 116, p. 634. Sir R. Peel had expressed a similar opinion in 1841.

portion of a budget were to be construed into a vote of want of confidence."¹

In proceedings in parliament upon matters of supply and taxation, the two Houses do not stand on the same footing. Although the consent of both Houses is indispensable to give legal effect and validity thereto, yet, from a very early period, the Commons have succeeded in maintaining their exclusive right to originate all measures of this description. They have gone further, and have claimed that such measures should be simply affirmed or rejected by the Lords, and should not be amended by that House in the slightest particular. The Lords have practically acquiesced in this restriction; although they have never formally consented to it.²

The questions in controversy between the two Houses in matters of supply have been elaborately discussed in the 3rd vol. of Hatsell's *Precedents*, and in May's treatise on the *Practice of Parliament*; it would therefore be superfluous to enter upon them here; suffice it to say that the proceedings between the two Houses on this subject are now in strict conformity with the resolution of the Commons on July 3, 1678, which declared that "all aids and supplies, and aids to his Majesty in parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons, and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords."

Without abandoning the abstract right of dealing with bills of supply and taxation as they may think fit, the Lords seldom attempt to make any but verbal alterations, in which the sense or intention is not affected; but even in regard to these, when the Commons

¹ *Hans. D.* v. 162, p. 901; and see Mr. Disraeli's observations, *Ib.* v. 205, p. 1658; v. 215, p. 1351. [The only instances during the present century, in which a ministry has retired from office in consequence of defeat on a budget, are the resignation of Lord Derby's first ministry in December, 1852, and of Mr. Gladstone's ministry in June, 1885.—*Editor.*]

² *Ib.* v. 163, pp. 720, 722.

have accepted them, they have made special entries in their journal recording the character and object of the amendments, and their reasons for agreeing to them.¹

Of late years an attempt has been made, by an ingenious process of reasoning, to establish a distinction between the right of the Lords to reject a bill imposing a tax and one repealing a tax. But this distinction is fallacious, and is not warranted either by precedent² or by constitutional authority.³ In 1860, a measure for the repeal of the paper Paper duties duties was submitted by the chancellor of the case. exchequer in his budget, and in due course was sent up to the House of Lords in a separate bill. The duty yielded a revenue of £1,300,000 per annum, to make up for the loss of which it was proposed to add a penny in the pound to the income tax. This recommendation was agreed to by both Houses; but the Lords refused to concur in the remission of the paper duties, on the ground that the state of the public finances, and the condition of the country, then on the eve of war with China, did not warrant the sacrifice of such a large amount of revenue. Other injurious consequences were also predicted as likely to result from a repeal of the duty on this article of manufacture. Whereupon the second reading of the bill was postponed for six months. After the House of Commons became officially cognizant of this fact, they appointed a committee to search the journals of both Houses, in order to ascertain the practice of parliament with regard to the several descriptions of bills imposing or repealing taxes. On June 29, this committee reported numerous precedents, which were set forth with great care and perspicuity; but they refrained from offering any opinion, or from making any comments upon the practice of each House, except to illustrate and explain. On July 5, Lord Palmerston (the premier) proposed to the House of Commons the following resolutions:—

“1. That the right of granting aids and supplies to the crown is in the Commons alone, as an essential part of their constitution; and the limitation of all such grants, as to the matter, manner, measure, and time, is only in them. 2. That although the Lords have exercised the power of rejecting bills

¹ See May's *Parl. Prac.* ed. 1883, p. 639, citing precedents.

² Report of Com^o on Tax Bills, *Com. Pap.* 1860, v. 22, pp. 125-134.

³ See Cox, *Inst.* p. 188.

of several descriptions relating to taxation by negating the whole, yet the exercise of that power by them has not been frequent, and is justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant the supplies and to provide the ways and means for the service of the year. 3. That to guard for the future against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this House has in its own hands the power so to impose and remit taxes, and to frame bills of supply, that the right of the Commons as to matter, manner, measure, and time may be maintained inviolate."

In the following session (1861), the chancellor of the exchequer, conformably to the principle asserted in the third resolution aforesaid, embodied his whole budget propositions, including resolutions for the repeal of the paper duty, in one bill. Great exception was taken to this course by a powerful minority in the House of Commons, and it underwent considerable discussion. Notwithstanding these objections, no attempt was made to oppose the passing of this bill, or to introduce any amendments therein; its opponents contenting themselves with recording, in an elaborate protest, all the arguments that had been adduced against it.¹

Following the precedent so successfully established, the chancellor of the exchequer determined to introduce the budget propositions of 1862 in one general bill.² Leading members of the Commons strenuously protested against this course, as being a serious restriction upon the opportunities for discussing these important financial measures, but without avail.³ It was commented upon somewhat severely in the House of Lords on this ground, but the colonial secretary (the Duke of Newcastle) contended that the new practice of combining the whole budget resolutions in one bill was merely a resort to former constitutional usage, and was sanctioned by high authority. After some further debate, the bill was concurred in without amendment. In like manner, the financial pro-

Commons
include the
whole budget
resolutions in
one bill.

¹ *Hans. D.* v. 163, p. 1166; *Lords Jour.* v. 93, p. 378.

² *Hans. D.* v. 166, p. 772.

³ *Ib.* pp. 1561-1567.

positions of government in each year from 1862 to the present time have all been included in one bill.¹

We will now proceed to consider the subject of money bills, which are of three kinds, viz. tax bills, bills of supply, and bills of appropriation. All these bills have a peculiar form of preamble, which intimates that the revenue or grant of money is the peculiar gift of the House of Commons, and such bills are invariably presented for the royal assent by the speaker of the House of Commons.²

Money Bills.

Tax bills, for raising revenues to be applied towards the services of the coming year, are founded upon resolutions of the committee of ways and means.

In like manner, bills of supply, or rather of ways and means, authorizing an advance out of the consolidated fund, or the issue of exchequer bills, towards making good supplies which have been voted by the House of Commons for the service of the year, emanate from the committee of ways and means.

When the committees of supply and ways and means have finished their sittings, a bill is introduced,³ which enumerates every grant that has been made during the session, appropriates the several sums, as voted by the committee of supply, which shall be issued and applied to each separate service, and directs that the said supplies shall not be used for any other than the purposes mentioned in the said act. This is known as the Consolidated Fund Bill, or, more generally, as the Appropriation Bill. By this act, which completes the financial proceedings of the session, the supply votes, originally passed by the Commons only, receive full legislative sanction. The appropriation is always reserved for the end of the session, and it is irregular to introduce any clause of appropriation into a revenue or other bill passing through parliament at an earlier period; for the questions of ways and means and of appropriation should be kept perfectly distinct.⁴

Appropriation Bill.

¹ *Hans. D.* v. 170, p. 851; v. 183, p. 1128; May, *Parl. Prac.* ed. 1883, p. 650. On May 17, 1866, Mr. Disraeli took occasion to reiterate his conviction that this course was attended with considerable inconveniences.

² Cox, *Inst.* 198.

³ *Hans. D.* v. 189, p. 1340.

⁴ The speaker in *Mir. of Parl.* 1841, p. 931; and see *Hans. D.* v.

By constitutional practice, the speaker of the House of Commons, as the guardian of its privileges, is required to take oversight of the financial proceedings of the House during the session, and it is his duty to ascertain that every bill for giving ways and means to the treasury is kept within the amount of the votes in supply already granted. At the close of the session he checks the final balance between the full amount of the votes in supply and the ways and means previously authorized, and limits the final grant of ways and means in the Appropriation Act to that amount.¹

The constitutional rule, now so well understood and acknowledged, "That the sums granted and appropriated by the Commons for any special service should be applied by the executive power only to defray the expense of that service,"² although not wholly unrecognized in earlier times,³ was first distinctly enunciated and partially enforced soon after the restoration. But it was not until the revolution of 1688 that this great principle was finally established and incorporated into the system of parliamentary government.⁴ At this epoch Solicitor-General (afterwards Lord) Somers and Mr. Sacheverel, by special direction of the House of Commons, framed some appropriation clauses with great care, which were included in the statute 1 Wm. & Mary, s. 2, c. 1. These clauses were not formally repeated in subsequent bills of supply, but they are referred to as to be "put in force and practised" in various succeeding statutes. Thenceforth it became the established and uniform practice, "that the sums granted by the House of Commons for the current service of the year should, by a special appropriation, either in the act for levying the aid or in some other act of the same session, be applied only to the services which they had voted." This doctrine has been enforced, from time to time, by penalties imposed by Acts of Parliament upon officers of the exchequer and others who should divert or misapply the moneys granted

170, pp. 1897, 1914; and Lord Grey's *Colonial Policy*, v. 1, p. 421. But this was not formerly the case (see *Parl. D.* v. 9, p. 632).

¹ Report on Pub. Moneys, *Com. Pap.* 1857, sess. 2, v. 9; *Mem. on Financial Control*, pp. 5, 27, 76.

² 3 Hatsell, 210.

³ See Hargrave's *Judicial Arguments*, v. 2, pp. 397-402.

⁴ 3 Hats. 202.

Duty of the speaker in matters of supply.

Appropriation clauses in bills of supply.

to any other purpose ; and a violation of the same is a misdemeanour, that has been declared to be a sufficient ground for a parliamentary impeachment.¹

The modern form of the appropriation clause, after enumerating the grants of the session, and applying them to their respective services, is as follows : "That the said aids and supplies shall not be issued or applied to any use, intent, or purpose, other than those before mentioned, or for the other payments, etc., directed to be satisfied by any acts of parliament, etc., of this session." A clause of this description was invariably inserted in the annual Appropriation Acts up to the year 1869. But, in point of fact, it has been authoritatively stated, that though, as a declaration of constitutional principle, the said clause might reasonably be inserted in any Appropriation Bill, yet that "it was in point of law mere surplusage, because the government had no authority to appropriate those moneys to any other purposes than those for which parliament had appropriated them."² Accordingly, since 1870, the clause has been omitted ; and the act itself materially simplified and abbreviated.

The Appropriation Act also contains a provision, that the expenditure for navy and army services shall be confined to those services respectively, but that "if a necessity shall arise for incurring expenditure not provided for in the sums appropriated" for the said services, "and which it may be detrimental to the public service to postpone until provision can be made for it by parliament in the usual course," application shall be made to the treasury, who are empowered to authorize such additional expenditure to be temporarily defrayed out of any surpluses which may have accrued by the saving of expenditure upon any votes within the same departments ; "provided that the House of Commons shall be duly informed thereof, in order to make provision for such deficient expenditure

Form of the appropriation clause.

Authority given to use surpluses of army and navy grants to make good deficiencies therein.

Subject to approval of the House of Commons.

¹ 3 Hats. 206. Cases cited in Lord Monteaule's Report, *Com. Pap.* 1857, sess. 2, v. 9, p. 567 ; and see *Hans. D.* v. 164, p. 1740.

² Mr. Gladstone, in *Ib.* v. 164, p. 1745. But the treasury may refrain from expending money granted for a particular purpose, if not satisfied with the propriety of the expenditure (*Ib.* v. 204, p. 1669).

as may be determined ; and provided also, that the aggregate grants for the navy and army services shall not be exceeded.”¹

The constitutional restrictions upon the grant of money, otherwise than through the committee of supply, necessarily confine the action of the House of Commons in respect to money votes to the proceedings of this committee, and to the decision upon their resolutions, when reported to the House. A motion to address the crown, that a vote which had been reported from committee of supply, and agreed to by the House, should not be expended, was declared by the speaker to be irregular and out of order.² Technically, such vote could, of course, be struck out of the Appropriation Bill.³ But in practice this bill has been defined by Lord Palmerston to be “simply a form that is required by the constitution, and not a bill to give rise to any discussion.” And, while he did not “dispute the power or right of the House to make any alteration it pleased in a bill as it passed through its several stages, it had never been a custom, by alterations in the Appropriation Bill, to rescind the previous acts and votes of this House.”⁴ Amendments which did not affect the determinations of the committee of supply have, though very rarely, been made in the Appropriation Bill during its progress through the House.⁵

Debates and amendments upon the Appropriation Bill are governed by the rules applicable to other bills, and must therefore be relevant to the bill, or some part of it, and should not be allowed the latitude practised on going into committees of supply and of ways and means.⁶ But this rule does not preclude a member from making observations upon the general conduct of public business or from bringing a question of foreign or domestic policy before the House, upon the motion for going into committee on this bill, or upon the second or third reading, if it be a question that “arises out” of any of the votes thereby appropriated.⁷

¹ 37 & 38 Vict. c. 56, § 4 ; *Hans. D.* v. 143, p. 563.

