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PARLIAMENT

ITS HISTORY
CONSTITUTION AND PRACTICE

By SIR COURTENAY ILBERT
G.C.B., K.C.S.I.

NEW AND REVISED EDITION

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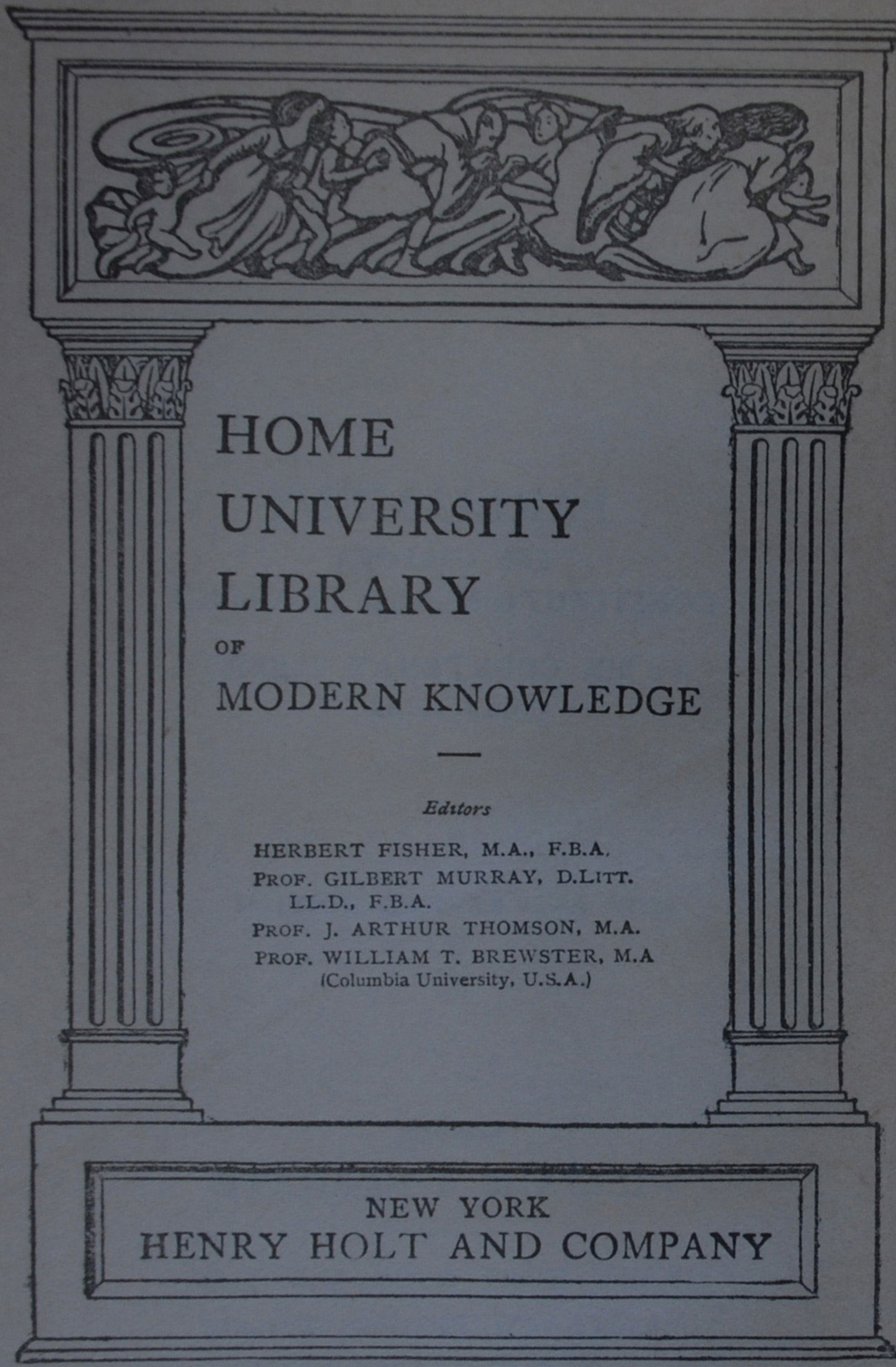

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PARLIAMENT

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BY

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CONTENTS

PARLIAMENT

CHAPTER I

ORIGIN AND DEVELOPMENT

THE word "parliament" originally meant a talk. In its Latin form it is applied by monastic statutes of the thirteenth century to the talk held by monks in their cloisters after [illegible]ner, talk which the statutes condemn as unedifying. A little later on the term was used to describe solemn conferences such as that held in [illegible]15 between Louis IX of France and Pope Innocent IV. When our Henry III summoned a [illegible]ncil or conference of great men to discuss grievances he was said by a contemporary chronicler to [illegible]ld a parliament. The word struck root in England, and was soon applied regularly to the national assemblies which were summoned from time to time by Henry's great successor, Edward I, and which took something like definite shape in what was afterwards called the "model parliament" of 1295. The word, as we have seen, signified at first the talk itself, the conference held, not the persons holding it.

By degrees it was transferred to the body of persons assembled for conference, just as the word "conference" itself has a double meaning. When Edward I was holding his parliaments institutions of the same kind were growing up in France. But the body which in France bore the same name as the English parliament had a different history and a different fate. The French "parlement" became a judicial institution, though it claimed to have a share in the making of laws.

The history of the English parliament may be roughly divided into four great periods: the period of the mediæval parliaments, the which the parliament of 1295 became the Tudors model and type; the period of the central portion and Stuarts, having for its ...ing and parliathe time of conflict betwe...ve and privilege; ment, between prerog... Revolution of 1688 and the period between ... 1832; and the modern the Reform Act ...egan in 1832.

period whic... and trace, in broad outline, the

Let u... out of which the parliament of 1295 elem... up, and the main stages through which ... development passed.

It had always been regarded in England as a principle that in grave and important matters, such as the making of laws, the king ought not to act without counsel and consent. The counsel and consent which the Saxon kings sought was that of their wise

men, and the "Witenagemot" of English constitutional history was a meeting of these wise men. It seems, says Maitland, to have been a very unstable and indefinite body. It was an assembly of the great folk. When there was a strong king it was much in his power to say how the assembly should be constituted and whom he would summon. When the king was weak the assembly was apt to be anarchical. The Saxon witenagemot was not numerous. Small men, especially if they lived at a distance, could not come. Great men often would not come. The institution was not much of a safeguard against oppression. Still it was an important fact that, on the eve of the Norman conquest, no English king had taken on himself to legislate or tax without the counsel and consent of a national assembly, an assembly of the wise, that is, of the great.

The Norman conquest made a great break in English institutions, but not so great as was at one time supposed. In the first place William the Conqueror had to build with English materials and on English foundations. In the next place English institutions had, during the reign of Edward the Confessor, been rapidly approximating to the continental type. What William did was to emphasize, rather than to introduce, certain principles of what was afterwards vaguely described as the "feudal system," and to adapt them to his own purposes. He insisted on the

principle that all land in the country was ultimately held of the king. There were to be no full owners of land under him, only holders or tenants. He insisted on the principle that every landholder in the country owed direct allegiance to the king. The landholder might hold his land under, and owe allegiance to, another lord, but his oath of allegiance to that lord was qualified by his allegiance to the king. And, in portioning out the English soil among the motley band of adventurers who had followed him and whom he had to reward for their share in his raid, he tried to break the strength of the greater men by scattering their estates over different parts of England, and by mixing up with them smaller men, who held their land, not under any intermediate lord, but directly under the king. He did not wholly succeed, as he and those after him found to their cost. But the existence, by the side of the greater lords, of a number of comparatively small landholders, who also held their land directly from the king, had an important bearing on the development of parliament. The Norman kings were despots, untrammelled by any constitutional restrictions, and controlled only by the resistance of powerful and turbulent subjects. But there were the traditions of better things past; there were the charters, often broken but always there, by the help of which kings with doubtful titles obtained succession, and

in which they promised to observe those traditions; and there was a feeling that, apart from these promises, it was prudent and politic to obtain an expression of counsel and consent, if it could be obtained. "Thrice a year," says the Saxon chronicle of the Conqueror, "King William wore his crown every year he was in England; at Easter he wore it at Winchester, at Pentecost at Westminster, and at Christmas at Gloucester; and at these times all the men of England were with him—archbishops, bishops and abbots, earls, thegns and knights." "All the men of England." What did this mean? To the Saxon chronicler it probably meant the men who counted, the wise and great, the men who might have been expected to attend a witenagemot. But William's court was a feudal court, and from the Norman point of view perhaps it was an assembly of the king's tenants in chief. These, however, were numerous, and many of them were small men, so that probably only a select few were summoned. Courts or great councils of the same kind were held under the later Norman kings, but we know little about their composition or functions. All that can be said with safety is that the few legislative acts of this period were done with the counsel and consent of the great men.

What we have to watch is the transformation of the body whose counsel and consent is required from a merely feudal body, a body

of great vassals or tenants in chief, to a body more representative of the nation at large.

