Erskine May, Vol. II, Chapter VII, pp. 85-98

Parliamentary Control of the Executive

The limits within which Parliament, or either House, may constitutionally exercise a control over the executive government, have been defined by usage, upon principles consistent with a true distribution of powers, in a free state and limited monarchy. Parliament has no direct control over any single department of the state. It may order the production of papers, for its information:(1) it may investigate the conduct of public officers; and may pronounce its opinion upon the manner in which every function of the government has been, or ought to be, discharged. But it cannot convey its orders or directions to the meanest executive officer, in relation to the performance of his duty. Its power over the executive is exercised [86] indirectly,—but not the less effectively,—through the responsible ministers of the crown. These ministers regulate the duties of every department of the state; and are responsible for their proper performance, to Parliament, as well as to the crown. If Parliament disapprove of any act, or policy of the government,—ministers must conform to its opinion, or forfeit its confidence. In this manner, the House of Commons, having become the dominant body in the legislature, has been able to direct the conduct of the government, and control its executive administration of public affairs, without exceeding its constitutional powers. It has a right to advise the crown,—even as to the exercise of prerogative itself; and should its advice be disregarded, it wields the power of impeachment, and holds the purse-strings of the state.

Parliament and the Prerogative

History abounds with examples, in which the exercise of prerogative has been controlled by Parliament. Even questions of peace and war, which are peculiarly within the province of prerogative, have been resolved, again and again, by the interposition of Parliament. From the reign of Edward III., Parliament has been consulted by the crown; and has freely offered its advice on questions of peace and war. The exercise of this right,—so far from being a modern invasion of the royal prerogative,—is an ancient constitutional usage. It was not, however, until the power of Parliament had [87] prevailed over prerogative, that it had the means of enforcing its advice.

At a time when the influence of the crown had attained its highest point under George III., the House of Commons was able to bring to a close the disastrous American war, against the personal will of the king himself. Having presented an address against the further prosecution of offensive war, to which they had received an evasive answer,—the House proceeded to declare, that it would 'consider as enemies to his Majesty and this country all who should advise, or by any means attempt the further prosecution of offensive war on the continent of America, for the purpose of reducing the revolted colonies to obedience by force.'(2) Nor did the House rest until it had driven Lord North, the king's war minister, from power.

During the long war with France, the government was pressed with repeated motions, in both Houses, for opening negotiations for peace. Ministers were strong enough to resist them: but, —at a period remarkable for assertions of prerogative, objections to such motions, on constitutional grounds, were rarely heard. Indeed the crown, by communicating to Parliament the breaking out of hostilities(3) or the commencement of negotiations for peace,(4) [88] has invited its advice and assistance. That advice may be unfavourable to the policy of ministers; and the indispensable assistance of Parliament may be withheld. If the crown be dissatisfied with the judgment of Parliament, an appeal may still be made to the final decision of the

people. In 1857, the House of Commons condemned the policy of the war with China: but ministers, instead of submitting to its censure, appealed to the country, and obtained its decisive approval.

Dissolution

Upon the same principles, Parliament has assumed the right of advising the crown, in regard to the exercise of the prerogative of dissolution. In 1675, an address was moved in the House of Lords, praying Charles II. to dissolve the Parliament; and on the rejection of the motion, several Lords entered their protest. Lord Chatham's repeated attempts to induce the House of Lords to address the crown to dissolve the Parliament which had declared the incapacity of Wilkes, have been lately noticed.(5) The address of the Commons, after the dismissal of the coalition ministry, praying the king not to dissolve Parliament, has been described elsewhere.(6) Lord Wharncliffe's vain effort to arrest the dissolution of Parliament in 1831, has also been adverted to.(7)

But though the right of Parliament to address the crown, on such occasions, is unquestionable, —its exercise has been restrained by considerations of [89] policy, and party tactics. The leaders of parties,—profiting by the experience of Mr. Fox and Lord North,—have since been too wise to risk the forfeiture of public esteem, by factiously opposing the right of ministers to appeal from the House of Commons to the people. Unless that right has been already exercised, the alternatives of resigning office or dissolving Parliament have been left,—by general consent,—to the judgment of ministers who cannot command the confidence of the House of Commons. In the exercise of their discretion, ministers have been met with remonstrances: but sullen acquiescence on the part of their opponents, has succeeded to violent addresses, and measures for stopping the supplies.