² *Ib.* v. 164, p. 1500.

³ *Ib.* p. 1502.

⁴ *Ib.* pp. 1750, 1751 ; and see v. 176, p. 1866.

⁵ See *Com. Jour.* July 22, 1858.

⁶ *Hans. D.* v. 143, pp. 560, 641 ; v. 180, p. 836.

⁷ *Ib.* v. 143, p. 643 ; v. 176, p. 1859 ; v. 189, p. 1526 ; v. 213, pp. 644, 709 ; v. 226, pp. 652-683, 778 ; v. 231, pp. 821, 1119, 1158.

In 1863 the chancellor of the exchequer (Mr. Gladstone) introduced the practice of submitting to the House, upon the third reading of the Appropriation Bill, a rectified statement of the estimated revenue and expenditure for the ensuing year. He pointed out the alterations which had been made in the original estimates since they had been introduced, in consequence of certain items of revenue which had been asked for by government not having been granted by the House; and noticed the effect of certain items of expenditure which had been authorized pursuant to supplemental estimates upon the general balance, as stated on the opening of the budget.¹

Final statement of estimated revenue and expenditure for ensuing year.

In 1864 Mr. Gladstone made a similar statement, upon the motion for going into committee on the Appropriation Bill;² but not in 1865. On July 23, 1866, Mr. Disraeli informed the House of the altered position of the public finances since the budget of his predecessor in office had been submitted. But these have been exceptional cases; as a rule it is now admitted that the government should make their budget statement as explicit and accurate as possible, and not so as to need subsequent rectification.³

On account of the formal character of the Appropriation Bill, it had been customary to abstain from printing it for the use of members. But, as complaints were made of alterations in the working of the bill having been occasionally made which were unknown to members generally, it was resolved, in 1863, that thenceforth a sufficient number of copies of all Appropriation Bills should be printed, and delivered to members applying for the same, in time for consideration before the committal of such bills.⁴

Appropriation Bill to be printed.

When the Appropriation Bill has passed both Houses, and is ready for the royal assent, it is returned into the charge of the Commons until the time appointed for the prorogation of parliament, when it is carried by the speaker to the bar of the House of Peers, and there received by the clerk of the parliament, for the

To be presented by the speaker for the royal assent.

¹ *Hans. D.* v. 172, p. 1268.

² *Ib.* v. 176, p. 1857.

³ Sir S. Northcote and Mr. Gladstone in *Ib.* v. 226, pp. 513, 522.

⁴ *Ib.* v. 169, pp. 730, 1863.

royal assent. When the sovereign is present in person, the speaker prefaces the delivery of the money bills with a short speech. "The main criterion by which the topics of these speeches have been selected appears to have been the political importance of the measures which have employed the attention of the House of Commons during the preceding session, unlimited by any consideration of their progress or their failure." Even the "peculiar privilege and concern of the House of Commons" has been noticed in such addresses.¹ On one occasion some observations of Sir Fletcher Norton, in his speech on presenting the Supply Bill, became the subject of remark and complaint in the House of Commons, on account of their uncourtly style; but his friend Mr. Fox having come to the rescue, Sir Fletcher was formally thanked by the House for his speech.² At the close of the speaker's address, the money bills are tendered for the royal assent, which they receive before any of the other bills awaiting the royal sanction, and in a peculiar form of words, which acknowledge the supply to be the free gift of the Commons.³

Speech of the speaker on presenting money bills.

Presentation of money bills.

¹ *Parl. D.* v. 27, pp. 479, 481; and see *Colchester Diary*, v. 2, *in loco*.

² May, *Com. Hist.* v. 1, p. 200.

³ May, *Parl. Prac.* ed. 1883, p. 690.

CHAPTER IV.

PARLIAMENTARY CONTROL OVER THE ISSUE AND EXPENDITURE OF PUBLIC MONEY.

HAVING explained the constitutional procedure in respect to the grant of public money for the service of the state, we have next to consider the regulations which have been established by law for the purpose of preventing the illegal issue or expenditure thereof. Parliamentary control over issue and expenditure of public money.

Strange as it may appear, "there has always been a marked contrast between the jealous susceptibility displayed by the House of Commons in asserting their exclusive right to grant the supplies, and the indifference with which (until very lately) they have abandoned the final appropriation of the supplies, when granted, to the unchecked discretion of the executive government."¹

Of late years, however, the constitutional control of parliament over the public expenditure has been exercised with great vigilance and effect. In the fulfilment of this important function, the House of Commons is assisted by three distinct tribunals, each of which has appropriate duties to discharge. These are : 1. The department of the exchequer and audit ; 2. The treasury ; and 3. The standing committee on public accounts. The sphere of action which belongs to these several departments will be apparent, as we proceed to consider their respective functions.

The subject will naturally divide itself into four heads. 1. The control which is exercised over the public revenue, its receipt, custody, and issue, by the department of the exchequer and audit ; an office which was duly consolidated and regulated by the act 29 & 30 Vict. c. 39, passed in 1866. 2. The control

¹ *Com. Pap.* 1865, v. 10, p. 123.

which is exercised over every branch of the public expenditure by the lords commissioners of her Majesty's treasury. 3. The operation of the system of audit, which is now applicable to all accounts of past expenditure, in every department of state. 4. The supervision over the issue and expenditure of public money which is exercised by the standing committee on public accounts.

1. The Control over the Public Revenue by the Department of Exchequer and Audit.

The check upon unauthorized expenditure is primarily effected by vesting the power of issue in the exchequer, an office which is quite independent of the treasury, and is presided over by a comptroller-general, who is appointed during good behaviour, and is in fact a parliamentary officer, responsible to both Houses, and liable to impeachment, as well as to dismissal, upon their joint address.¹

Control over the issue of public money by the exchequer department.

The functions of the exchequer, as defined by the commissioners of public accounts in 1831, consist in—(1) the receipt and safe custody of the public treasure; (2) a control over the crown and its ministers in relation thereto; (3) the duty of record.²

Functions of the exchequer.

Formerly, the exercise of the functions of the exchequer was a very complex affair, owing to the excessive number of officers, and the cumbrous forms which had to be resorted to, in order to put its authority in operation. But in 1834, pursuant to the recommendations of the commissioners aforesaid, a statute was passed which abolished several of the subordinate officers, simplified the machinery of business, and transferred to the comptroller-general all the prescriptive powers and duties previously exercised by other functionaries in this department.

The essential powers which are now possessed by the

¹ Act 4 & 5 Will. IV. c. 15, sec. 2. This statute, under which the ancient office of the exchequer was remodelled and reformed, was passed, on the recommendation of a commission of inquiry into the public accounts, in 1831 (*Com. Pap.* 1857, sess. 2, v. 9, p. 569). See debate in House of Commons, on office of comptroller of the exchequer, on Feb. 27, 1840.

² Rep. Com. of Pub. Accts. on the Exchequer, *Com. Pap.* 1831, v. 10, p. 16.

exchequer have been thus described: "It is the great conservator of the revenues of the nation. It does not exercise any authority over the administrative departments of receipt, nor over the departments of payment further than to guard against the illegal application of any portion of the public income. The constitutional functions of its officers, who hold their situations for life, are to provide for the safe keeping and proper appropriation of the public money. For this purpose it is charged with the receipt of the revenues, which are vested in its name, and deposited in its care, until issued under the authority of parliament for the service of the state; and it is armed with a power of denying its sanction to any demands upon it, from whatever minister or department they may be made, unless those demands are found in accordance with the determinations of the legislature."¹

Moreover, the office of comptroller of the exchequer renders it absolutely necessary that parliament should be assembled at least once in every year, and that it should not be prorogued before the passing of an Act of Appropriation; because it is the duty of this high functionary to refuse to permit the issue of any public money except under the authority of an act of parliament.

In the year 1857, Sir G. C. Lewis (the then chancellor of the exchequer) laid before the committee of the House of Commons on public moneys a proposal that the office of the receipt of her Majesty's exchequer should be abolished, and its functions of control transferred to the commissioners of audit, with additional powers; in order that one department, responsible to parliament, and reporting directly to parliament, should henceforth control the original issue, and, both by concurrent and final audit, superintend the application of the public moneys to the services for which they were voted by parliament.² This proposal, however, drew forth a strong remonstrance from Lord Monteagle, the then comptroller of the

Proposed
union of the
exchequer
and audit
offices.

¹ Rep. Com^o. on Pub. Moneys, *Com. Pap.* 1856, v. 15; Evid. p. 2; Mem. on Financial Control, *Com. Pap.* 1857, sess. 2, v. 9, p. 75; Act 4 & 5 Will. IV. c. 15, secs. 11-13. Other duties of the exchequer, which are not material to the present inquiry, are described in Murray's *Handbook of Church and State*, p. 135.

² Rep. Com^o. on Pub. Moneys, *Com. Pap.* sess. 2, v. 9, 1857, p. 34.

exchequer, who pointed out, in an elaborate memorandum, the beneficial results of exchequer control over the issues of public money, and the constitutional importance of his office in the guardianship of the public revenues. This induced the government to abandon their scheme, and led to the withdrawal of resolutions for the abolition of the exchequer office which had been submitted to the committee.¹ The committee, however, recommended the reorganization of the board of audit, with higher powers, so as to make it rank with the principal departments of state, and to interpose an effective check on existing abuses, thereby rendering the control of parliament over the details of the public expenditure effectual and complete.² This recommendation was not regarded, at the time, with much favour, either by the government or by the House of Commons,³ but in 1865 the administration submitted to parliament a bill to unite the offices of comptroller of the exchequer and chairman of the board of audit, which became law.⁴ It was alleged, in behalf of this bill, that, while "exchequer control had become inefficient, anomalous, and unreal, to a very great degree," and not sufficiently important to justify the maintenance of a separate establishment,⁵ it was not intended to alter the duties then performed by the comptroller of the exchequer, but merely to assign the same to the chairman of the board of audit until parliament should be enabled to consider the question in all its bearings, and to decide whether any further changes were desirable. Meanwhile, the chairman of the audit board, in holding both offices, would be elevated, in point of salary and tenure, to the highest position of dignity and independence.

A very short time sufficed to satisfy the government as to the necessity for further legislation on this subject. Accordingly, early in the following session, a bill was brought into the House of Commons, by the chancellor of the exchequer, to consolidate the duties of the exchequer and audit departments, to regulate the receipt, custody, and issue of public moneys, and to provide for the audit of the accounts thereof. The Exchequer

Partially
effected in
1865.

Exchequer
and audit
departments
consolidated
in 1866.

¹ *Com. Pap.* sess. 2, v. 9, 1857, p. 10.

² *Ib.* p. 5.

³ *Hans. D.* v. 165, p. 1350.

⁴ Act 28 & 29 Vict. c. 93.