Henry II did something when he imposed a tax on movables, the Saladin tithe of 1188, and had it assessed by a jury of neighbours, a jury in some sense representative of the taxpayer and of the parish in which he lived, and thus brought into connection the ideas of taxation and representation.

The Great Charter of 1215 declared that exceptional feudal aids were not to be levied without the common counsel of the realm. But this counsel was to be given by an assembly consisting of prelates and great lords summoned singly, and of tenants in chief summoned collectively through the sheriffs. So it was still a feudal assembly.

A further step was taken when, in 1254, at a time when Henry III was in great need of money, each sheriff was required to send four knights from his county to consider what aid they would give the king in his great necessity. For these knights represented, not the tenants in chief, but all the free men of their county They were representatives of counties.

Eleven years later, in 1265, Simon de Montfort summoned to his famous parliament representatives, not merely of counties, but also of cities and boroughs.

Edward I held several great assemblies, which were usually called parliaments, and which made some great laws, but some of

these laws were made without the assent of representatives of the commons.

The model parliament, which settled the general type for all future times, was held in 1295. To this parliament King Edward summoned separately the two archbishops, all the bishops, the greater abbots, seven earls and forty-one barons. The archbishops and bishops were directed to bring the heads of their cathedral chapters, their archdeacons, one proctor for the clergy of each cathedral, and two proctors for the clergy of each diocese. Every sheriff was directed to cause two knights of each shire, two citizens of each city, and two burgesses of each borough, to be elected.

Two points should be specially noticed about the constitution of this parliament.

In the first place it was not a feudal court, nor a meeting of the king's tenants, but a national assembly. Edward had suffered much in his father's time from the great barons, who had made him prisoner at the battle of Lewes, and he wished to draw counsel and help from other quarters. His parliament was intended to represent the three great estates or classes into which mediæval society might be roughly divided, the clergy, the barons, and the commons; those who pray, those who fight and those who work, as Maitland puts it. The same idea underlay the States General which were coming into existence about the same time in France, and which met, at intervals, during many

centuries. After an interval of 175 years the three estates of France were for the last time summoned to meet as separate bodies in 1789, but were at once merged in the national assembly which began the French Revolution.

The idea of the three estates was never realized in England. The clause by which archbishops and bishops were directed to bring with them representatives of their clergy, a clause still remaining in the writ by which they are summoned at the present day, was persistently ignored. The clergy as a body preferred to stand aloof, to meet in their own clerical assemblies or convocations, and to settle there what contribution they would make to the king's needs. The archbishops, bishops and greater abbots attended, as they had attended the great councils of previous kings. But then they were not merely clerics, they were great feudal lords and great holders of land.

The knights of the shires were drawn from the same class as the greater barons. The word "baron" originally meant simply "man," and for some time there was much uncertainty as to who should be treated as a man so great as to be entitled to a separate summons, and who should be left to be represented, like other freemen of the lesser sort, by the knights of the shires. The title of baron came eventually to be confined to the greater men who were summoned separ-

ately. The knights who represented the shires, when they came to Westminster, mingled themselves with the representatives of the cities and boroughs. In the time of Edward III there was a risk of the merchants being consulted as a separate class for the purpose of taxation, but this risk was avoided. If things had fallen out somewhat differently the English parliament might have sat as three separate houses, as in France, or might have been grouped in a single house, as in Scotland, or might have formed four houses, as in Sweden. But the inferior clergy abstained from attendance, the greater clergy, the spiritual lords, sat with the lay or temporal lords, and the knights of the shires threw in their lot with the citizens and burgesses. Thus parliament became an assembly, not of three estates, but of two houses, the house consisting of the lords spiritual and temporal, and the house representing the commons, the house of lords and the house of commons.

The other point to be noticed is that parliament was an expansion, for temporary purposes, of the king's continuous council. The Norman and Plantagenet kings, like other kings, needed continuous assistance, both for domestic and ceremonial purposes, and for the business of government, such as the administration of justice, and the collection and expenditure of revenue. The courts or councils composed of the men on whom the king most relied for this assistance bore

various names, varied in number, and exercised varying functions. As the work of government increased and specialized, these nebulous bodies split up into more coherent parts, with more definite functions, and out of them grew the king's courts of justice and the great departments of the central government. When the king held his great assemblies it was necessary that he should have about him the men on whom he was accustomed to place special reliance for advice and assistance. Accordingly there were summoned by name to the parliament of 1295 men who were not earls or barons, but were members of the king's council, and in particular the king's judges. And to this day the judges of the supreme court are summoned to parliament, and some of them take their seats in the house of lords when the king opens parliament.

The fact that the mediæval parliament was an expansion of the king's council explains the nature of the business which it had to transact. The immediate cause of summoning a parliament was usually want of money. The king had incurred, or was about to incur, expenses which he could not meet out of his ordinary resources, such as the revenues of his domain and the usual feudal dues. He summoned a parliament and, through his chancellor or some other minister, explained what he wanted and why he wanted it. The king's speech might touch on other great matters about which he might need advice

or approval, but money was the gist. On the other hand the king's subjects had grievances for which they desired redress. The grievances would be of different kinds, breach of old customs, failure to observe charters or laws, oppression by the king's officers or by great men, maladministration of justice, difficulties in the way of settling private disputes, and so forth. For the redress of these grievances petitions were presented, petitions which in their multifarious character were not unlike the statements of grievances presented to the national assembly on the eve of the French Revolution. The petitions were to the king in parliament or to the king in his council, and parliament was the petitioning body, the body by or through whom the petitions were presented. The remedies required would be classified in modern language as judicial, legislative or administrative. But in the thirteenth century these distinctions had not been clearly drawn. A statute made by Edward I in his parliament of 1292, known as the Statute of Waste, and based on a petition presented to him in that parliament, supplies a good illustration of the way in which judicial, legislative and administrative remedies might be combined. The statute begins with a long story showing how Gawin Butler brought a complaint before the king's justices about waste done to his land, but died before obtaining judgment; how his brother and heir, William, who was under age and a ward of the king, sought to continue

the proceedings; and how the justices differed in opinion as to whether he was entitled to do so. Thereupon the king, in his full parliament, by his common council or by general consent (for the Latin phrase wavers between the two meanings of "council" and "counsel") ordains that all heirs may have an action by writ of waste for waste done in the time of their ancestors, and the king himself commands his justices to give judgment accordingly. Here the king acts partly in his legislative capacity, laying down a general rule, partly in his judicial capacity, as having power to review and control the proceedings of his justices, and partly in an administrative capacity as guardian of an infant heir.

At the beginning of each parliament the king, or his great council on his behalf, appointed persons to receive and to try these petitions, that is to say to sort them out, to consider what remedy, if any, each petition required, and to devise an appropriate form of remedy. The triers or auditors of petitions were really committees of the king's council. Until near the close of the nineteenth century receivers and triers of petitions from England, Scotland and Gascony respectively (for Edward I ruled in Gascony as well as England) were appointed at the beginning of each parliament by an entry in the lords journals. But their functions had ceased for many centuries.

The sittings of an early Plantagenet parlia-

ment did not extend over many days. Travelling was difficult, dangerous and costly; members could not afford to stay long away from their homes. The main object of the meeting was usually to strike a bargain between the king and his subjects. The king wanted a grant of money, and it was made a condition of the grant that certain grievances, about which petitions had been presented, should be redressed. When an agreement had been arrived at as to how much money should be granted and on what terms, the commoners and most of the lords went their ways, leaving the king's advisers, the members of his council, to devise and work out, by means of legislation or otherwise, such remedies as might be considered appropriate and advisable.

It is to the Plantagenet period that we owe the most picturesque of our parliamentary ceremonials, those which attend the opening of parliament and the signification of the royal assent to Acts. And we ought to think of the Plantagenet parliament as something like an oriental durbar, such as was held by the late Amir of Afghanistan, with the king sitting on his throne, attended by his courtiers and great chiefs, hearing the complaints of his subjects and determining whether and how they should be met.

Of the changes in the composition of parliament which took place during this period something will be said later on, but a few

words must be said here about the changes in its powers and functions, specially with respect to the two main branches of its business, taxation and legislation.

Before the end of the fourteenth century parliament had established two principles of taxation. In the first place they had taken away the power of the king to impose direct taxes without their consent, and had restricted his power to impose indirect taxes without their consent to such taxes as might be justified under the customs recognized by the Great Charter. In the second place parliament had acquired the right to impose taxes, direct and indirect, of all kinds. In imposing these taxes they did not care to go beyond the immediate needs of the case. Hence the necessity for frequent parliaments.