As Parliament may tender its advice to the crown, regarding its own dissolution, so the people, in their turn, have claimed the right of praying the crown to exercise its prerogative, in order to give them the means of condemning the conduct of Parliament. In 1701, during a fierce contest between the Whig and Tory parties, numerous petitions and addresses were' presented to William III. at the instance of the Whigs, praying for the dissolution of the Parliament, which was soon afterwards dissolved. The constitutional character of these addresses having been questioned, it was upheld by a vote of the House of Commons, which affirmed 'that it is the undoubted right of the people of England to petition or address the king, for the calling, sitting, and dissolving [90] Parliaments, and for the redressing of grievances.' In 1710, similar tactics were resorted to by the Tories, when addresses were presented to Queen Anne, praying for a dissolution, and assuring her Majesty that the people would choose none but such as were faithful to the crown, and zealous for the church.

In 1769, Lord Chatham sought public support of the same kind, in his efforts to obtain a dissolution of Parliament. Lord Rockingham and some of the leading Whigs, who doubted at first, were convinced of the constitutional propriety of such a course; and Lord Camden expressed a decisive opinion, affirming the right of the subject.(8) The people were justly dissatisfied with the recent proceedings of the House of Commons; and were encouraged by the opposition to lay their complaints at the foot of the throne, and to pray for a dissolution.

The contest between Mr. Pitt and the coalition was characterised by similar proceedings. While the Commons were protesting against a dissolution, the supporters of Mr. Pitt were actively engaged in obtaining addresses to his Majesty, to assure him of the support of the people, in the constitutional exercise of his prerogative.

Votes of Confidence

The House of Commons in the first instance,—and the people in the last resort,—have

become arbiters of the fate of the ministers [91] of the crown. Ministers may have the entire confidence of their sovereign, and be all-powerful in the House of Lords: but without a majority of the House of Commons, they are unable, for any considerable time, to administer the affairs of the country. The fall of ministries has more often been the result of their failure to carry measures which they have proposed, or of adverse votes on general questions of public policy: but frequently it has been due,—particularly in modern times,—to express representations to the crown, that its ministers have not the confidence of the House of Commons. Where such votes have been agreed to by an old Parliament,—as in 1784,—ministers have still had before them the alternative of a dissolution: but when they have already appealed to the country for support,—as in 1841, and again in 1859,—a vote affirming that they have not the confidence of the House of Commons, has been conclusive.

The disapprobation of ministers by the House of Commons being decisive, the expression of its confidence has, at other times, arrested their impending fall. Thus in 1831, Lord Grey's ministry, embarrassed by an adverse vote of the House, on the second reform bill,(9) was supported by a declaration of the continued confidence of the House of Commons.

And at other times, the House has interposed its advice to the crown, on the formation of administrations, with a view to favour or obstruct political arrangements, then in progress. Thus, in 1784, [92] when negotiations had been commenced for a fusion of parties, resolutions were laid before his Majesty expressing the opinion of the House of Commons, that the situation of public affairs required a 'firm, efficient, extended, and united administration, entitled to the confidence of the people, and such as may have a tendency to put an end to the divisions and distractions of the country.' Similar advice was tendered to the Prince Regent in 1812, after the death of Mr. Perceval; and to William IV., in 1832, on the resignation of Earl Grey.(10)