⁵ *Chanc. of excheq. Hans. D.* v. 180, p. 303.

and Audit Department Bill passed through both Houses with very little opposition; and, notwithstanding the change of ministry which took place during this session, it was freely accepted by the new administration, and became law.¹

Such of the provisions of this act as materially modify the constitutional practice which heretofore prevailed in relation to its subject matter will be noticed in their appropriate places in this section. But beyond the change effected by the abolition of the board of audit, and the consolidation of the hitherto distinct departments of the exchequer and audit, the alterations made by this act in the existing practice are comparatively few, and of minor consequence.

As regards the receipt of public moneys by the exchequer, no change in the existing regulations has been made, except to render it compulsory upon the government to pay to the exchequer account the gross revenues, after deducting certain charges enumerated in section 11. But this had been already the practice, under the authority of a treasury minute, ever since the year 1854, when the charges for the collection of the revenue were first voted.²

As regards the custody of public moneys in the exchequer, the new act introduced no change whatever. It requires all public moneys to be paid, as heretofore, to the account of the exchequer at the Bank of England, or of Ireland, and to remain there, subject to the provisions of the act. The moneys are to be placed to the account, not of the treasury, or of the government, but of "her Majesty's exchequer," as represented by an independent officer, called the exchequer and audit commissioner.³

As regards the issue of public moneys from the exchequer account, there is substantially no difference in the control to be exercised by the exchequer and audit commissioner over the issues, beyond that which heretofore prevailed; but there is a different machinery resorted to, as will appear from the following account of the

¹ Act 29 & 30 Vict. c. 39.

² See *ante*, p. 201; Rep. Com. Pub. Accts. on Excheq. and Audit Bill, *Com. Pap.* 1866, v. 7, Evid. 10-16.

³ Evid. 37-41, *Com. Pap.* 1866, v. 7, p. 525.

successive steps required to give effect to a parliamentary appropriation.

It is necessary that there should be (1) votes of the House of Commons, in committee of supply, granting money, for certain specified services, to the crown. These votes to be subsequently confirmed by the Appropriation Act, and substantiated by an act of parliament placing at the disposal of the treasury ways and means to satisfy the same; (2) one or more royal orders, authorizing the treasury to apply the supplies granted to her Majesty (by the Ways and Means Act covering the same), in conformity with the votes of parliament in the Appropriation Act. These orders must proceed direct from the sovereign.¹

(3) To enable the treasury to meet these payments it applies to the comptroller and auditor-general for a general credit, to an amount not exceeding that of the available ways and means, and in accordance with the votes in supply; whereupon the said officer grants to the treasury credits, on the exchequer accounts at the bank, not exceeding the amount of the ways and means granted by an act of parliament.² (4) This having been obtained, the treasury will then operate upon that credit, by transfers to the paymaster-general's account, to enable him to meet the payments for the different services. When the treasury have issued their daily orders to the Bank of England to transfer money to the paymaster-general's account, the bank is required to advise the auditors thereof immediately, in order that they may have the materials for checking the accounts which they are called upon, by the audit clauses of the Exchequer Act, to check before they are submitted to parliament by the treasury.³

By these constitutional forms, the principle of the monarchy is asserted as fully, in respect to the issue of moneys voted to the sovereign for the public service, as by the use of the sign manual in all other affairs of

Monarchical principle fully asserted.¹

¹ Clode, *Mil. Forces of the Crown*, v. 2, pp. 183-187.

² Act 29 & 30 Vict. c. 39, sect. 15.

³ Rep. Com^o. Pub. Accts. (Excheq. and Audit Bill), *Com. Pap.* 1866, v. 7; Evid. 49, 62-64, compared with the Mem. on Financial Control, *Com. Pap.* 1857, sess. 2, v. 9, pp. 30, 79. The new forms (Nos. 1-15) required under the Exchequer Act of 1866 are appended to the treasury minute, to carry into effect the act of March 2, 1867 (*Com. Pap.* 1867, v. 39, p. 337).

state ; and the independent control of the exchequer is maintained by the power of suspending or refusing the grant of credit to the treasury until, in the words of the act 4 & 5 Will. IV. c. 15, sec. 11, the comptroller-general shall have first satisfied himself that "the royal order has been made in conformity with, and has not exceeded, the amount of the grant of parliament."¹

There is a difference in regard to supply charges and consolidated fund charges. The actual amounts of the former are specified in the votes and in the Appropriation Act. The amounts of the latter are not specified in the act, and must be made up by the treasury. Before the exchequer permits the insertion of any new charge on the consolidated fund, the warrant or other instrument creating the office, or making the grant, is called for, examined, and recorded. If found correct, the charge is allowed ; if not, its amount would be deducted from the total, and not issued.²

The Exchequer and Audit Act of 1866 expressly forbids the treasury, or any subordinate authority, to direct the payment of expenditure which has not been sanctioned either by an act whereby services are or may be charged on the consolidated fund, or by a vote of the House of Commons.³ The ways and means are general, and may be applied to any services voted. But no money voted can be issued until the Ways and Means Act is passed ; and the amount of supply voted is limited in the issue by the amount of ways and means. It is only by authority of the Ways and Means Act—which always contains a clause stating that the ways and means therein granted may be applied to any services voted by the House of Commons—that the resolutions of supply can be acted upon.⁴

Money only to be applied to services sanctioned by parliament.

¹ Nor is this a mere fiction. The control of the exchequer was exercised in upwards of one hundred cases, between 1834 and 1857, and has proved effectual for the purposes designed. See Mem. on Financial Control, pp. 78, 80, 84, 114, *Com. Pap.* 1866, v. 7 ; and see Lord Monteaule's Ev. before Com. on Pub. Moneys, *Ib.* 1856, v. 15.

² Mem. Financial Control, p. 78 ; Rep. Com. Pub. Accts. (Excheq. and Audit Bill), *Com. Pap.* 1866, v. 7 ; Evid. 173, 180.

³ Act 29 & 30 Vict. c. 39, sec. 11.

⁴ Rep. Com. Pub. Accts. (Excheq. and Audit Bill), *Com. Pap.* 1866, v. 7 ; Evid. 50-61.

In case of a deficiency of funds to meet the permanent charges on the consolidated fund, the Act of 1866 empowers the treasury to apply to the Bank of England to make advances to the extent of that deficiency, the principal and interest of which are chargeable upon the growing revenue of the quarter. A similar provision is contained in the Ways and Means Acts, in respect to services to be provided for by those acts. The only point wherein this differs from the old practice is, that formerly deficiency bills were issued by the exchequer to the bank for this purpose. In no circumstances would the comptroller of the exchequer grant a credit in excess of his balance at the bank.¹

Nevertheless, the system of exchequer control, while it effectually prevents the unauthorized issue of public money, is powerless of itself to prevent irregular expenditure.

Exchequer controls issue of money but not expenditure.

Principle of exchequer control over issue of money.

The control of the exchequer over the issues of public money is based upon an admitted principle of our constitutional system, that no money is legally available for public services but that which has been placed at the disposal of government by parliament. The government, in fact, are unable, under the laws now in force, to obtain from the exchequer any money but what is drawn against some specific parliamentary grant. The issue of money by the comptroller of the exchequer is, moreover, accompanied by what is substantially an authoritative direction to the proper officers to apply such money to the particular service for which it was granted by parliament, and the annual Appropriation Acts have always strictly forbidden any misapplication of the funds granted therein. But these stringent requirements, though they have undoubtedly served to restrain unauthorized expenditure, have not sufficed to prevent it altogether. The "systematic misappropriation" of funds granted by parliament for specific purposes is an abuse which has existed for centuries, and which has continued to be practised to some extent even in our own day, notwithstanding frequent resolutions of the House of Commons, and penalties imposed by legislative enactment upon public officers

¹ *Com. Pap.* 1866, v. 7, p. 527; *Evid.* 68-78, 83. See *Ib.* 1868-9, v. 35, p. 1003.

who should presume to divert or misapply the public revenues to any other uses than those for which they had been appropriated by parliament.¹

It is therefore erroneous to suppose that the government can be absolutely prevented from any misapplication or expenditure in excess of the parliamentary grants. Even were it possible to do so, it would not be politic to restrain the government from expending money, in any circumstances, without the previous authority of parliament. In the words of Mr. Macaulay (secretary to the board of audit) "cases must constantly arise, in so complicated a system of government as ours, where it becomes the duty of the executive authorities, in the exercise of their discretionary powers, boldly to set aside the requirements of the legislature, trusting to the good sense of parliament, when all the facts of the case shall have been explained, to acquit them of all blame; and it would be, not a public advantage, but a public calamity, if the government were to be deprived of the means of so exercising their discretionary authority."² To the same effect, we have a declaration by a committee of the House of Commons, that "in special emergencies expenditure unauthorized by parliament becomes absolutely essential. In all such cases the executive must take the responsibility of sanctioning whatever immediate urgency requires; and it has never been found that parliament exhibited any reluctance to supply the means of meeting such expenditure."³

Impossibility of wholly preventing unauthorized expenditure.

Discretionary powers vested in government.

The best remedy against unauthorized and unjustifiable expenditure is to be found in the vigilant exercise of the inquisitorial powers of parliament. "It is undoubtedly the business of the House of Commons to be responsible not only for the inception of all public expenditure, but also to follow the money raised by taxation until the last farthing is accounted for."⁴ This duty is facilitated by the investigations of the auditor-general,

Remedy against unauthorized expenditure.

¹ 3 Hatsell, 206, etc.; debate in House of Commons, June 23, 1828, on "the misappropriation of public funds," Rep. Com. on Public Moneys, Com. Pap. 1857, sess. 2, v. 9, pp. 31, 81.

² Rep. Com. Pub. Accts. *Ib.* 1865, v. 10, App. p. 140.

³ First Rep. Com. on Packet and Telegraphic Contracts, p. xv. *Ib.* 1860, v. 14.

⁴ Mr. Gladstone, *Hans. D.* v. 197, p. 633.

who is a parliamentary officer, and is mainly performed through the instrumentality of the standing committee on public accounts.

“The public interests require that the government should possess the power of incurring expenses of indispensable necessity, although parliament may not have previously provided for them. . . . Unforeseen events may happen, and lead to an expenditure beyond the provision made by parliament for the ordinary service of the year; and it must be for the interest of the public that no delay should occur in taking the necessary measures, and in defraying the expenses which such events may entail.” There is, accordingly, a fund called the Treasury chest fund. “treasury chest fund,” which is maintained for the purpose of supplying the specie required for the “treasury chests” in the several colonies, and for making the necessary advances for carrying on the public service at home and abroad. By the act 40 & 41 Vict. c. 45, this fund, formerly £1,300,000, is now limited to £1,000,000.¹ It is authorized to be employed by the treasury “in making temporary advances for any public service; to be repaid out of money appropriated by parliament to such service, or out of other money applicable thereto.” The governors of colonies have authority, in cases of emergency, to pay advances out of the treasury chest, to be made good out of votes in supply. This unavoidably occasions an expenditure, in certain cases, which has not been authorized by parliament, but the earliest opportunity is taken to explain the transaction to the House of Commons.²

There is also another fund, which was created in 1862, pursuant to the recommendations of the committee on public accounts, in the previous year. It is called the “civil contingencies fund,” and is limited to £120,000. The treasury are empowered to draw upon this fund, from time to time, to defray new and unforeseen expenditure for civil services at home, for which no votes

¹ This reduction was first made in 1873 (by Act 36 & 37 Vict. c. 56), principally on account of the diminished demands upon the chest, occasioned by the reduction of the military force in the colonies, and the facilities afforded by quicker communications between England and her colonies than formerly (Second Rep. Com^o. Pub. Accts. p. xiii. *Com. Pap.* 1875, v. 8; and Act 40 & 41 Vict. c. 45).