According to the theory of the three estates, each estate would tax itself separately, and this theory was at first observed. The clergy granted their subsidies, not in parliament, but in convocation, and continued to do so, in theory at least, until after the Restoration of 1660. But long before this time they had agreed to grant or submit to taxes corresponding to those imposed on the laity. At a much earlier date, before the end of the fourteenth century, the lords and commons, instead of making separate grants, agreed to join in a common grant. And, as the bulk of the burden fell upon the commons, they adopted a formula which placed the commons

in the foreground. The grant was made by the commons, with the consent of the lords spiritual and temporal. This formula appeared in 1395, and became the rule. In 1407, eight years after Henry IV came to the throne, he assented to the important principle that money grants were to be initiated by the house of commons, were not to be reported to the king until both houses were agreed, and were to be reported by the Speaker of the commons house. This rule is strictly observed at the present day. When a money bill, such as the finance bill for the year or the appropriation bill, has been passed by the house of commons and agreed to by the house of lords it is, unlike all other bills, returned to the house of commons. On the day for signifying the royal assent the clerk of the house of commons takes it up to the bar of the house of lords, then hands it to the Speaker, who delivers it with his own hand to the officer charged with signifying the king's assent, the clerk of parliaments.

Ever since the reign of Henry VII the enacting formula of Acts of Parliament has run thus—

"Be it enacted by the king's (or queen's) most excellent majesty by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows." This formula grew into shape in what has been called above the mediæval period of

parliament. At the beginning of this period the king made laws with the requisite advice and consent. One important early Act was expressed to be made at the instance of the great men. Later on the concurrence of the whole parliament, including the commons, became essential. But the commons usually appear at first in a subordinate position. Throughout the fourteenth century the kind of form most usually adopted is that a statute is made with the assent of the earls, prelates and barons and at the request of the knights of the shires and commons in parliament assembled. The commons appear as petitioners for laws rather than as legislators. And this is in fact what they were. They presented their petitions, which might ask for amendment or clearer declaration of the law. It was for the king, with the aid of those more intimately in his counsels, to determine whether legislation was required and if so what form it should assume. Throughout the fourteenth century there was much risk that, even if the making of a law were granted, the law, when made, would not correspond to the petition on which it was based. The statute was not drawn up until after the parliament was dissolved, its form was settled by the king's council, and there were many complaints about the variance between petitions and statutes. At last in 1414, soon after the accession of Henry V, the king conceded the point for which the commons had repeatedly

pressed. The commons prayed "that there never be no law made and engrossed as statute and law neither by additions nor discriminations by no manner of term or terms which should change the sentence and the intent asked." And the king in reply granted that from henceforth "nothing be enacted to the petition of the commons contrary to their asking, whereby they should be bound without their assent." This concession led to an important change in the method of framing statutes. It became the practice to send up to the king, not a petition, but a bill drawn in the form of a statute, so that the king was left no alternative beyond assent or dissent. Legislation by bill took the place of legislation on petition. This practice became settled about the end of the reign of Henry VI.

The changes in practice were reflected by changes in the legislative formula. Statutes were expressed to be made by the advice and consent of the lords and the commons, thus putting the two houses on an equal footing. And before the middle of the fifteenth century a significant addition was made to the formula. Statutes were expressed to be made, not only with the advice and consent of the lords and commons in parliament, but "by the authority of the same." This was an admission that the statute derived its authority from the whole parliament. The two houses had become not merely an

advising, consenting, or petitioning body, but a legislative authority.

The power to refuse assent to legislation still remained, and it was often exercised until a much later date. It was signified in a courteous form—"The king will consider."

The political power of parliament grew rapidly in the fourteenth and fifteenth centuries. In 1327 a parliament which had been summoned in the name of Edward II resolved, in summary fashion, on his deposition and forced him to resign. But the proceedings on the deposition of Richard II were more formal. Richard was forced to summon a parliament, and then to execute a deed of resignation. The parliament assembled in Westminster Hall, which Richard had rebuilt, and which stood then much as it stands now. Parliament accepted his resignation and went on, by further resolutions, to declare that he was deposed and to resolve that Henry of Lancaster should be king in his place. A parliament which could thus make and unmake kings was a formidable body. The Lancastrian kings, it has been said, were kings by Act of Parliament; they meant to rule and did rule by means of parliament. In the quarrels of the seventeenth century between king and commons men looked back to the Lancastrian period as the golden age of parliament, and precedents from that period were freely quoted for parliamentary use. But in the fifteenth century the times were not ripe for

parliamentary government. The powers of parliament fell into the hands of turbulent nobles. Henry V was a famous and capable warrior. But Henry VI began his reign as an infant, and ended it as an idiot; he was ruled by unscrupulous uncles and a termagant queen; and the bloody faction fights known as the Wars of the Roses brought the Plantagenet dynasty to a close, weeded out the older nobility, and cleared the way for a new form of monarchy.

The age of the Tudors, at least during the reigns of Henry VIII and Elizabeth, is a period of strong monarchs governing through the strength of parliament. Henry VIII accepted Henry IV's principle that the king should rule through parliament, but worked that principle in an entirely different way. He made parliament the engine of his will. He persuaded or frightened it into doing anything he pleased. Under his guidance parliament defied and crushed all other powers, spiritual and temporal, and did things which no king or parliament had ever attempted to do, things unheard of and terrible. Elizabeth scolded her parliaments for meddling with matters with which, in her opinion, they had no concern, and more than once soundly rated the Speaker of her commons. But she never carried her quarrels too far and was always able to end her disputes by some clever compromise. The result was that her parliaments usually acquiesced in and gave

effect to her wishes. Before Henry VIII the life of parliament was usually comprised within a single session, and the sessions were short. Parliaments now grew longer. Henry VIII's Reformation parliament lasted for seven years. One of Elizabeth's parliaments lasted for eleven years, though, it is true, it held only three sessions. Parliament was no longer a meeting dissolved as soon as some specific business was finished. It tended to become a permanent power in the state, and a power with formidable attributes. A monarch that swayed and did not fear parliament could afford to recognize its sovereignty, for it was his own. And never were the authority and sovereignty of parliament more emphatically asserted than in Tudor times. Sir Thomas Smith was secretary to Queen Elizabeth, and in a book which was published in 1589, and which he called *The Commonwealth of England and the manner of government thereof*, he declares that "the most high and absolute power of the realm of England consisteth in the parliament." Such doctrines could be preached with safety while Tudor kingcraft remained; when it departed they shook and upset the throne.

It was in Tudor times that both houses began to keep their journals and that the house of commons acquired a permanent home of their own. But these are matters of which more will be said hereafter. Owing to the existence of the journals we now begin

to know much more about the proceedings of parliament than in previous times. Under the Plantagenets some of the characteristic features of parliamentary procedure, such as the three readings of bills, had been settled, but had not been recorded. In the journals the dates of each reading are given. The entries are at first scanty, but are soon amplified. Rulings and practices are noted, precedents are searched for and observed. The records of the Elizabethan journals are expanded by Sir Symonds d'Ewes from other sources. Sir Thomas Smith, in the book referred to above, and Hooker, in the book which he wrote for the guidance of the parliament at Dublin, have given us descriptions which enable us to understand how business was conducted in the English parliament under the great queen. The general outlines of parliamentary procedure were settled, and much of the common law of parliament, the law which is not to be found in standing orders, may be traced back to Elizabethan times.

James I came to the throne by inheritance. He talked much and foolishly about his divine right to rule, and soon came into collision with his parliaments. Parliament claimed and obtained some important rights, such as the right to adjourn without the king's leave, and the right to determine disputes about the validity of elections. Other questions, such as the right to levy taxes, remained to be

fought out under his successor. The king and parliament were hostile bodies, and parliament was jealous of the king's interference with, or even knowledge of, its proceedings.

The main lines of parliamentary procedure were settled during the seventeenth century. The committee system grew up under Elizabeth and her successor. Small committees were appointed to consider the details of bills and other matters, and sat either at Westminster or sometimes at the Temple or elsewhere. For weightier matters larger committees were appointed and had a tendency to include all members who were willing to come, for the difficulty was to obtain a quorum. Hence the system of grand committees, and of committees of the whole house, which will be described in a later chapter. Before the end of the seventeenth century parliamentary procedure began to follow the lines which it retained until after the Reform Act of 1832. The first edition of Sir Erskine May's book on parliamentary procedure was published in 1844, and "the parliamentary procedure of 1844," says Sir R. Palgrave in his preface to the tenth edition, "was essentially the procedure on which the house of commons conducted its business during the long parliament."

The constitutional quarrel of the seventeenth century, which culminated in the great civil war, was at first whether government should be by the king or by the king in

parliament, afterwards whether the king should govern or whether parliament should govern. Strafford, the strong minister of a weak king, tried to govern without parliament, and failed. The long parliament tried to govern without a king, and failed. During the revolutionary period the house of commons set up executive committees, foreshadowing the famous executive committees of the French Revolution; but government by committees was not a success. The great rule of Cromwell was a series of failures to reconcile the authority of the "single person" with the authority of parliament. The monarchical régime which was revived under Charles II broke down under James II. It was left for the "glorious revolution" of 1688, and for the Hanoverian dynasty, to develop the ingenious system of adjustments and compromises which is now known, sometimes as cabinet government, sometimes as parliamentary government. Of the growth and working of this system more will be said hereafter.