² Second Rep. Com^o. Pub. Accts. Evid. p. 9, *Com. Pap.* 1868-9, v. 6.

have been taken, or to meet unforeseen deficiencies on ordinary votes.¹ But every advance made from these funds must be repaid out of votes to be taken in parliament, in the following year, on behalf of the services for which such advances had been made. No expenditure whatever is allowed to be finally charged against either of these funds. The "civil contingencies fund" has been set apart by the treasury as a substitute for the irregular items previously included in the estimates under the head of "civil contingencies," and which had frequently to be voted after the expenditure had been incurred. The creation of this fund has been formally approved by the committee on public accounts: and there is no reason to doubt that the sanction of the legislature, which is certainly required to make it legally available for public purposes, would, if applied for, be readily granted.²

There is yet another fund, that for "secret services," the disposal of which is in the hands of government, Secret service expenditure. although the greater part of the amount is annually voted in supply. The vote in supply for this service has sometimes amounted to upwards of £30,000, and for the year ending March 31, 1866, it had increased to Secret service fund. £50,000. A sum of £300 is paid to the permanent under-secretary of state for foreign affairs for services in distributing the foreign office share of this fund out of another vote.³ This, however, does not include the whole amount at the disposal of government for secret services. For the distinction has been uniformly maintained, that, while it is proper to come to parliament to make a general grant for such purposes, it is right that government should have at their disposal a fixed amount for the same which is independent of an annual vote. Accordingly, the Civil List Act, which is passed upon the accession of the sovereign to the throne, sets apart the sum of £10,000 per annum, which is payable out of the consolidated fund, for "home secret service." The annual vote in supply is intended to supplement the deficiency

¹ First Rep. Com^o. Pub. Accts. p. iii. *Com. Pap.* 1877, v. 8.

² Rep. Com^o. Pub. Accts. App. p. 192, *Ib.* 1862, v. 11; *Hans. D.* v. 169, p. 1858; *Ib.* v. 176, p. 1702 (vote for Ashantee war); Rep. Com^o. Pub. Accts. Evid. 31-37, *Com. Pap.* 1865, v. 10, and see App. p. 140; First Rep. Com^o. Pub. Accts. p. 8, *Ib.* 1870, v. 10; Accounts relating to Civil Conting. Fund, 1868-9, *Ib.* 1870, v. 41, p. 175.

³ Civ. Serv. Est. 1886, *Ib.* 1884-5, v. 50, pp. 115, 177.

of this grant.¹ The secretaries of state, and others, who may draw upon this fund, are bound by oath not to use any of it for purposes which do not legitimately appertain to their several departments. And the names of all persons receiving secret service money, with the sums paid to them, must be entered in a book, in order to be produced in either House of parliament if required. It is not usual, however, to give information to parliament, in regard to the expenditure out of this fund; neither is it subjected to detailed audit.²

The rule hitherto sanctioned by parliament in respect to this grant has been, "to confine the knowledge of it to the smallest possible number of persons, and, having thus concentrated responsibility, to trust to their honour and discretion."³ The proposed vote may of course be challenged, in committee of supply, and amendments moved, to reduce the amount, with a view to condemn a supposed objectionable use of the fund.⁴

There still remain two unauthorized sources of supply, which, however convenient in practice, and unobjectionable, or even expedient, in the abstract, are nevertheless, until sanctioned by parliament, opposed to an admitted constitutional principle. The one is the "cash account" of the paymaster-general, which is the receptacle of various sums and deposits which, though not placed by parliament at the disposal of the government, are regarded in practice as available sources of supply for the working accounts of the paymaster. For instance, sums realized from the sale of old stores, sums which are deposited with the paymaster for safe-keeping or investment—as, for example, moneys paid in respect of the crown's nominee fund, or the mercantile marine fund—sums remitted home on account of fees received by consuls abroad, or in respect of the obligations of certain colonies to the mother country for military protection, etc.; all such sums and deposits are

Cash account
of the pay-
master-general.

¹ Act 1 & 2 Vict. c. 2, sec. 15; *Com. Pap.* 1873, v. 47, pt. 1, p. 149.

² 22 Geo. III. c. 82, secs. 24-29; *Hans. D.* v. 65, p. 182; v. 159, p. 1528; v. 207, p. 999.

³ Mr. Gladstone, *Ib.* v. 203, p. 691; and see Mr. Hammond's *Evid. Rep. Com^e. Diplom. Service*, p. 58, *Com. Pap.* 1870, v. 7; *Ld. Clarendon's Evid. Ib.* p. 290. See also *Hans. D.* v. 206, pp. 1388, 1424; v. 211, p. 1543.

⁴ *Ib.* v. 219, p. 449.

carried to the credit of the paymaster's cash account, and are used to supply his working account with funds, which are not legally available for public purposes. The committee on public accounts has suggested that such moneys should be transferred to the exchequer, or invested, or kept in deposit, as the circumstances of each case may require; and that they should in no case be used for public purposes.¹

The other instance of money being used to defray voted services, without the sanction of the legislature, is that of the receipts of revenue. The salaries of the various revenue departments are never paid, Salaries in the revenue departments. in the first instance, out of the votes, but out of the revenue: such advances being afterwards repaid from the votes. This practice is pursued by collectors of revenue throughout the kingdom in reference to certain payments on account of the public service at the several localities in question; the advances being subsequently repaid to the revenue from the votes applicable to such services. The committee on public accounts, though cognizant of the mode in which these temporary advances are made from the revenue, have not objected to it; and the existing practice, both as regards the receipts of revenue and the paymaster's cash account, has always been defended by the government as tending to economy, to the security of the public money, and to simplicity of account. This may be a sufficient reason for adhering to the present practice; nevertheless, it is equivalent to the establishment of so many additional treasury chest funds, of indefinite extent, without any parliamentary authority whatever. Provided proper steps are taken to ensure an efficient appropriation audit of all the parliamentary grants, there is no reason to fear that a continuance of this practice would facilitate abuse, or misappropriation. But it will be hereafter an important point to determine the conditions under which the government should be authorized by law to use for public purposes moneys derived from other sources than the grants of parliament and the treasury chest fund.²

¹ Mr. Macaulay's Paper, Rep. Com^o. on Pub. Accts. p. 141, *Com. Pap.* 1865, v. 10. See further, as to "extra receipts," and money realized from sale of old stores, Rep. Com. Pub. Accts. Evid. 444-518, *Ib.* 1866, v. 7; the Naval Stores Act, 1869, *Hans. D.* v. 195, p. 672.

² Mr. Macaulay's Paper appended to Rep. Com^o. Pub. Accts. 1865, p.

2. *The Functions of the Treasury in relation to the Public Expenditure.*

We now proceed to consider the second branch of our inquiry, viz. the mode in which the constitutional control of parliament over the public expenditure is conducted, through the instrumentality of the responsible department of the treasury.

By immemorial custom, the lords commissioners of the treasury have been constitutionally empowered to control all the other departments of the state, in matters of finance and public expenditure. In various acts of parliament, and reports of committees of the House of Commons, this authority has been from time to time recognized and enforced. By degrees, however, this wholesome control had been gradually relaxed, and the various public departments, more particularly those in charge of naval and military affairs, had begun to act independently of the treasury, incurring expenses beyond the votes of parliament, without previous reference to this supreme authority. In order to check the growing extravagance in the public service, and to introduce a proper responsibility in regard to public expenditure, committees of the House of Commons recommended that the ancient control of the treasury should be again exercised. In 1817, the finance committee adverted to the subject in the following terms: "Feeling, as your committee do strongly, the necessity of bringing all financial subjects officially within view of the treasury," they suggest whether—in addition to the "unrecorded and confidential intercourse which must at all times exist on the part of the first lord of the admiralty, and the master-general of the ordnance, and the chancellor of the exchequer respectively, on all matters which they may feel it their duty to bring under the consideration of their colleagues in the cabinet"—it might not be advisable that it should be made a rule of the privy council, whenever orders in council are in contemplation to

142, *Com. Pap.* 1865, v. 10. Also in regard to extra receipts and the regulations concerning them, *Rep. Com^o. Pub. Accts.* 1867 and 1868; *Ib.* First Rep. pp. v. 108, *Com. Pap.* 1870, v. 10; *Ib.* Third Rep. p. 3, *Com. Pap.* 1871, v. 11.

regulate the establishment of any public department, "that every proposition involving an increase of public expense should, according to the nature of the case, either be submitted to a committee of council, consisting of such members as may be connected with the treasury, or be made by the council office the subject of a direct reference to, and report from, the treasury to that office before it is presented to his Majesty for his final approbation. By this arrangement, which will combine the forms which have from the earliest times prevailed in the practice of our government, with that essential control which your committee judge it necessary to place in the financial ministers alone, they hope that the results which they have so often recommended may be attained."¹

Pursuant to the foregoing report, a treasury minute was issued on March 13, 1818, embodying a memorandum agreed upon by Lord Liverpool (first lord of the treasury), the first lord of the admiralty, and the master-general of the ordnance, and approved by the prince regent, "to carry into effect the recommendation of the finance committee, in their fourth and sixth reports, that no department of large expenditure ought ever to be placed beyond the controlling superintendence of the board of treasury." That minute established various regulations for checking naval and military expenditure which are now obsolete, one of which required the working heads of the army and navy departments to attend the treasury whenever that board wished for verbal in addition to written information on any financial subject connected with their departments.²

Ten years afterwards, a committee of the House of Commons called the attention of the House to the fact, "that the ancient and wise control vested by our financial policy in the hands of the treasury over all the departments connected with the public expenditure has been in a great degree set aside. Although it is the practice to lay the annual estimates before the board of treasury, the subsequent course of expenditure is not practically restrained as it ought to be by one governing and responsible power, but remains too much under the separate management of the departments. The want of constant check over the expenditure, which is the consequent

¹ Sixth Rep. Com^o. on Finance, 1817, quoted in Rep. of Com^o. on Pub. Accts. Com. Pap. 1862, v. 11; Evid. 665, 769, 943.

² *Ib.* Min. of Evid. 943.

of the departure from the old and constitutional course, has established a scale of expense greatly beyond what existed during the former periods of peace. Each department naturally endeavours to exalt its own importance, and wishes to promote its general efficiency, and to have everything in it complete and perfect: hence the desire to secure these objects, rather than the exigency of the public service, has had too much influence over a great part of the public expenditure." Again: "The establishment of an effectual control in the hands of the treasury is nothing more than the restoration to the treasury of its ancient authority. It is necessary that this control should be constantly exercised in determining the amount of expenditure to be incurred by each department, in securing the application of each sum voted in the annual estimates to the service for which it has been voted, in regulating any extraordinary expenditure which, upon an emergency, may be deemed necessary within the year, although not included in the estimates; and in preventing any increase of salary or extra allowance, or any other emoluments, being granted without a minute expressive of the approbation of the board of treasury. The committee have further to observe that it is expedient not only to restore this control, but to secure it from being again set aside, which cannot be effected, except by the House of Commons constantly enforcing its application, by holding the treasury responsible for every act of expenditure in each department."

The foregoing recommendations set forth, with sufficient clearness, the nature and extent of treasury control which would appear to be necessary to ensure a proper responsibility in financial matters, and to check extravagant and unauthorized expenditure.¹ They were not, however, attended with any immediate result. Nevertheless, in the time which has elapsed since the date of these reports, they have mostly been adopted, so far as is consistent with the freedom of action that properly belongs to the great executive departments.

The first reform which was effected was at the instance of Sir James Graham, who, when first lord of the admiralty, in

¹ Further recommendations, with a view to enforce the superintending control of the treasury, were made by the committee on navy, etc., *Com. Res.*, in 1848 (*Com. Pap.* 1847-8, v. 21, p. 35).

1832, introduced and caused to be embodied in the act 2 & 3 Will. IV. c. 40, sec. 30, what is termed the appropriation check. The appropriation check, or audit, was a regulation requiring the admiralty to make up an annual account of expenditure under the several heads of service specified in the Appropriation Act, and submit the same to the commissioners of audit, to be compared with the vouchers. The commissioners to certify the correctness of the said accounts, and to note under each head whether the expenditure had exceeded or fallen short of the vote of parliament. The certified account to be annually laid before the House of Commons.¹

Appropriation
audit of naval
expenditure.

Up to 1845, none of the departments appear to have applied to the treasury for authority to exceed any vote included in their estimates. In that year, a treasury committee on ordnance expenditure reported an opinion that efficient control over the public expenditure could only be established by the examination of the audited accounts by a committee of the House of Commons; but that, in the absence of such a committee, they considered that a control should be exercised by the treasury, as being the department primarily responsible for the regularity of the public finances. Parliament, in assigning to the commissioners of audit the duty of reporting on the public accounts, had reserved to itself a right of revision; but hitherto no action had been taken by the House of Commons on these reports; it was therefore expedient to consider whether this task ought not to be undertaken by the treasury. This recommendation was concurred in by the lords of the treasury, who, on January 13, 1846, issued a minute, declaring that "No executive department is authorized to exceed the sum appropriated by parliament under each general head or vote in their respective estimates, or to apply any surplus which may exist under one vote to supply the deficiency on others without the express previous

Control of the
treasury over
other public
departments
in financial
matters.

¹ Prior to the introduction of this reform, the several amounts voted in supply for the various naval services were added together and included in the Appropriation Bill in a bulk sum to the credit of the naval service generally. For full particulars of the change, which was extended to military expenditure in 1846 (9 & 10 Vict. c. 92), see Rep. Com^o. Pub. Accts. Evid. pp. 1-42, *Com. Pap.* 1862, v. 11. See also *infra*, p. 264.

sanction of the treasury, to be given on a written representation of the circumstances which render the adoption of such a course indispensable for the public service." This opinion was endorsed by the House of Commons in a resolution of March 30, 1849, that, "when a certain amount of expenditure for a particular service has been determined upon by parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose."¹ And, by a clause which was first

Treasury may empower the navy and army departments to use their surplus funds to make good deficiencies.

introduced into the annual Appropriation Act for the year 1846-47, the treasury are empowered to meet emergencies in the navy and army departments by authorizing the appropriation of any surpluses or grants in the same department towards making good any deficiency caused by such emergencies, provided that the aggregate sum voted for each department for the year be not exceeded. This act was followed up by treasury minutes, intended to explain more minutely the manner of giving effect to it, and of ensuring to the treasury the right of appeal and ultimate control in all cases of unforeseen and unprovided expenditure.²

The appropriation clause above cited was, until recently, so framed as to confer on the treasury the power of finally appropriating surpluses on particular grants to cover deficiencies on others within the same department. It so continued from 1846 to 1861. Meanwhile much controversy arose as to the true intent and meaning of the clause itself. Notwithstanding

Practice of the admiralty in this matter.

the obvious meaning of the act of parliament, the board of admiralty as a general rule refused, until recently, to recognize the supreme authority of the treasury, and claimed the right, under their own patent, of directing their own expenditure.³ And in complying with the directions of the statute, and seeking the formal sanction of

¹ See Gen. Balfour's Paper, in *Sat. Jour.* v. 29, p. 392. See also the Annual Appropriation Acts, Smith's *Parl. Rememb.* 1857-8, p. 145; Rep. of Com^o. on Misc. Expenditure, Min. of Evid. p. 6, *Com. Pap.* 1860, v. 9.

² See Rep. of Com^o. on Pub. Accts. Evid. 640-668, *Ib.* 1862, v. 11; and see chanc. of excheq. observations in *Hans. D.* v. 169, pp. 1860, 1863; *Ib.* v. 236, p. 770.

³ Rep. on Pub. Accts. Min. of Evid. 756-766, 788, *Com. Pap.* 1862, v. 11.

the treasury to transfers of votes, the board did not afford to the treasury sufficient information to enable them to exercise a proper control. Their applications, moreover, were usually made after the unauthorized expenditure had been incurred.¹ The treasury refrained from the attempt to compel a recognition of their right to control this department in the details of expenditure. A large proportion of almost every vote consists of expenditure abroad, so that it is impossible to know beforehand whether any vote will be exceeded or not. It was, therefore, contended "that, unless the treasury are prepared to take the whole responsibility of the conduct of the navy, they cannot possibly take such management of the details."² The first lord of the admiralty for 1862 declared his view of the matter to be "that the admiralty should have the power of spending under each vote (the naval estimates being ordinarily divided into seventeen separate votes) the whole of the sum taken under that vote; that, if we want to transfer from one vote to another, we should go, as we have gone at the time, and submit it to the treasury."³ Even so, it was claimed that "the previous sanction" required by the treasury must be understood to mean a formal sanction to the transfer, which is not necessarily or usually given before the expenditure has been incurred. It was urged that no other construction of the rule was practicable or consistent with the secrecy and despatch so often necessary in carrying out the directions of government, conveyed through a secretary of state,⁴ and that if the first lord of the admiralty were to shrink from the responsibility of exceeding his estimates, in obeying such directions, he ought to request the first lord of the treasury to convene a cabinet in order that the point might be discussed. Should a disagreement arise between the treasury and the admiralty on a financial question, they would appeal to the cabinet.⁵

Treasury control over admiralty expenditure.

Construction of the rule requiring treasury sanction to all extra expenditure.

But it has since been ruled, in conformity with sec. 27 of

¹ Rep. on Pub. Accts. Min. of Evid. 664, 823-828.

² *Ib.* 1442, 1495, *Com. Pap.* 1862, v. II.

³ *Ib.* 1500, 1519.

⁴ *Ib.* 1520-1522, *Com. Pap.* 1862, v. II.

⁵ *Com. Pap.* 1862, v. II, p. 331, Evid. 1524, 1562.

the Act 28 & 29 Vict. c. 123, that both the war office and the admiralty must obtain treasury authority for every excess over £500 upon the sub-heads or items of any vote, since the control of the House of Commons upon the expenditure of money under the sub-heads of every parliamentary grant is practically entrusted to the treasury. For, while the civil service departments were not strictly subjected to this rule, a more stringent practice is now enforced forbidding any excess on one sub-head to be defrayed out of the savings upon another without express treasury sanction.¹

In 1846 the system of appropriation audit in force in the navy was introduced into the army departments. Each of those departments, namely, the ordnance and the war office, presented separate estimates. They had, within their respective grants, the same power of transfer as the admiralty, but no transfer could be made from a vote under one department in aid of a deficiency in that of another. In 1856-57 these departments, together with the commissariat, were consolidated under the secretary of state for war. In the Appropriation Act the sums given for the army were divided into two aggregate grants—one, in round numbers, for six million pounds, and the other for nine millions. At first, the power of transfer was confined to the separate grants; “but in 1858 it appears that a change was made in the wording of the Appropriation Act, so as to give to the war department the power, with treasury consent, to transfer the surplus on a vote within one grant to a deficiency on a vote included in the other grant. The change thus introduced has been continued in subsequent acts.” Viewing this alteration as defeating the intention of the House and of the government, in dividing the votes into two aggregate grants, and as affording to the government a very extended power of transfer, the committee on public accounts, in 1862, recommended that the Appropriation Act should be so framed in future as to limit the power of transfer to the extent of the particular grant.² There are now twenty-seven votes

¹ First Rep. Com. Pub. Accts. p. 23, *Com. Pap.* 1867, v. 10; *Ib.* Second Rep. p. 21, *Com. Pap.* 1868-9, v. 6; *Ib.* First Rep. p. 6, *Com. Pap.* 1870, v. 10; *Ib.* Third Rep. pp. 1, 12, *Com. Pap.* 1871, v. 11; *Ib.* Sixth Rep. p. 24; Appropriation Accts. 1873-4, pp. 90, 122, 219, *Com. Pap.* 1875, v. 50; *Ib.* p. 186, *Com. Pap.* 1876, v. 50.

² Second Rep. Com. Pub. Accts. pp. iv., v. *Com. Pap.* 1862, v. 11;

for army services, which are all included in one grant.¹ The sub-heads of these votes are given in the estimates, and the war office are obliged to obtain treasury authority for any excesses in regard to these sub-heads.² Particulars explanatory of such transactions must be laid before the House of Commons at the commencement of the next session.³

Treasury sanction to all extra army expenditure.

The value of the appropriation clause above mentioned, the true intent and meaning of which has given rise to so much controversy, has been questioned, on the ground that it "loosens the control of parliament over the separate grants for naval and military services, by giving a power to the treasury to vary the appropriation specially directed by parliament itself;" and it has been recommended that this clause should be expunged from the Appropriation Act.⁴ The annual appointment by the House of Commons of a committee of inquiry into the audited accounts undoubtedly affords facilities for securing more effectually than by treasury control the strict appropriation of public money to the purposes for which it has been voted.⁵ The committee on public accounts in 1862 bestowed great attention on this point, and unanimously resolved that the power of transfer, in relation to army and navy appropriations, ought to be subjected to some further check. In view of the resolution of the House of Commons, on March 30, 1849, setting forth the duty of all public departments to confine their expenditure within the

Value of the clause authorizing the treasury to deviate from the appropriation in certain cases.

New regulations on this subject recommended.

and see *Hans. D.* v. 169, p. 1849; Rep. Com^o. Pub. Accts. Evid. p. 7, *Com. Pap.* 1864, v. 8.

¹ 29 & 30 Vict. c. 91, sec. 14, sched. D.

² First Rep. Com^o. Pub. Accts. p. 23, *Com. Pap.* 1867, v. 10. The financial supremacy of the treasury is fully recognized by the war office. (*Hans. D.* v. 187, p. 1703; Rep. Com^o. on Military Reserve Funds, Min. of Evid. pp. 7, 19, *Com. Pap.* 1867, v. 7).

³ 28 & 29 Vict. c. 123, sec. 27; Rep. Com^o. Pub. Accts. Evid. 1884-1898, 2292; *Com. Pap.* 1852, v. 11.

⁴ Memo. by Mr. Anderson, in app. to Rep. on Pub. Accts. p. 192, *Com. Pap.* 1862, v. 11.

⁵ Min. of Evid. 1730, *Com. Pap.* 1862, v. 11, p. 352. See cases cited of abuses from want of sufficient check over departments by whom the power of transfer is exercised, in Ld. R. Montagu's speech, *Hans. D.* v. 169, March 24; and see Rep. Com^o. Pub. Accts. Evid. p. 6, *Com. Pap.* 1864, v. 8.

amount placed at their disposal by parliament, the committee declared it to be the duty of each department, with the assistance of the treasury, so to frame their estimates as to provide as far as possible for all anticipated expenditure; and that, if additional outlay should unexpectedly become necessary, the department ought to communicate with the treasury thereupon without delay. The treasury should then determine whether parliament should be applied to for a supplementary vote, or whether it would be more expedient to meet the additional expenditure by an advance from the surplus on hand from other votes. If the latter, the treasury should authorize the same in writing. At the making up of the final accounts, copies of all such applications, and of the treasury letters and warrants thereupon, should be presented to parliament. A vote should then be proposed in supply to meet any deficiencies, and all surpluses should be surrendered to the exchequer. By this plan the government would be at liberty to exercise its discretion in providing for unexpected emergencies, by permitting transfers of surpluses to meet the deficiencies, and the House of Commons would possess an opportunity of reviewing such transactions, when transfers that had been made were submitted for their approval in the shape of a vote.¹ These recommendations were sanctioned by parliament and by the government. A new appropriation clause was inserted in the Appropriation Act of the year, which, instead of authorizing the treasury to determine finally on applications for transfers, merely empowered them to authorize the temporary use of surpluses, in order that the advances thus made might be submitted for the sanction of parliament, and the deficiencies in question be provided for "in such manner as parliament might direct."² A treasury minute, to give effect to the new arrangements, was issued on January 27, 1863. It prescribed the circumstances in which the naval and military departments should be at liberty to apply for treasury sanction to expenditure for services unforeseen and unprovided for; and the forms to be observed in such applications, with a view to enable the treasury to

New form of appropriation clause, enabling the treasury to give a temporary sanction to the use of surpluses.