The two last of the parliamentary periods referred to above must be passed over very lightly. The eighteenth century was a great age of parliamentary oratory, but it was not an age of great legislation. The territorial magnates who, or whose nominees, as knights of the shires or members for pocket boroughs, constituted the house of commons, contented themselves in the main

with formulating as Acts of parliament rules for the guidance of landowners as justices of the peace. Parliamentary procedure tended to stiffen and become more formal. Important constitutional changes were silently going on, but they were not, as a rule, marked by legislation. One of the few exceptions was the Septennial Act of 1715, which extended from three years, the limit fixed by an Act of 1694, to seven years, the maximum duration of a parliament. Power rested first with the families of the great Whig magnates who had brought about the Revolution of 1688, then for a time with the king and his "friends," and finally with the parliamentary genius whom George III was fortunate enough to obtain as chief adviser, the younger Pitt.

The earthquake of the French Revolution, which shook all Europe, and changed its surface, did not extend across the English Channel. It produced effects here, but its immediate effects were those of resistance and reaction, and its results were to prolong the period of the old régime for more than thirty years after the close of the eighteenth century.

Leipsic and Waterloo stopped the course of the Revolution in Europe. But, after a trial of fifteen years, the revived French monarchy of the Restoration died in the Paris barricades of 1830. Two years later the Act of 1832 reformed the constitution of the house of commons, and brought fresh powers into

play. After the lapse of another two years the fire of October 16, 1834, destroyed the ancient home of parliament. Of the buildings which had sheltered parliaments for so many centuries nothing now remains above ground except the great hall which William Rufus built and Richard II rebuilt, and some parts of the cloisters which were added to St. Stephen's Chapel shortly before the dissolution of its chapter. The new parliament had to build a new home, the home which is the present Palace of Westminster.

CHAPTER II

CONSTITUTION OF THE HOUSE OF COMMONS

It is from no disrespect for the house of lords that the description of that house is reserved for a later chapter, but because the principal share of parliamentary business is transacted in the house of commons; because the position of the older house is, under our constitution, subordinate; and because the position and functions of the house of lords cannot be understood until the functions of the house of commons have been explained.

A double thread of meaning runs through the word "commons." Technically, the house of commons, at the time of its institution, was the community or body representing the communities of the counties and of the boroughs. "The commons," says Stubbs, "are the communities, the organized bodies of freemen of the shires and towns, and the estate of the commons is the general body into which, for the purposes of parliament, these communities are combined." But the word has another shade of meaning, reflected in the modern use of the word "commoner." The commons are those who are not included

in either of the special classes of clergy and barons. "The persons who enjoy no special privilege," says Maitland, "who have no peculiar status of barons or clerks, are common men." In this sense they correspond to the third estate of France, which, on the eve of the French Revolution, according to Sieyès, was nothing, wished to be something, and ought to be everything.

The technical meaning of the word is, for historical purposes, of great importance. Before the time of parliaments both the counties and the boroughs had been recognized as communities for judicial, fiscal and administrative purposes, and the counties acted as such in their county courts. The boroughs were winning for themselves, through charters, communal rights resembling and often suggested by those of the French communes. It was but a step forward to utilize existing ideas and institutions for the purpose of national and parliamentary representation.

The history of the county franchise is comparatively simple. The sheriffs were directed by their writs to cause an election to be held of two knights for each shire; election was to be made in and by the county court; and the electors were those who were entitled to attend and take part in the proceedings of that court. No further definition of the machinery of election was attempted, or was, at first, necessary. The sheriff would

conduct the proceedings in the customary fashion, and would have a good deal to say as to who should take part in them. It was not until the reign of Henry VI that any statutory restriction was placed on the class of electors. The Act of 1430, which was passed to prevent riotous and disorderly elections, directed that the electors were to be people dwelling in the county, whereof every one was to have free land or tenement to the value of forty shillings a year at least (a high value for that period) above all charges. This Act continued to regulate the county franchise for more than four centuries, until the Reform Act of 1832. But the definition of the qualifying freehold gave much employment to lawyers and parliamentary committees, and its meaning was so interpreted as to facilitate the manufacture of qualifications and the creation of faggot voters. Leaseholders and copyholders had no votes.

The number of parliamentary counties did not vary much before 1832. At first there were thirty-seven counties returning two members each. The counties of Chester and Durham, which were counties palatine, and under a semi-independent authority, did not come into the parliamentary system until a later date. Henry VIII brought in the Welsh counties. The Union with Scotland and with Ireland completed the list.

The history of the borough franchise is far more complicated. In the first place the

writs addressed to the sheriff for returns to the early parliaments merely told him to provide for the return of two members for each city or borough in his county, and did not specify the places which were to be treated as boroughs. That was assumed to be known. Hence much room for uncertainty and for the exercise of discretion on the part of the sheriff. It had not yet been discovered that representation of a borough in parliament was a source of profit, local or personal, to the borough, or conferred much personal advantage on its representative. On the contrary, when members were paid wages by their constituencies, and when places recognized as boroughs were taxed for subsidies at a higher rate than shires, representation in parliament was an onerous privilege. Towns often desired not to be represented, and probably made arrangements with the sheriff for this purpose. Later on the tide turned, and in the sixteenth and seventeenth centuries the number of boroughs increased with great rapidity. The increase was effected in various ways. A borough which had ceased to return members might be revived in pursuance of a direction to the sheriff. The king might grant a charter giving a right of representation. At a later date a resolution of the house of commons sufficed for the right. The Tudor monarchs exercised freely their power of creating boroughs by charter. They used their parliaments and had to find means of

controlling them. In the creation of "pocket" or "rotten" boroughs, Queen Elizabeth was probably the worst offender. She had much influence in her duchy of Cornwall, and many of the Cornish boroughs which obtained such a scandalous reputation in later times were created by her for the return of those whom the lords of her council would consider "safe" men. The practice of creating new parliamentary boroughs by charter lessened under the Stuarts, and fell into desuetude after the reign of Charles II. The charter which he granted to Newark was the last royal charter conferring a parliamentary franchise.

There was no Act for the redistribution of borough seats until 1832, and an interesting map prefixed to the first volume of Mr. Porritt's *Unreformed House of Commons*, shows how borough representation stood at that date. A glance at the map will disclose two features, first, the proportionately large number of boroughs on or near the coast from the Wash southwards and westwards to the Severn estuary, and next, the dense cluster of little boroughs in the extreme south-west. To some extent these features were survivals from an age of different social and economical conditions, from the time when the pulse of English life beat most strongly on the coasts, and when the growth of trade and manufacture had not yet filled up the central and northern regions. But the existence of many of the smaller boroughs

was due to other reasons. Reference has been made above to the profuse creation of Cornish boroughs. In what is now the Liskeard division of Cornwall, a division which returns one member, there were in 1832 nine boroughs returning eighteen members. In this region, and elsewhere, there were curious little twin boroughs, having no reason for their separate existence except the desire to multiply members. Such were West and East Looe, divided by a river which was spanned by a bridge of fifteen arches. Such also were Weymouth and Melcombe Regis, which were united for administrative purposes, but divided for purposes of parliamentary representation. In the early part of the eighteenth century these were controlled by the notorious borough-monger, Bubb Dodington, who atoned for his many misdeeds by leaving a diary in which they are recorded. Bramber and Steyning were close to each other in Sussex, and part of Bramber was in the centre of Steyning. Each returned two members. In Yorkshire, Aldborough and Boroughbridge were in the same parish, and about half-a-mile apart. The electors of Boroughbridge numbered sixty-five, those of Aldborough about fifty. Each returned two members, at the time when Birmingham was not represented in parliament.

Whilst the selection and distribution of parliamentary boroughs was arbitrary, nothing

could be more various, confused or uncertain than the parliamentary franchise which they enjoyed. There was no general law regulating the franchise in boroughs. Everything depended on local custom and usage, settled or unsettled by the decisions of parliamentary committees, which turned upon personal and political considerations. The "unreformed" boroughs as they stood before 1832 have been roughly divided into four groups. There were scot and lot and potwalloper boroughs, burgage boroughs, corporation boroughs, and freemen boroughs.

In the scot and lot group the franchise was, in theory, very democratic. Any one who was liable to pay "scot," or local dues, or bear "lot," that is to say, take his share in the burden of local offices, was entitled to the franchise. In later times liability to the poor rate was taken as a general test. At the time of the first Reform Act, Gatton, with 135 inhabitants, was a scot and lot borough. So, at the other end of the population scale, was Westminster. The potwalloper, who is treated as belonging to this group, was an ancient and picturesque person. His very name may have been a corruption. It is said by some to have been developed out of "potwaller," and that again to have been a scribe's mistake for "potboiler." He was a man who was in a position to boil a pot of his own, and was not dependent for his meals on any one else. On the eve of an

election a pot-walloper might be seen spreading his board in front of his hovel, to show that he was entitled to the franchise. In burgage boroughs the right to vote depended on showing title to a house or piece of land by the form of tenure known as burgage tenure. In some cases residence was necessary, and the chimneys of burgage hovels were carefully preserved, as evidence of the possibility of residence. But the necessary period of residence might be short, and a single night might suffice. Coaches could be seen carrying down qualifying burdens on the eve of the poll. In other cases residence was not necessary, or even possible. At Droitwich the qualification of an elector was being "seised in fee of a small quantity of salt water arising out of a pit." It was proved before a parliamentary committee that the pit had been dried up for more than forty years. But there were title deeds which could be produced by the voter at the poll. At Downton, in Wiltshire, one of the burgage tenements was in the middle of a watercourse. At Old Sarum, where ploughed fields gave seven votes which returned two members, there was no building, and a tent had to be erected for the shelter of the returning officer. Title deeds to qualifying property of this kind passed easily and rapidly from hand to hand as occasion required. Hence the class of "snatchpaper" voters. A woman could not vote herself, but she could pass on her qualifi-

cation temporarily to any man. At Westbury a widow's qualifying tenement was worth £100 to her in 1747.