¹ Second Rep. Com^o. of Pub. Accts. pp. vii., viii. *Com. Pap.* 1862, v. 11; and see Evid. before First Com^o. Pub. Accts. *Com. Pap.* 1870, v. 10.

² 25 & 26 Vict. c. 71, sec. 26.

submit to the House of Commons all needful information in relation thereto.¹ With such restrictions there is a manifest advantage in permitting the transfer of savings from one vote to meet an excess in another.² The elasticity of the service would be destroyed if a minister had not that power. Very disastrous results might ensue, if no alteration were allowable in the course of a financial year in estimates which were framed six months before the year began.³

A statement of savings and deficiencies upon the grants for army services for the years 1862-63—together with copies of the correspondence between the war office and the treasury for authority to incur expenditure that would occasion an excess on a particular vote—was communicated to the committee on public accounts for 1864. These accounts are the first that were prepared under the altered system introduced by the Appropriation Act of 1862, by which the treasury were empowered to give a temporary sanction only to applications for leave to make use of surpluses to defray excesses upon other services, and were required to submit to the consideration of parliament the final determination there-
upon. The committee reported that the effect of ^{Benefits of} this change. ^{this change.} this change had been very beneficial to the public service, and that the great object of the alteration in the Appropriation Act had been accomplished. Heretofore it had not been customary for the departments to apply to the treasury to authorize transfers until the time for closing the account was at hand, which afforded no opportunity to the treasury of exercising any judgment upon such applications. "Now, before any excess of expenditure is incurred, the departments apply to the treasury for their sanction as soon as the necessity arises." In many cases it is impossible to tell, until the account is balanced, what the amount of excess or deficiency will be; the application for treasury sanction is therefore ordinarily deferred until the account is made up. But any large excess must be foreseen, and no excess would be

¹ *Com. Pap.* 1863, v. 29, p. 173.

² Second Rep. Com^o. Pub. Accts. 1869, p. 32, *Com. Pap.* 1868-9, v. 6. For latitude allowed to the war office and to the admiralty in such transfers, particularly under the vote for army works, see *Ib.* pp. 40, 62, *Com. Pap.* 1872, v. 7.

³ Rep. Com. Pub. Accts. Evid. 639, *Com. Pap.* 1877, v. 8.

sanctioned which could not be covered by the aggregate vote.¹

The committee carefully considered the important constitutional point, as to the mode in which these "temporary advances" should be submitted for the subsequent sanction of the House of Commons. They declared their opinion that, as soon as the accounts ascertaining the deficiencies and savings on the votes for army and navy services had been laid before the House, no time should be lost in seeking the sanction of parliament for the "temporary advances" authorized by the treasury, by a vote, "which ought to receive the most formal consideration and sanction of the House." "A vote in the form of a resolution of a committee of the whole House would be the proper mode of effecting this object, and of complying with the provisions of the Appropriation Act." This resolution to be embodied as a clause in the Appropriation Act.²

Accordingly, on July 18, 1864, the reports of the navy and army expenditure, for the year ending March 31, 1863, were considered in committee of the whole House, and resolutions agreed to—(1) setting forth the savings effected in the grants on behalf of these services, and also the amounts of expenditure in excess of the said grants, which had been "temporarily defrayed," under the authority of the treasury, out of the surpluses; and (2) "That the application of so much of the said surpluses be sanctioned." The effect of asking the House to pass these resolutions was explained by the chancellor of the exchequer as intended "simply to give them the opportunity, if they thought fit, of disapproving of any of these transfers from one vote to another;" and to enable the House, if it did not approve the manner in which the government had exercised the discretionary power entrusted to them, to pass "a vote of censure."³ The resolutions above

¹ Rep. Com^o of Pub. Accts. Evid. 409-429, *Com. Pap.* 1865, v. 10. But from the Second Rep. of this Com^o. in 1869, p. 20, *Com. Pap.* 1868-9, v. 6, we learn that it is not unusual for the treasury sanction to be given in anticipation of an expected surplus, which may turn out to be non-existent.

² Rep. Com^o. of Pub. Accts. p. v. *Com. Pap.* 1864, v. 8; and see Evid. pp. 52-54.

³ *Hans. D.* v. 176, p. 1696; First Rep. Com^o. Pub. Accts. p. x. *Com. Pap.* 1876, v. 8; *Hans. D.* v. 231, pp. 72, 657.

mentioned were afterwards embodied in the Appropriation Act for 1864.¹ Similar proceedings have taken place, in subsequent sessions, in regard to the transfers of army and navy expenditure for the past financial year. These resolutions customarily pass through the House without debate,² and are embodied in the Appropriation Acts.³

In the case of expenditure on behalf of the civil services, the treasury have no authority to apply any surplus from one civil service vote to meet deficiencies in another.⁴ All surpluses are obliged to be surrendered to the exchequer, and all deficiencies to be voted by parliament. Each vote has its own special account in the books of the paymaster-general, and a balance of debit and credit is struck every week. When an issue is applied for, the votes on account of which the issue is required are always specified. The consequence is, that a civil service vote can never be exceeded; that the balances at the end of the year are surrendered; and that there are no transfers, except from one sub-head to another, of the same vote, a proceeding which is still permitted, and for which treasury sanction is generally, if not invariably, required.

No transfers allowed on the civil service votes.

A vote in committee of supply is in the nature of a maximum. It is not imperative on the government to spend the whole or any part of the amount granted, but it is a matter of discretion; provided that any parties, with whom the government should have entered into contracts to execute works authorized to be undertaken by parliament, would be entitled to claim compensation for losses incurred, if the government should afterwards decide to abandon such undertakings.⁵ On the other hand, no pledge should be exacted that a particular estimate should not be exceeded in any circumstances.⁶

The whole sum voted need not be expended.

¹ 27 & 28 Vict. c. 73, sec. 26.

² *Hans. D.* v. 180, p. 331; *Ib.* v. 184, p. 999.

³ 28 & 29 Vict. c. 123, sec. 26; 29 & 30 Vict. c. 91, sec. 28; *Hans. D.* v. 212, p. 1589; *Quar. Rev.* v. 141, p. 239.

⁴ Rep. Com^o. Pub. Accts. p. v. *Com. Pap.* 1874, v. 6.

⁵ *Hans. D.* v. 165, p. 1109. See the case of Bentham's "Panopticon," authorized to be built by act 34 Geo. III. c. 84, but not proceeded with. Bentham was compensated by act 52 Geo. III. c. 44. See his works, v. 11, p. 96.

⁶ *Hans. D.* v. 185, p. 690.

If, in addition to the sums voted by parliament for particular services, further expenditure is unavoidably incurred thereon, an explanatory statement must be laid before parliament, "of sums required to be voted in order to make good excesses on certain grants for civil services" for the particular financial year, showing the causes of excess in every instance. In this statement the savings upon the civil service grants for the same period will be stated and contrasted with the excesses, for which a further appropriation is required.¹

This proceeding being essentially a matter of account, it is usual for the vote thereon to be taken in a lump sum.² Votes for excesses should, if possible, be taken before the close of the financial year in which the expenditure has been incurred, so as to be included in a ways and means bill to be passed before the year has expired.³

So far as relates to the army and navy estimates, it has for a length of time been the rule and practice that, if the money voted for any particular service be not expended within the year, the power of expenditure granted by the vote ceases, and the money cannot afterwards be made use of until it is re-voted by parliament.⁴ This rule has been carried out of late years very strictly. It is only very lately that the civil service votes and miscellaneous estimates have been subjected to the same rule. In 1857 the committee on public moneys reported a recommendation, that "all unexpended balances should be surrendered, and grants unapplied, but required for the completion of the services to which they had been appropriated, should be re-voted."⁵ The committee on the miscellaneous

Votes to make good excesses on grants.

Balances not expended within the year to be surrendered to the exchequer.

¹ *Com. Pap.* 1870, v. 48, pp. 551, 557.

² *Hans. D.* v. 199, p. 1953.

³ *Rep. Com^o. Pub. Accts.* pp. iii., xiv. *Com. Pap.* 1874, v. 6.

⁴ *Hans. D.* v. 141, p. 181; v. 165, pp. 950, 1069. But see as to unexpended balances on the "China Vote of Credit," *Ib.* v. 170, p. 1951; v. 175, p. 1352; *Com. Pap.* 1864, v. 32, p. 261. The rule does not apply to cases such as the grant for fortifications, which was made by special act of Parliament, and did not come out of the year's income, but was raised by annuities, as an addition to the national debt (*Ib.* v. 172, p. 330; act 26 & 27 Vict. c. 80).

⁵ *Rep. Com^o. on Pub. Moneys*, p. 7, *Com. Pap.* 1857, sess. 2, v. 9. See observations thereon in treasury minute of Feb. 15, 1858, in *Com. Pap.* 1857-8, v. 34, p. 386.

estimates in 1860 made a similar recommendation; as also did the committee on public accounts, in 1861, in their fifth report. On June 24, 1861, the secretary to the treasury informed the House that the government were making arrangements to carry out these suggestions. The new system was partially introduced in the same year,¹ but it was not universally adopted until the following session.² On March 31, 1863, "for the first time in our financial history, all the services were required to surrender the balances standing to their credit" into the exchequer. The votes are now taken "for services coming in course of payment during the year," instead of, as heretofore, "for the services of the year."³ By this means, the highly objectionable system of allowing running balances to go from year to year has been stopped, and the control of parliament over the public expenditure has been practically guaranteed.

Notes now
taken for
payments
within the
year.

3. *The Application of the System of Audit to the Public Accounts.*

We now proceed to consider the provision which has been made by parliament for the examination and audit of the public accounts.

From an early period in our constitutional history, the attention of the House of Commons has been directed to the importance of securing an efficient audit of the public expenditure. Acts were passed in the reigns of William III. and of Queen Anne, appointing commissioners of audit, by whose exertions flagrant abuses and misappropriations of public money were brought to light, from time to time, and the offenders subjected to censure and punishment, at the instigation of the Commons. But in the two succeeding reigns the Commons relaxed their vigilance. Not only did they refuse to pass an Audit Act, but in two instances they gave to the crown an unlimited vote of credit, or power to apply the whole supply of the year as the crown might direct.⁴ In 1780, however, in consequence of Mr.

Origin of the
system of
audit.

¹ *Hans. D.* v. 164, p. 315.

² *Ib.* v. 166, p. 999.

³ First Rep. Com^o. on Pub. Accts. p. iv. *Com. Pap.* 1862, v. 11.

⁴ Clode, *Mil. Forces*, v. 1, pp. 110, 126.

Burke's efforts in the cause of economic reform, an act was passed appointing audit officers, named by the crown, and not, as heretofore, chosen by ballot out of the House of Commons.¹ At length in 1785 a permanent board of commissioners for auditing the public accounts was constituted by the act 25 Geo. III. c. 52. The duties of the board were defined and enlarged by several subsequent statutes.²

Notwithstanding its parliamentary origin and peculiar responsibilities, the board of audit was undoubtedly a department of the executive government, dependent upon the treasury for the regulation of its strength, resources, and organization; and, as regards the examination of accounts under the administrative audit, it was likewise dependent upon the treasury. But, by the gradual extension of the principle of the appropriation audit, the department has been elevated into a more independent position. As soon as the main functions of the auditors shall be, not to act on behalf of the treasury as a check upon the transactions of treasury accountants, but on behalf of the House of Commons as a check upon the pecuniary transactions of the treasury itself, of the other great departments of state, and of the executive government generally, the auditors will probably become, in fact as well as in theory, the servants of the House of Commons, and dependent upon the House, not only for guidance as to what duties they should perform, but for the means of performing those duties efficiently.³

Still, it is important to remember that the audit office was never designed to exercise any direct control over public expenditure. In the words of Mr. Gladstone, "it is a board to ensure truth and accuracy in the accounts of the public expenditure, and might properly be termed a board of verification." To attempt to confer upon it coercive and controlling powers, or a right to judge of the propriety or expediency of any such expenditure, would be to transfer to it what strictly belongs to the House of Commons.⁴ The functions of the board of audit were summed

¹ See Clode, *Mil. Forces*, v. 2, p. 133.