For the mode in which an election might be conducted in a burgage borough Sir George Trevelyan's description of the first election of Charles James Fox may suffice. His father and uncle wanted to keep their boys steady, a difficult matter, so they clubbed together to find a borough. For Charles, who was then just nineteen, the two brothers "selected Midhurst, the most comfortable of constituencies from the point of view of a representative; for the right of election rested in a few small holdings, on which no human being resided, distinguished among the pastures and the stubble that surrounded them by a large stone set up on end in the middle of each portion. These burgage tenures, as they were called, had all been bought up by a single proprietor, Viscount Montagu, who, when an election was in prospect, assigned a few of them to his servants, with instructions to nominate the members and then make back the property to their employer. This ceremony was performed in March 1768, and the steward of the estate who acted as the returning officer, declared that Charles James Fox had been duly chosen as one of the burgesses for Midhurst, at a time when that young gentleman was still amusing himself in Italy."

In the "corporation boroughs" or "close

boroughs," the right to vote was restricted by charter to the members of what was called the governing body of the borough, a body very different in constitution and functions from the governing bodies created by the Municipal Corporations Act of 1835. They were usually self-elected, they were often non-resident, they were not responsible to any one for the management of municipal affairs, and they existed, not primarily for the good administration of the borough, but as organizations for returning members to the house of commons. In the eighteenth century they mostly fell into the hands of patrons, and, for a suitable consideration, returned the members nominated by their patrons. With the reform of parliament the reason for their existence ceased, and the Act of 1835 followed speedily after the Act of 1832.

The freeman who exercised the parliamentary franchise in the eighteenth century was a different person from the freeman who voted in the thirteenth and fourteenth centuries, and belonged to a more restricted class. Freedom of the borough, membership of the general corporation which constituted the borough, as distinguished from its governing body, might be acquired in various ways—by birth, by marriage, by real or nominal service as apprenticeship to some freeman in his craft or trade, by gift or purchase. In London, membership of one of the trading

companies, the livery companies, was necessary. Where freedom came by marriage, it was practically a dower to the freeman's daughter, and had a very tangible pecuniary value at election times. "I have heard that in former days," wrote a town-clerk of Bristol, "the prospect of an election would bring hesitating or lagging swains to a sense of the desirability of prompt action." There were honorary freemen and non-resident freemen, both having votes. The tendency of parliamentary action was to restrict the class of freemen, for the representation of a borough with numerous freemen was an expensive luxury. On the other hand, it might be convenient to swamp the existing body of electors. At Bristol, in 1812, 1,720 freemen were admitted with a view to an election in the autumn of that year.

Under the electoral system as it worked before 1832 a small number of powerful and wealthy men controlled all the elections. Not that the house of commons was uninfluenced by public opinion. Any great wave of feeling or opinion was sure to reach the house and to produce effects there. The counties were more independent than the boroughs, and the larger boroughs sometimes had views of their own as to the way in which their members should vote. But the number of pocket boroughs, whose members were expected to vote as their patrons told them, was very large. John Wilson

Croker, who knew the house of commons during the first quarter of the last century as well as any one, put the members returned by patrons at 276 out of 658. Before the union with Ireland increased the number of members by 100 the proportion was probably greater, for the number of nomination seats in Ireland did not exceed twenty. It has been estimated that from about 1760 to 1832 nearly one-half of the members of the house of commons owed their seats to patrons. Gladstone once eulogized nomination boroughs as a means of bringing young men of promise into the house, and Bagehot went so far as to describe them as an organ for specialized political thought. But a study of electoral statistics and parliamentary history tends to show that the young men of promise who were given a comparatively free hand were rare, and that the tie between the nominated member and his patron was much less romantic and more prosaic and practical than as conceived by Bagehot. A nominee member was usually expected to obey his patron's orders, and to study his interests. In 1810 a younger brother, who had been put into parliament by his senior, was reprimanded for neglecting the family interests. "As to my being justifiable in thus abandoning the interests of my family, after all the money that has been spent to bring me into parliament," he writes in reply, "I have only to answer that the money so spent has, I think,

been well spent. Your lord lieutenancy and Peter's receiver-generalship have been the consequence. In point of pecuniary advantage to the family the receiver-generalship pays more than the interest on the capital sunk." The seat was a good family investment. For patronship, discreetly used, brought honours and lucrative sinecures. Sir James Lowther returned nine members, the "Lowther ninepins"; he obtained a peerage, and successive steps in the peerage. George Selwyn returned two members for Ludgershall, and was sometimes able to return one of the members for Gloucester. "He was," says Sir George Trevelyan, "at one and the same time Surveyor-General of Crown Lands, which he never surveyed; Registrar of Chancery at Barbadoes, which he never visited; and Surveyor of the Meltings and Clerk of the Irons in the Mint, where he showed himself once a week in order to eat a dinner which he ordered, but for which the nation paid." The payments to constituents, in the form of cash or office, were smaller but more numerous. Posts in the customs and excise were freely used. Bossinney, a little fishing village in the north of Cornwall, was once a borough. When the Act of 1782 disfranchised revenue officers it reduced the voters at Bossinney to a single elector.

If a candidate could not find a patron, or did not wish to be dependent on a patron, he had to buy a seat. Many of the reformers,

men such as Burdett, Romilly and Hume, had to buy their seats. Throughout the eighteenth and the early part of the nineteenth century seats were freely and openly bought and sold. They were even advertised for sale, like livings in the church. The price of seats went up rapidly during the latter half of the eighteenth century, especially when East Indian nabobs entered the market. The government of course took a large share in these transactions, and treasury boroughs were kept for those who were wanted on the treasury bench, or could be counted on to give a safe vote in its neighbourhood. Bargains were struck as to how the cost should be divided between the treasury and the member. "Mr. Legge," wrote Lord North in 1774 to Robinson, his chief election manager, "can afford only £400. If he comes in for Lostwithiel he will cost the public 2,000 guineas. Gascoyne should have the refusal of Tregony if he will pay £1,000, but I do not see why we should bring him in cheaper than any other servant of the crown. If he will not pay, he must give way to Mr. Best or Mr. Peachy." The Whig administration of 1806 adopted a more economical method. They bought seats cheap and sold them dear, and thus saved money for the public. A seat could be bought for a parliament, or hired for a term of years like a country house. Prices varied much, according to place and time, but between 1812 and 1832 the ordinary

price of a seat bought for a parliament is said to have been between £5,000 and £6,000.

Without concrete illustrations such as have been given it is impossible to realize in the twentieth century the working of the electoral system which prevailed one hundred years ago. The details are sordid and unpleasant. But it must be remembered that on these sordid foundations was built a government whose strength and stability won the admiration and envy of Europe. Burke, and the other conservatives of his time, Whig and Tory, had solid reasons for their convictions when they resisted all changes in the electoral system under which they lived. "Our representation," wrote Burke, "has been found perfectly adequate to all the purposes for which a representation of the people can be desired or devised. I defy the enemies of our constitution to show the contrary." It is true that he wrote these words in his later days, under the terrifying influence of the French Revolution, but they represented the views which he had always held about the franchise. According to him, the variety of franchise in the boroughs, and the mode in which the constituencies were controlled, roughly represented the various interests of the nation, and its ruling forces. The king and his ministers had to rule, the discordant elements in the country and the constitution had to be kept together. It was difficult to see how any form of government could be

maintained except by the employment of methods such as have been described above. The ruling class of the eighteenth century were coarse and corrupt, but they were capable and courageous. They made great blunders, they were blind and indifferent to great evils, but they weathered terrible storms.

Into the various causes which brought about the Reform Act of 1832 this is not the place to enter. The generation of statesmen who had carried on the great war had passed away. The governments of the later 'twenties were weak and unstable. The reaction against the excesses of the French Revolution was losing its force. Bentham's principles, which were hostile to a privileged class, and made in the long run for democracy, were being popularized by such men as James Mill and Francis Place. But, above all, there was grave and growing discontent on the part of the middle class with the existing state of things, with their exclusion from political power, and with the practical grievances which, in their opinion, were due to that exclusion. They felt that the house of commons was not in touch with the country at large, that it failed to represent the most vital and growing elements in the nation. The Reform Bill was introduced by Whig aristocrats, but it was the middle class that carried it through.

The Reform Act of 1832 made a radical change in the system of elections and in the

constitution of the house of commons. It redistributed seats, it simplified and rationalized the franchise, it established registers of electors.

The number of seats in the house of commons had been rapidly increased under the Tudors, less rapidly under the Stuarts. Thus Henry VIII created 38 seats, including the Welsh constituencies, and Elizabeth 62. The union with Scotland in 1707 added 45 members, that with Ireland in 1801, 100. In 1832 the total number of members was 658. Five of the English boroughs returned single members. Yorkshire sent four members, having gained two by the disfranchisement of Grampound in 1821. The city of London also sent four members. With these exceptions, each constituency in England returned two members, the number fixed for the earliest English parliaments. Each of the twelve counties and twelve boroughs in Wales returned a single member.

The Act of 1832 materially altered the distribution of seats. It disfranchised in England fifty-six boroughs absolutely, and thirty-one to the extent of depriving each of one member. The seats taken from the boroughs were given to counties and large towns.

The alterations made by the Act in the parliamentary franchise were numerous and important. In the counties it preserved the old forty-shilling freehold franchise, with

some limitations, and it added some new classes of voters. It enfranchised four main classes: (1) the £10 copyholders, (2) the £10 long leaseholders, (3) the £50 short leaseholders, and (4) the £50 occupiers.

Into the boroughs the Act introduced one uniform franchise, the £10 occupation franchise which was in force until 1867. The Act preserved some of the old qualifications, but placed them under restrictions intended to guard against their abuse. Freemen were still entitled to vote, as such, in certain boroughs. But the old qualifications had in most cases been made unimportant by the extension of the occupation franchise.

Finally, the Act introduced the machinery of parliamentary registration, substantially on its existing lines. Since 1832 a qualification to vote entitles a man to be placed on the register, not to vote. Unless he is on the register he is not entitled to vote. If he is on the register he is presumably entitled to vote.

Separate Reform Acts for Scotland and Ireland, framed on the same general lines as the English Act, were passed in the same year. They gave three additional members to Scotland, and three to Ireland, but the total number of seats for the United Kingdom was not altered.

The Reform Act of 1832 did not realize the hopes of its friends or the fears of its foes. Like most English Acts, it was based on com-

promise, not on abstract principle. Its objects were to remedy the most obvious grievances, to remove the most glaring anomalies and abuses. In dealing with distribution, it did not parcel out the country into equal, or approximately equal, electoral districts. It merely shifted seats, with some regard to the population and character of the places to be represented. It preserved old franchises, and superimposed new franchises upon them. It did not introduce, and was not intended to introduce, democracy. It gave electoral power, in the counties, to the landholders with a few large farmers; in the towns, to the great middle class. The borough electorate in England and Wales was increased by about 100,000. There was no finality about the Act. It was a step forward, suggesting further steps at a later date. It did not put an end to bribery, corruption, or the exercise of undue influence. But the opportunities for these practices were made fewer and less easy, and the practices became less flagrant and universal.

Thus the Act of 1832 was not the product of, and did not effect, a revolution. But its importance, political, social and economical, cannot be exaggerated. It was one of the great landmarks of English history.

The reformed house of commons reflected the virtues of the middle class, and their weaknesses. The influence of the middle class preponderated, as under the contem-

porary bourgeois rule of Louis Philippe. But Louis Philippe's régime died of corruption and stagnation in 1848, whilst the English chartism of that year shook neither parliament nor the throne. For the British parliament had justified its existence in its renovated form, and had accomplished some great things. It had reformed the poor law; it had reformed municipal government; it had reformed the fiscal system.

It is in the sphere of legislation that the difference between the unreformed and the reformed house of commons is most marked. It is impossible to emphasize too strongly the enormous change which the Reform Act of 1832 introduced into the character of English legislation, or the complete contrast between the legislation which preceded and the legislation which followed that date. The eighteenth century and the first two decades of the nineteenth century were prolific of legislation, but it was of an ephemeral character. The parliament of the eighteenth century passed many laws which would now be classed as local Acts, for authorizing the construction of roads, canals and bridges, and was never tired of regulating, after its lights, the conditions of labour, the conduct of trades and industries, and the relief of the poor. But it created no new institutions. It is from the Reform Act that date the series of Acts which began with remodelling the poor law and municipal corporations, and

which have completely altered the framework of our central and local government. And from the same time dates that special responsibility of the government for legislation which is now so marked a feature of the parliament at Westminster. Sir Charles Wood, afterwards Lord Halifax, first took his seat in the house of commons in 1828, and, when talking to Mr. Nassau Senior in 1855, he dwelt on the changed attitude of the government towards legislation. "When I was first in parliament," he said, "twenty-seven years ago, the functions of the government were chiefly executive. Changes in our laws were proposed by independent members, and carried, not as party questions, by their combined action on both sides. Now, when an independent member brings forward a subject, it is not to propose himself a measure, but to call to it the attention of the government. All the house joins in declaring that the present state of the law is abominable, and in requiring the government to provide a remedy. As soon as the government has obeyed, and proposed one, they all oppose it. Our defects as legislators, which is not our business, damage us as administrators, which is our business." This was a natural expression to fall from the lips of an experienced statesman who had lived through the change, and had not quite lost the habit of mind which preceded it. And one still hears from private members regrets for the

time when their predecessors enjoyed greater freedom of legislative action, and denunciations of government encroachments on their legislative opportunities. But the change was inevitable. The great demand for new laws, especially laws which create, remodel, and regulate administrative machinery, and the importance, difficulty, and complexity of the legislative measures required, necessarily lessen the share of the private member in the initiation and passing of laws, and increase the responsibility of the government for the work of legislation.

The great outburst of parliamentary activity immediately after 1832 was naturally followed by a reaction, and there were periods of failure and inactivity, legislative and administrative. Walter Bagehot has given an inimitable description of the Palmerstonian house of commons, as it stood in the years 1865 and 1866. No one could hit off more neatly the habits and ways of that house, or was more fully aware that its leader, who had been in political harness long before 1832, represented traditions of government which were passing away, and ought to pass away. Palmerston in his later years opposed a steady and usually an effective resistance to all changes, and his last ministry, from 1859 to 1866, was a period of exceptional barrenness in legislation. But when, after 1867, Bagehot wrote the preface to the second edition of his book on the English Constitution, it is

evident that he had serious misgivings about the effect of that Act, and one suspects that he looked back to the Palmerstonian period as the golden age of what was, in his opinion, the best of all governments, a safe, sober, cautious middle-class government.

The Reform Act of 1832 had shown the possibility of making changes in an electoral system which was venerable, and was venerated, by reason of its antiquity. It suggested and paved the way for further changes. There was, as has been said above, no finality in its provisions. The forty-shilling freeholder came down from the middle ages. But there was nothing venerable or sacrosanct about the £50 leaseholder or the £10 occupier. If £10, why not some other figure?

Disraeli was the first minister who was bold enough to propose dispensing with all tests of rental or rating, and to offer the borough franchise to householders as such. The history of the Representation of the People Act, 1867, is well known, and its inner side was revealed many years ago in Lord Malmesbury's indiscreet *Memoirs of an Ex-Minister*. The bill of 1867, as introduced, while conferring the household franchise, surrounded it with safeguards. The householder was required to have resided for two years, and to have paid his rates personally. A householder paying twenty shillings in direct taxation was to have a second vote, and there were some special franchises, as in

previous bills. But the government which introduced the bill was in a minority in the house of commons, and all these safeguards disappeared in committee. The period of residence was reduced to one year. The second vote and the fancy franchises disappeared. After a long battle over the "compound householder," the man whose rates are paid for him by his landlord, compounding was abolished, and all householders were to be rated in person. But this was found so inconvenient that, two years later, compounding was restored, and personal payment of rates ceased to be a necessary qualification for being registered as a voter. Lastly, £10 lodgers were admitted to the vote. Thus the measure was completely transformed, and it has been estimated that the number of persons enfranchised was increased from about 100,000 to about two millions. These were the changes made by the Act of 1867 in the borough franchise. Those which it made in the county franchise were less important. It reduced the £10 qualification for copyholders and leaseholders to £5. And it added a £12 rateable occupation franchise which practically took the place of the £50 rental franchise.

The Act of 1867 enfranchised the urban working man as the Act of 1832 had enfranchised the mainly urban middle class. Its effects made themselves apparent, specially in the changed attitude of the legislature

towards trade unions, and generally in the great outburst of legislative activity during Gladstone's first ministry, a period as fertile in legislation as the period immediately preceding 1867 had been barren.

Among the Acts passed during that ministry was the Ballot Act, 1872, which introduced into parliamentary elections the system of election by secret ballot. Vote by ballot had been one of the famous "six points" of the Charter of 1848, and proposals for establishing it had been annually introduced by private members, but, before the ministry of 1869, had never been supported or proposed by the government. The Act was not passed without a long and hard fight, and then only as an experimental measure, to remain in force for one year only, unless renewed. It has been renewed annually ever since by the Expiring Laws Continuance Act of each year, but curiously enough, though it was passed nearly forty years ago, and though its lapse would throw the whole law of elections into confusion, it has not even yet found its place on the statute book as a permanent measure. It put an end to the venerable ceremonies of election at the old county court—a very different institution from the modern judicial county court—and, incidentally, by altering the form of the writ for elections, removed the distinction between knights, citizens and burgesses, grouping them all as "members."