² *Ib.* c. 24.

³ Observations of Mr. Macaulay, Secretary Board of Audit, p. 148, *Com. Pap.* 1865, v. 10.

⁴ *Hans. D.* v. 165, p. 1350; and see extract from Fifth Rep. of Finance Com^o. of 1819, *Com. Pap.* 1871, v. 11.

up by its secretary in the following terms: "The whole of our experience as appropriation auditors tends to satisfy us that we ought to have no further communication with the executive departments than Functions of the board of audit. may be necessary for the purpose of obtaining information. Whatever tends to associate us, either directly or indirectly, with the pecuniary transactions of the government, cannot but tend to damage the credit of the reports in which we are required to submit those transactions to the judgment of parliament. We conceive, therefore, that we should never be required to advise, to control, or to remonstrate."¹ It is as an auxiliary to the labours of the standing committee on public accounts that the investigations of the audit office are mainly important, and are capable of being made increasingly valuable.²

In addition to the check to which public accounts may be subjected in the department to which they relate, all accounts of public expenditure are liable to two kinds of audit—(a) the administrative audit; (b) the appropriation audit.

(a) The administrative audit, as its name imports, is conducted on behalf of the treasury, with a view to Administrative audit. purposes which are purely administrative. Until recently, this was the only kind of audit applied to the public accounts; and, with certain exceptions, it is still the only check which is applied to the miscellaneous civil service accounts. This audit may be conducted by any persons whom the treasury shall appoint. But it has been usually conducted by the board of audit, acting exclusively on behalf of the treasury, and with a view to enable the treasury to maintain their legitimate authority and control over the various departments of expenditure.³ The board has no authority to apply this audit to the public expenditure generally, but only to such accounts as they may be directed by the treasury to examine. Apart from the mere business of checking the accounts, it is the main duty of the board, in conducting this audit, to determine whether the departmental

¹ Rep. Com^s. Pub. Accts. p. 131, *Com. Pap.* 1865, v. 10.

² *Ib.* Evid. pp. 9, 35, 65, *Com. Pap.* 1864, v. 8.

³ Appended to the Fifth Rep. of Pub. Accts. Com^s. for 1861 is a table of the accounts which are audited by the audit board, and of those which are audited by other departments.

expenditure has been in accordance with treasury instructions, whether special or general. After receiving the auditor's report, it becomes the duty of the treasury to decide what shall be done in respect to any irregularity, or departure from the directions of the treasury, that may be pointed out therein.¹

It is not a little curious that, amongst the numerous statutory provisions relating to the administrative audit, none can be found which imposes on the auditors the duty of questioning, or even of noticing, any expenditure that may have been incurred in excess of a parliamentary vote, or in respect of a service for which no appropriation whatever had been made.² This left the door open for much abuse, and enabled the treasury to expend money which had been granted for one service for entirely different purposes, without fear of detection or censure by parliament. Sometimes it happened, however, that such reckless and extravagant expenditure was incurred, more particularly on behalf of the army or navy, as to call for the special interposition of parliament.³ For example, the admiralty account, for a series of years prior to 1831, was systematically misappropriated.⁴ It was not until the year 1832 that a partial remedy was found for this evil, by the introduction of a new description of audit, which will now engage our attention.

(b) In 1832, Sir James Graham, who was at that time first lord of the admiralty, introduced into the House of Commons a bill for the better regulation of the naval accounts, the most prominent feature of which was a provision empowering the commissioners of audit to examine the accounts and vouchers of naval expenditure, side by side with the votes and estimates for the naval service; and to report the result of the comparison annually to the House of Commons. This bill became law; and, pursuant to its requirements, the votes for naval services were, for the first time,

¹ Rep. Com^o. Pub. Moneys, p. 14, *Com. Pap.* 1857, sess. 2, v. 9; Rep. Com^o. Pub. Accts. Evid. 3, 4, 118, 252, etc.; and App. p. 119, *Com. Pap.* 1865, v. 10.

² *Ib.* App. p. 119, *Com. Pap.* 1865, v. 10.

³ 3 Hatsell, pp. 209-211.

⁴ Rep. Com^o. Pub. Accts. p. 119, *Com. Pap.* 1865, v. 10.

arranged under distinct heads, or branches of expenditure, in the annual Appropriation Act; in a form which, with some slight alterations, has been observed ever since.¹

In 1846 a new act was passed (the 9 & 10 Vict. c. 92), which extended the operation of this audit to the accounts of military as well as naval expenditure.² In 1851, by the act 14 & 15 Vict. c. 42, the appropriation audit was directed to be applied to the newly created departments of the board of woods and the board of public works. In 1857, the committee on public moneys recommended that it should be applied to the "accounts of income and expenditure kept at the treasury, to the accounts of the revenue departments, and to the various accounts comprising the expenditure of the votes for civil services, including civil contingencies."³ In 1860, by the act 24 & 25 Vict. c. 93, the appropriation audit was extended to the expenditure of the customs, the inland revenue, and the post-office departments; and in 1861 (pursuant to the report of the committee on public accounts of that year), to payments out of the civil contingencies fund. It only remained that it should be applied to the miscellaneous civil service expenditure; an undertaking which, after having been repeatedly urged upon the government by the committee on public accounts,⁴ was at length accomplished in 1866, by the Exchequer and Audit Departments Act, 29 & 30 Vict. c. 39.

It is undoubtedly of the first importance that the appropriation audit should be extended to every branch of the public expenditure, inasmuch as the financial accounts which are annually presented to parliament do not as yet exhibit the precise relation between the grants and the expenditure for each particular service; and parliament has no means of comparing the expenditure actually incurred without any vote to which the appropriation audit has not been applied.

¹ For full particulars of this change, see Rep. Com^o. Pub. Accts. Evid. pp. 1-4, etc., *Com. Pap.* 1862, v. 11.

² *Ib.* Evid. 227, *Com. Pap.* 1865, v. 10.

³ Report, p. 6, *Com. Pap.* 1857, sess. 2, v. 9.

⁴ See Report of 1862, p. iii. and App. p. 2; Report of 1864, App. Nos. 3 and 4.

The appropriation audit is conducted exclusively by the exchequer and audit department, acting in concert with an officer from the accountants branch of the department whose accounts are under examination. Every account is examined on behalf of the House of Commons, in accordance with the rules prescribed by the Exchequer and Audit Act of 1866.¹

The object of this audit, and its precise difference from a mere administrative audit, have been thus explained. The appropriation audit is intended to ascertain what payments are properly chargeable to a particular parliamentary vote. It accordingly determines—1. Whether the expenditure incurred is verified by regular vouchers. 2. Whether it has been sanctioned by the proper departmental authority. 3. Whether it has been distinctly authorized by parliament. The administrative audit is confined to the two first inquiries, but the appropriation audit determines all three.² Accordingly, whenever any particular accounts are directed by the treasury to be subjected to the appropriation audit, the mere administrative audit to which such accounts may have been previously subjected is necessarily merged in the larger inquiry.³

When the accounts for the past financial year to which the appropriation audit is applied have been duly examined, the comptroller and auditor-general is required to embody the result of such examination in reports for the information of the House of Commons. His report is sent, first of all, to the treasury, in order that that department may interpose its authority to rectify any irregularity pointed out therein; and also that the treasury, in transmitting the report to the House of Commons, may accompany it with any observations they may think fit to make upon

¹ By an amendment to this act, in 1884, 47 & 48 Vict. c. 62, sec. 14, a definition of the nature of documents which constitute vouchers or proofs of payment—in cases of money granted for army or navy services made in respect of pay, wages, pensions, gratuities, or allowances to persons—is made.

² Rep. Com^o. Pub. Accts. Evid. 262, App. pp. 142–147, *Com. Pap.* 1865, v. 10. For further particulars of duties imposed on comptroller and auditor-general concerning application of appropriation audit, see *Com. Pap.* 1876, v. 8, p. 141.

³ Rep. Com^o. Pub. Accts. Evid. 24, 235, etc. *Com. Pap.* 1865, v. 10.

it, having previously furnished the comptroller-general with a copy of their observations in the shape of a treasury minute.¹ It is the duty of the comptroller and auditor-general to direct the attention of parliament, in his reports, to every departure from the provisions of the Appropriation Act.² These reports should make mention not merely of any cases of positive irregularity on the part of any department of the state in the expenditure of public money placed in their hands for particular purposes, but also of any cases wherein, with the sanction of the treasury, surpluses of certain votes had been used to defray the deficiencies of other votes, in conformity with the provisions in the recent Appropriation Acts, permitting the treasury to authorize such an arrangement "temporarily," and subject to the future approbation of parliament. Upon their presentation to parliament, the appropriation accounts of the sums granted for the service of the year to which they relate, together with the reports thereon of the comptroller and auditor-general, and the observations of the treasury upon the same, are referred to the committee on public accounts.

We have now to consider the origin and functions of the last tribunal by means of which parliament, and more especially the House of Commons, is enabled to exercise its constitutional control over the public expenditure with vigilance and success, viz.—

4. *The Standing Committee on Public Accounts.*

From the period of the revolution of 1688, the House of Commons have exercised the right of inquiry, by committees of their own, into the public expenditure; and of auditing the public accounts either by members or persons named by their own House. The appointment of commissioners of audit, to be nominated by the crown under the authority of parliament, has not in any degree impaired the powers of the Commons in this respect; for "it is competent to this House to examine into, and to correct, abuses in the

¹ Report (Excheq. and Audit Bill), Evid. 214-228, *Com. Pap.* 1866, v. 7; and see Appropriation Accts. 1868-9, *Com. Pap.* 1870, v. 48.

² Excheq. and Audit Act of 1866, sec. 32; and see First Rep. Com^s. Pub. Accts. p. v. *Com. Pap.* 1870, v. 10.

expenditure of the civil list revenues, as well as in every other branch of the public revenue, whenever it shall appear expedient to the wisdom of this House so to do.”¹

With a view to obtain the co-operation of the House of Commons in the important task of economical retrenchment and reform, it had been customary for the government from time to time to call upon the House to appoint what were termed finance committees, with authority to inquire into the revenue and expenditure of the country in every branch of the public service. The first instance of the appointment of such a committee was during the administration of Mr. Pitt, in 1786. From this date, similar committees, composed of men selected for their talents and knowledge of finance, without distinction of party, but including some members of the existing ministry,² were appointed about once in every ten years, until 1828, when twenty years—to 1848—elapsed without the nomination of such a committee, if we except one in 1834, which was confined to colonial military expenditure.³

On February 22, 1848, on the motion of the chancellor of the exchequer, two select committees were appointed, one on military expenditure, and the other to inquire into the expenditure for miscellaneous services. And on February 18, 1873, a select committee was appointed, on the motion of Mr. Gladstone (the prime minister), to inquire into any possible reductions in the expenditure for civil services.

Such committees, though not professedly secret, being intended to receive information from government which it would not be expedient to divulge to members generally, have been usually empowered to conduct their inquiries in secret, and to exclude from publicity any evidence which it might be important to abstain from disclosing.⁴ And, in consequence to the appointment of these committees, the government have been careful to stipulate that their inquiries should be restricted within constitutional limits, and that, while reporting their opinions in regard to retrenchments in the public expenditure and economical reforms, they

Beneficial if confined within proper limits.