The last stage in the history of the reform of parliamentary elections is marked by the Representation of the People Act, 1884, and by the Act for the Redistribution of Seats which followed in 1885. The Act of 1884 is in form clumsy and difficult to understand, but its effect is very simple. It extended to the counties the household and lodger franchise which the Act of 1867 had conferred on the boroughs. It also remodelled the occupation qualification, making the occupation of any land or tenement of a clear yearly value of £10 a qualification both in boroughs and in counties. And it created a new form of franchise, called the service franchise, intended to meet some cases not quite covered by the householder or the lodger vote. The Act increased the electorate by forty per cent, and its most important effect was the enfranchisement of the rural working man. The Act of 1867 had given the vote to the working man in the town. The Act of 1884 gave it to the working man in the country, the agricultural labourer and his like. It was soon afterwards that the famous "three acres and a cow" made their appearance on the parliamentary scene.

The house of lords refused to pass the Act of 1884 unless it was accompanied by a measure for the redistribution of seats. The difference between the two houses was ended by a compromise, in pursuance of which, after an adjournment, a bill was brought in which

became law as the Redistribution of Seats Act of 1885. The terms of the bill were settled, during the adjournment, by an arrangement between the chiefs of the two parties, and so numerous and conflicting were the interests involved that without some such agreement the bill could not have become law.

The Act of 1885, though to some extent a compromise, was drawn on bolder lines than its predecessors, and was based on the general principle of equal electoral districts each returning a single member. The proportion of one seat for every 54,000 people was roughly taken as the basis of representation. In order to adapt this principle to the then existing system with the least possible change, boroughs with less than 15,000 inhabitants were disfranchised altogether, and became, for electoral purposes, a part of the county in which they were situated. Boroughs with more than 15,000 and less than 50,000 inhabitants were allowed to retain, or if previously unrepresented, were given, one member each: those with more than 50,000 and less than 165,000, two members; those above 165,000, three members, with an additional member for every 50,000 people more. The same general principle was followed in the counties.

The boroughs which had previously elected two members, and retained that number, remained single constituencies for the election

of those two members. Of these boroughs there are now twenty-three, and these, with the city of London, and the three universities of Oxford, Cambridge and Dublin, make the twenty-seven cases of constituencies returning two members. All the other constituencies are single member districts, a result which was brought about by a partition of the counties, of boroughs with more than two members, and of the new boroughs with only two members, into separate electoral divisions, each with its own distinctive name.

The total number of members was increased from 658 to 670, the number at which it now stands.

The conditions of the franchise, and the distribution of seats, remain to-day as they were fixed in 1884 and 1885. As to the franchise, there is still a property qualification, but the most important franchises are the three forms of occupation franchise: (1) the qualification of the occupier of a dwelling-house, (2) that of the occupier as lodger of lodgings of the yearly value of £10, (3) that of the occupier of any land or tenement of the yearly value of £10. Such a wide meaning has been given to the expression householder that it is often difficult for the revising barristers and the courts to distinguish between householders and lodgers.

Throughout the history of parliament the right to vote has not been personal but

has, as a rule, depended on the ownership or occupation of land or a dwelling-place. That principle, with some exceptions, such as graduates and freemen, still remains. As to the distribution of seats, the Act of 1885 made a departure from the principle of local representation, and approximated to the principle of electoral districts with equal population. The ancient idea of the representation of communities, or organized bodies of men has thus given way to that of representation of a number of men, grouped only for the purpose of election.

During the last quarter of a century there has been no change in the electoral system.

For a general extension of the franchise, an extension from the occupation franchise to the adult franchise, such demand as exists has arisen mainly out of the burning question of the franchise for women. We are already much nearer manhood suffrage than is often supposed. According to Mr. Lawrence Lowell's calculations, the ratio of electors to population is about one in six, whereas the normal proportion of males above the age of twenty-one, making no allowance for paupers, criminals, and other persons disqualified by the law of most countries, is somewhat less than one in four. But the demand for the enfranchisement of women has raised the general question as to the principle on which the franchise should be based, for the advocates of the womens'

vote appear to be divided into two camps, those who would grant it on the existing basis of property or occupation, and those who fear that an extension on these terms would unduly increase the influence of property and who would postpone the extension until adult suffrage is granted.

For alteration of the distribution of seats, of the incidents of the franchise, and of the conduct of elections, there have been many demands in parliament and elsewhere.

The distribution of population has greatly changed since 1885 and a strong case can be made out for a better adjustment of seats to the existing distribution. Mr. Balfour's government, on the eve of their fall in 1905, submitted preliminary resolutions for this purpose. The question is always being kept to the front, under the catchword phrase "one vote, one value," but there are many difficulties in the way of dealing with it, Ireland in particular. On the mere numerical basis Ireland is much over represented, but a representation guaranteed to Ireland by the Act of Union ought not to be reduced without her consent.

The phrase "one vote, one value" was invented as a counterpoise to the earlier demand for "one man, one vote." Under the ownership and occupation franchises a man can have separate votes for different constituencies, and may have more than one vote for residential qualifications. This plural

vote is at variance with the electoral practice of most foreign countries, and of most parts of the British empire, and many attempts have been made to abolish it. A bill for this purpose was passed by the commons in 1906, but was thrown out by the lords.

Among other changes demanded in various quarters are the reduction of the expenses incident to elections, by holding all elections on one day, and by simplifying and cheapening the machinery of registration; the modification of the condition of residence so as to prevent the disfranchisement of those who are compelled, for business or other reasons, to shift their residence; and the removal of the disqualification attached to the receipt of poor law relief, a disqualification which has already been mitigated in various ways. The payment of members, and of the official expenses of candidates, was promised on the eve of the dissolution of the short parliament of 1910, and proposals for authorizing it were then in preparation.

A far more sweeping change would be effected if the advocates of proportional representation had their way. The devising of some means for the protection of minorities against the "tyranny of majorities" has occupied the attention of political thinkers for many generations, and John Stuart Mill, in 1867, urged in parliament the adoption of Thomas Hare's well-known scheme, but his arguments met with a frigid reception.

No better was the fortune of Mr. Leonard Courtney, now Lord Courtney of Penwith, in 1884. The three-cornered constituencies which were introduced in 1867 at the instance of the house of lords, and which aimed at securing the return of candidates who could secure the support of a little more than one-third of the voters in their constituency, perished in 1885, and the Act of that year established the general principle of single-member constituencies. The cumulative vote for English school boards, introduced in 1870, went with the school boards themselves in 1902. The experience of Belgium, and the experiments tried in Tasmania, South Africa and elsewhere, revived interest in the question, and the whole subject was carefully considered by a royal commission which reported in 1910. Proposals for proportional representation have obtained the support of many men of eminence and ability, but do not appear to have yet aroused any general interest either in parliament or in the country.

A word or two may be said in conclusion on the qualifications of members as distinguished from voters. A residential qualification was imposed in the fifteenth century but soon became obsolete, and was formally repealed, as such, in the eighteenth century. By the legislation of that century a property qualification was required, but it was easily evaded, and was abolished by a private

member's Act in 1858. No test is required to make the entry of poor men into parliament difficult. Oaths of allegiance and oaths imposing religious tests in various forms and degrees of stringency were introduced in the sixteenth and seventeenth centuries; and their modification and abolition, and the steps by which Roman Catholics, Jews and others, obtained admission into the house of commons, form an interesting chapter in parliamentary history. All that is now required is a very simple oath or affirmation of allegiance, in a form compatible with any variety or shade of religious belief or unbelief.

The existing constitution of the house of commons may be summed up as follows.

The house consists of 670 members, 465 for England, 30 for Wales, 72 for Scotland, and 103 for Ireland. Single member constituencies are the general rule, but in a few cases one constituency returns two members. Every male householder who has resided in his constituency for a year, and has paid or compounded for his rates, is entitled to be registered, and, when registered, to vote as a parliamentary elector for that constituency. This is the most general franchise, but there are others, including the occupation of lodgings rented at £10 a year, and the ownership or occupation of lands or buildings of a certain value. Some of the universities return members, elected by their graduates. Women are not entitled to the parliamentary franchise.

Subject to disqualifications arising from peerage, holding of office, bankruptcy, and conviction of treason or felony, every British subject who is of full age is eligible to the house of commons. A peer of the United Kingdom or of Scotland is not eligible, but a peer of Ireland, unless he be a representative peer, is eligible for any but an Irish seat. For instance, Lord Palmerston was an Irish peer. Where a member of the house of commons is described as a lord, he is either an Irish peer, or, more frequently, a commoner holding a courtesy title as son of a peer.

The evidence of election is the return sent to the crown office by the returning officer at the election. If the validity of an election is disputed, the question is tried and decided by election judges appointed by, and from among members of, the high court. A member must, before sitting or voting as such, except in the election of Speaker, take the oath of allegiance, or make an affirmation to the same effect.