¹ *Com. Jour.* v. 37, p. 763; Clode, *Mil. Forces*, chaps. vii. xxiv.

² *Mir. Parl.* 1828, pp. 199, 203.

³ *Hans. D.* v. 96, pp. 991, 1056.

⁴ Peel, in *Ib.* pp. 1007, 1063.

should not encroach on the functions of the executive government, who are alone responsible for deciding as to the number of men required for the army or navy, or any other branch of the public service, in order to maintain due efficiency therein.¹

In the year 1845, as we have already seen, a departmental committee of the treasury reported their opinion that efficient control over the public expenditure could only be secured by the examination of the audited accounts by a committee of the House of Commons.² But this recommendation was not carried out; and the country is mainly indebted for the introduction of this important feature into the political system of England to the timely counsels of the committee on public moneys, who, in their report in 1857, advised that the principle of the concurrent audit, or appropriation check, should be extended to all accounts of public income and expenditure to which it had not yet been applied; that the whole of the public accounts finally audited should be presented to parliament before the close of the year succeeding that to which they relate; and that these audited accounts should be annually submitted to the revision of a committee of the House of Commons.³

Origin of
public
accounts
committee.

On February 2, 1860, a motion was carried in the House of Commons against the government, "that it would be desirable to appoint, every year, a select committee to inquire into the miscellaneous civil service expenditure of the preceding year; into the payments made out of the consolidated fund; and into those on account of the woods, forests, and land revenues." But, doubtless through the influence of the government, no such committee was nominated. Nevertheless, on March 29 following, the government consented to the appointment of a committee whose powers should be limited to an inquiry into "the expenditure for miscellaneous services, and to report whether any reduction could be effected therein." This committee made a report on July 25, strongly recommending that they should be reappointed in the next session. On February 21, 1861, inquiry was made of ministers in the House of Commons whether they had taken any steps to give effect to the

¹ *Hans. D.* v. 96, p. 1073; and v. 101, p. 713.

² See *ante*, p. 251.

³ *Rep. Com^o. Pub. Moneys*, p. 6, *Com. Pap.* 1857, sess. 2, v. 9.

recommendations of the committee on public moneys of 1857, that the principle of audit should be applied to the miscellaneous expenditure, and that a committee on the public accounts should be annually appointed, etc. In reply, the chancellor of the exchequer stated that the government were willing to accede to the appointment of a committee to review the audited accounts from year to year, but that for the present year the army and navy expenditure alone could be subjected to such scrutiny, as the miscellaneous expenditure had not as yet been brought under the system of audit. On April 9 following, upon the motion of the chancellor of the exchequer, a select committee was appointed for the examination, from year to year, of the audited accounts of the public expenditure; and the chancellor intimated his intention of moving that the appointment of such a committee should be a standing order.¹ On March 31, 1862, this promise was fulfilled by the appointment of a standing committee, styled "The committee of public accounts," for the examination of the accounts, showing the appropriation of the sums granted by parliament to meet the public expenditure, to consist of nine (increased by order of March 28, 1870, to eleven) members, who shall be nominated at the commencement of every session, of whom five shall be a quorum. On April 3 this was made a standing order.

This committee has been characterized by Mr. Gladstone as "an institution well founded on the principles of parliamentary government," it being intended "to give completeness to our system of parliamentary control over the public moneys;"² and as affording to the House of Commons, through its investigations, "the best security for the due, speedy, and effectual examining and rendering of the public accounts."³

An excellent understanding prevails between the government and this committee; and its proceedings have been invariably

¹ *Hans. D.* v. 162, pp. 313, 773; v. 165, p. 1027.

² *Ib.* v. 177, p. 456; v. 217, p. 1227; and see article on Parliament and the Public Moneys, *Quar. Rev.* v. 141, p. 224; Second Rep. Com^o. Pub. Accts. p. 21, *Com. Pap.* 1863, v. 7.

³ *Hans. D.* v. 165, p. 1351.

characterized by moderation and impartiality. It is customary that both the secretary and ex-secretary of the treasury should be members of it.¹ The former reports to it officially every session the steps which have been taken during the past year to give effect to its recommendations. If any particular recommendation proves impracticable or inexpedient, the reasons are given why it has not been carried out. It is usual for the treasury, in dealing with the recommendations of this committee, either to embody their conclusions upon particular suggestions in a minute, or to ask the committee to reconsider the question.²

Great care is taken in the choice of members to compose this important committee. It was at first proposed that it should be chosen by the committee of selection; but they declined to undertake the duty, and the committee is now nominated by government, in concert with such members of the House as are of the greatest weight and authority upon financial questions.³ This is in conformity with the practice which formerly prevailed in the appointment of finance committees.⁴ The same gentlemen are usually re-appointed on the committee every session; and hitherto the government have successfully resisted all attempts to alter its composition.⁵ The chairman is invariably an unofficial member of the House, but not invariably a supporter of the government.

The committee on public accounts is of immense utility in bringing the entire revenue and expenditure of the country under the control of the House of Commons, in pointing out abuses in the management of the public finances, and in suggesting remedies; and furthermore, in investigating and reporting to the House their opinion upon disputed points of account between the treasury and any department or functionary entrusted with the collection or expenditure of public moneys.⁶

¹ *Hans. D.* v. 192, pp. 118, 134.

² First Rep. Com^o. Accts. Evid. 982, *Com. Pap.* 1870, v. 10.

³ *Hans. D.* v. 165, p. 1350.

⁴ *Mir. of Parl.* 1828, pp. 199, 203.

⁵ *Hans. D.* v. 166, pp. 330, 528; v. 169, p. 715.

⁶ Mr. Disraeli, *Ib.* v. 221, p. 621.

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Table of Abbreviations used in the Foot-notes.

Ad. & Ell.	Adolphus & Ellis Queen's Bench Reports.
Adolphus	History of England under George III.
Am. L. Rev.	American Law Review.
Ann. Reg.	Annual Register.
Best & Smith	Queen's Bench Reports.
Bisset	The Commonwealth of England.
Black. Mag.	Blackwood's Magazine.
Blackstone	Commentaries on the Law of England.
Bro. & Bingham	Broderip & Bingham's Common Pleas Reports. [Cases.]
Brod. & Freem.'s Judgments	Broderick & Freemantle's Ecclesiastical
Broom Leg. Max.	Legal Maxims.
— Const. Law	Constitutional Law.
C. & B.	Common Bench Reports.
Campbell's Chan.	Lives of the Lord Chancellors.
Can. Sess. Pap.	Sessional Papers of the Dominion of Canada.
Chan. of the Exch.	Chancellor of the Exchequer.
Chitty Prerog.	Prerogative Law.
Clode Mil. Forces	Clode Military Forces.
Col. Pol.	Colonial Policy.
Com.	The Commons.
Com ^e .	Committee.
Com. Dig.	Comyn's Digest of the Laws of England.
Com. Jour.	Journals of the House of Commons.
Com. Pap.	Sessional Papers of the House of Commons.
Con. Rev.	Contemporary Review.
Const. Hist.	Constitutional History.
— Prog.	— Progress.
Cooley Const. Lim.	Constitutional Limitations.
Cox Ant. Parly. Elec.	Ancient Parliamentary Elections.
— Inst.	Institutions of the English Government.
Crim.	Criminal.
De Lolme Const.	Constitution of England.
Dicey	The Privy Council.
Dub. Rev.	Dublin Review.
Ed.	Edition.
Ed. Rev.	Edinburgh Review.
Ell. & B.	Ellis & Blackburn's Queen's Bench Reports.
Ency. Brit.	Encyclopædia Britannica.
Eng. Const.	English Constitution.

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Fin. Reform Alm.	Financial Reform Almanac.
Forsyth Const. Law	Cases and Opinions on Constitutional Law.
Fort. Rev.	Fortnightly Review.
Fost. & Fin.	Foster and Finlason Nisi Prius Reports.
Fras. Mag.	Fraser's Magazine.
Freeman	Norman Conquest.
Govt. of Eng.	Government of England.
Gt. Gov. Fam.	Great Governing Families.
H. of C.	House of Commons.
H. of L.	House of Lords.
H. of Rep.	House of Representatives.
Hale	Pleas of the Crown.
Hallam's Const.	Constitutional History of England.
Hans. D.	Hansard's Debates. [House of Commons.
Hats. Prec.	Hatsell's Precedents of Proceedings in the
Hawkins P. C.	Pleas of the Crown.
Hearn, Govt. of Eng.	Government of England.
Hist. of Eng.	History of England.
Inst.	Coke's Institutes.
Int. Rev.	International Review.
Irish Stat. Soc. Jour.	Irish Statistical Society Journal.
Kemble	The Saxons in England.
Knight	History of England.
L. K. App. Cases	Law Reports Appeal Cases.
— Prob. Div.	— Probate Division.
L. T. Rep. N. S.	Law Times Reports, New Series.
L. Can. J.	Lower Canada Journal.
Law Mag. N. S.	Law Magazine, New Series.
Ld.	Lord.
Lewis Admin.	Administrations of Great Britain.
Lord's Pap.	Sessional Papers of the House of Lords.
Mac. Mag.	Macmillan's Magazine.
Mac. & G.	Macnaghten and Gordon's Chancery Reports
Martin Pr. Consort	Life of the Prince Consort.
May Const. Hist.	Constitutional History.
— Parl. Prac.	Parliamentary Practice.
Mill Rep. Govt.	Representative Government.
Mir. of Parl.	Mirror of Parliament.
Moore P. C. C.	Moore's Privy Council Cases.
N. Am. Rev.	North American Review.
Nicholas	Proceedings and Ordinances of the Privy Council of England.
19th Cen.	Nineteenth Century Review.
Norm. Conq.	Norman Conquest.
p.	Page.
P. C.	Privy Council.
Palgrave	English Commonwealth.
Parl. D.	Parliamentary Debates (Series of Debates from 1830 to 1880).
Parl. Govt.	— Government.
Parl. Hist.	— History.

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Parl. Pract.	. . .	Parliamentary Practice.
Parl. Remb.	. . .	Smith's Parliamentary Remembrancer.
Parry, Parls.	. . .	Parliaments and Councils of England.
Peel's Mem.	. . .	Peel's Memoirs.
Pict. Hist. of Eng.	. . .	Pictorial History of England.
Pol.	. . .	Political.
Prac.	. . .	Practice.
Prin. of Gov.	. . .	Principles of Government.
Q. B. Rep.	. . .	Queen's Bench Reports.
Quar. Rev.	. . .	Quarterly Review.
Rep. of Sel. Com ^e	Report of Select Committee.
Rept. Govt.	. . .	Representative Government.
Rept.	. . .	Report.
Rose Corresp.	. . .	Diaries and Correspondence.
S.	. . .	Series. [mons.]
S. O. H. of L. (or C.)	. . .	Standing Orders House of Lords (or Com-
Sat. Rev.	. . .	Saturday Review.
Shower's Rep.	. . .	King's Bench Reports.
Stat. of Can.	. . .	Statutes of Canada.
Stat. Soc. Jour.	. . .	Statistical Society Journal. [England.]
Step. Com.	. . .	Stephen's Commentaries on the Laws of
Stephen's Ecc. Stat.	. . .	Ecclesiastical and Eleemosynary Institutions.
— Hist. Crim. Law	. . .	History of the Criminal Law of England.
Stockmar's Mem.	. . .	Memoirs of the Baron.
Stubbs'	. . .	Constitutional History of England.
Term Rep.	. . .	Durnford and East's Term Report.
v.	. . .	Volume. [ports.]
Wallace Sup. Ct. Rep.	. . .	Wallace's United States Supreme Court Re-
Well. Desp.	. . .	Wellington's Despatches.
West. Rev.	. . .	Westminster Review.
Wheaton	United States Supreme Court Reports.
Wilson	King's Bench Reports.