About disqualification by office something more must be said. After the restoration of Charles II, and indeed until the end of the seventeenth century, there was much jealousy of the presence in parliament of persons holding office under the king. It was feared that, through his officers, the king would be able to exercise undue influence over parliamentary proceedings, and an Act was passed which made the holding of all

such offices incompatible with a seat in the house of commons. Fortunately this Act was repealed before it came into operation; if it had remained law it would have made our present system of government impossible. The present state of the law depends on a series of complicated enactments, but its general effect is that some offices cannot be held by a member of the house of commons, whilst in other cases acceptance of the office by a member vacates his seat, and compels him to seek re-election, but, if he is re-elected, he can hold both the office and the seat together. The offices which cannot be held by a member of parliament include those of the higher judges, and those of the members of what is known as the permanent civil service, who retain their posts independently of any change in the government. The offices which involve re-election are the so-called political offices which are held by the ministers of the crown, who represent in the house the government of the day, and who resign their offices when there is a change of government owing to another party coming into power. Under the provisions of various statutes an exchange of one of these offices for another is an exception from the rule which vacates a member's seat when he accepts the office of a minister. Thus if the president of the board of trade become home secretary he does not thereby vacate his seat and require re-election. Nor does appointment to the

post of parliamentary under-secretary to a secretary of State, or to such departments as the board of admiralty, board of trade, or local government board vacate a seat, the technical reason being that these appointments are made, not by the king himself, but by the minister under whom the parliamentary secretary serves, and therefore the posts are not "offices under the Crown" within the meaning of the disqualifying statutes.

A member cannot resign his seat, but, if he wishes to retire from parliament, he takes advantage of these disqualifying statutes by asking for appointment to some old office to which nominal duties and emoluments are attached, and which he resigns as soon as his acceptance of it has made his seat vacant. The office usually selected for this purpose is that of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, in the county of Bucks. Acceptance of the Chiltern Hundreds is the door by which a member escapes when he wishes to retire from parliament before a general election.

Members, other than those in receipt of official salaries, now receive a salary of £400 a year. This payment was first authorized by a resolution of the house agreed to on August 15, 1911. At present the authority for payment rests, not on a permanent Act, but on an annual vote confirmed by the Appropriation Act of the year.

CHAPTER III

THE MAKING OF LAWS

THE business of the house of commons may be divided into three branches, legislative, financial, critical. The house makes laws with the concurrence of the house of lords and the king. It grants money for the public service, specifies the purposes to which that money is to be appropriated, imposes taxes and authorizes loans. By means of questions and discussions, it criticizes and controls the action of the king's ministers, and of the executive government of which they are at the head.

Let us begin with the work of making laws. The law of this country is commonly classified as falling under two heads, the common law and the statute law. The common law may for present purposes be described as the law which is based on custom and usage as declared and expounded by judges. The statute law is the law which is made by the legislature and is to be found in Acts of Parliament, or, as they are also called, the statutes of the realm. There are other distinctions and refinements with which we need not concern ourselves

here. It is with the making of statute law that parliament is concerned. The gradual change in the form of parliamentary legislation, by which legislation on petition was transformed into legislation by bill, has been described in an earlier chapter.

In dealing with the work of legislation, as conducted under modern rules of procedure, it may be convenient to begin by describing, very briefly, the stages through which a bill, that is, a project of law, or a proposed law, must pass before it obtains the king's assent, becomes an Act of Parliament, and acquires the force of law. We will suppose that it is a public bill, that is, a bill for the alteration of the general law, as distinguished from a private bill, the nature of which will be explained later on, and that it makes its start in the house of commons, not in the house of lords.

Any member of the house of commons may introduce a bill into that house, or move the house for leave to introduce it. Until recently this motion for leave, which was rarely refused, was the preliminary step for introduction of a bill, and the old practice is still usually followed in the case of the more important measures introduced by the government, and sometimes in the case of bills introduced by private members. But, under an alteration of rules made in 1902, any member may now present a bill, after giving formal notice of his intention to do so. If he has obtained the

requisite leave, or given the requisite notice, the Speaker, at the proper time, calls his name, and thus invites him to present his bill. He does so by bringing to the table of the house, where the clerks sit, a document which is supposed to be his bill, but which is really a "dummy" or sheet of paper, supplied to him at the public bill office, and containing the title of the bill, the member's name, and the names of any other members who wish to appear as supporting him or joining with him in presenting the bill. The clerk at the table reads out the title of the bill, and it is then supposed to have been read a first time. A formal order is made for printing it, and a day is fixed for its second reading. There was a time when these so-called "readings" were realities. The Speaker would explain from notes or a "breviate" supplied to him the general nature of the proposals to be brought before the house, and the bill itself would probably be read in full, at later stages, by the clerk at the table of the house. Nowadays the "readings" are merely stages in the progress of a bill through the house. The first reading is a mere formality. When the question is put that the bill be read a second time an opportunity is afforded for discussing its general principles as distinguished from its details. If the house signifies its approval of these principles the bill is supposed to be read a second time, and then follows what is called the committee

stage. Under the present rules, when a bill has been read a second time it is sent to one of the standing committees on bills, unless it falls under certain exceptions, or the house makes an order that it be considered by some other kind of committee.

There are four of these standing committees. One of them is for the consideration of public bills relating exclusively to Scotland, and must include all the members representing Scottish constituencies. The other three are constituted by the committee of selection, which is one of the committees appointed for each session by the house, and the same committee of selection also reinforces the committee on Scottish bills by adding to it some other members. The minimum number of each standing committee is sixty, and the quorum for business is twenty.

If a bill does not go to a standing committee, it usually goes to what is called a committee of the whole house, but is really the house itself, transacting its business in a less formal manner, with the Speaker's chair vacant, and sitting under the presidency of a chairman, who occupies the chair at the table which is occupied by the clerk of the house when the Speaker is present. These so-called committees of the whole house, corresponding to what are called "committees of the whole" in the United States, came into existence at the beginning of the seventeenth century. The more important bills were then sent to

large committees, and as it was difficult to obtain attendance at these committees, orders were often made that any member who wished might attend. These orders grew into a general practice. It is said also that the house of that day did not place complete confidence in its Speaker, whom it regarded as the agent and nominee of the king, and that it preferred to conduct its deliberations in his absence. So it came to pass that what is called a committee of the whole house is the same body of persons as the house itself, sitting in the same place, with slightly different formalities and procedure.

Before a recent change in the rules, all bills went after second reading to a committee of the whole house, unless the house ordered otherwise. Now the presumption is reversed, and all bills, except a special class, go to a standing committee unless the house orders otherwise. But the Finance Bill and other money bills of the year must go to a committee of the whole house, and opposition is always made when it is proposed to send to a standing committee any of the more important bills or any very controversial bill, for, notwithstanding the recent change of rules, many members hold that every member of the house ought to have an opportunity of taking part in the discussion of the detailed provisions of these bills.

When a bill is before a standing committee or a committee of the whole house, the

committee goes through the bill, clause by clause, discussing any amendments that may be proposed, determining as to each clause, how, if at all, it should be amended, and whether in its original or amended form it should stand part of the bill, and then whether any new clauses should be added. In the case of important and controversial bills these debates may last over many days or weeks, and the notices of amendments to be proposed fill many pages of the parliamentary notice papers. When the discussion is finished, and the whole bill has been gone through, the chairman of the committee makes a simple report to the Speaker, merely stating whether the bill has been amended or not.

In some cases a bill, instead of going to a standing committee or to a committee of the whole house, is sent to a small select committee, or to a joint committee of both houses. These cases are comparatively rare, and the reason for adopting this course usually is that it is desired to summon witnesses and take evidence as to the expediency and effect of the provisions of the bill. Committees of this kind usually make special reports, stating their reasons and conclusions, but bills considered by them have to be considered subsequently by a committee of the whole house.

After the committee stage follows the report stage. The house, sitting formally with the

Speaker in the chair, considers the bill as reported to it by the committee, and discusses and determines whether any further alterations or additions should be made.

The final stage in the house of commons is the third reading. At this stage only formal or verbal alterations are allowed. The house considers the bill as a whole, and determines whether, in its opinion, the measure ought or ought not to become law.

When a bill has passed through all its stages in the house of commons it is sent up with a message to the house of lords, to pass through its several stages there, stages which correspond, with some differences of detail, to those in the house of commons. The lords may reject the bill or may amend it, but, as will be explained hereafter, they have no power to amend a finance or other money bill. If the lords amend a bill they send it back to the commons with a message requesting the concurrence of the commons in their amendments. Should the two houses differ, informal negotiations take place between the friends and the opponents or critics of the bill, and amendments and counter amendments may pass to and fro between the two houses until an agreement is arrived at. But if no agreement can be arranged, the bill drops, that is to say, fails to become law, for, except in pursuance of the Parliament Act, 1911, a bill cannot be presented for the royal assent until the concurrence of both houses has been obtained.