Impeachments

But this constant responsibility of ministers, while it has made their position dependent upon the pleasure of Parliament, has protected fallen ministers from its vengeance. When the acts and policy of statesmen had been dictated by their duty to the crown alone, without regard to the approval of Parliament, they were in danger of being crushed by vindictive impeachments, and attainders. Strafford had died on the scaffold: Clarendon had been driven into exile:(11) Danby had suffered a long imprisonment in the Tower;(12) Oxford, Bolingbroke, and Ormond had been disgraced and ruined,(13) at the suit of the Commons. But parliamentary responsibility has prevented the commission of those political crimes, which had provoked the indignation of the [93] Commons; and when the conduct or policy of ministers has been condemned, loss of power has been their only punishment. Hence the rarity of impeachment in later times. The last hundred years present but two cases of impeachment,—the one against Mr. Warren Hastings, on charges of misgovernment in India,—the other against Lord Melville, for alleged malversation in his office. The former was not a minister of the crown, and he was accused of offences committed beyond the reach of parliamentary control; and the offences charged against the latter, had no relation to his political duties as a responsible minister.

The case of Mr. Warren Hastings finally established the constitutional doctrine, that an impeachment by the Commons is not terminated by any prorogation or dissolution of Parliament. It had been affirmed by the Lords in 1678, after an examination of precedents: when Lord Stafford fell a victim to its assertion; and six years afterwards, it had been denied, in order to secure the escape of the 'popish lords,' then under impeachment.(14) Lord Danby's lingering impeachment had been continued by the first decision, and annulled by the last. The same question having arisen after the lapse of a century, Parliament was called upon to review the precedents of former impeachments, and to pass its judgment upon the contradictory

decisions of the Lords. Many of the precedents were so obscure as to furnish arguments [94] on both sides of the question: conflicting opinions were to be found amongst text-writers; and the most eminent lawyers of the day were not agreed.(15) But the masterly and conclusive speech of Mr. Pitt was alone sufficient to settle the controversy, even on the grounds of law and precedent. On broad constitutional principles, the first statesmen of all parties concurred in upholding the inviolable right of the Commons to pursue an impeachment, without interruption from any act of the crown. It could not be suffered that offenders should be snatched from punishment, by ministers who might be themselves concerned in their guilt. Nor was it just to the accused, that one impeachment should be arrested before a judgment had been obtained; and another preferred,—on the same or different grounds, perhaps after his defence had suggested new evidence to condemn him. Had not the law already provided for the continuance of impeachments, it would have been necessary to declare it. But it was agreed in both Houses, by large majorities, that by the law and custom of Parliament, an impeachment pending in the House of Lords continued *in statu quo*, from one Session and from one Parliament to another, until a judgment had been given.

[95] As parliamentary responsibility has spared ministers the extreme penalties of impeachments,—so it has protected the crown from those dangerous and harassing contests with the Commons, with which the earlier history of this country abounds. What the crown has lost in power, it has gained in security and peace. Until the Commons had fully established their constitutional rights, they had been provoked to assert them with violence, and to press them to extreme conclusions: but they have exercised them, when acknowledged, with moderation and forbearance. At the same time, ministers of the crown have encountered greater difficulties, from the increased power and independence of the Commons, and the more direct action of public opinion upon measures of legislation and policy. They are no longer able to fall back upon the crown for support: their patronage is reduced, and their influence diminished. They are left to secure a majority, not so much by party connexions, as by good measures and popular principles. Any error of judgment,—any failure in policy or administration, is liable to be visited with instant censure. Defeated in the Commons, they have no resource but an appeal to the country, unaided by those means of influence, upon which ministers formerly relied.

Strong and Weak Governments

Their responsibility is great and perilous: but it has at least protected them from other embarrassments, of nearly equal danger. When the crown was more powerful, what was the fate of ministries? [96] The first ten years of the reign of George III. witnessed the fall of five feeble administrations; and their instability was mainly due to the restless energies of the king. Until Mr. Pitt came into power, there had not been one strong administration during this reign. It was the king himself who overthrew the coalition ministry, the absolute government of Mr. Pitt, and the administration of 'All the Talents.'

For more than ten years after Mr. Pitt's fall, there was again a succession of weak administrations, of short duration. If the king could uphold a ministry,—he could also weaken or destroy it. From this danger, governments under the new parliamentary system, have been comparatively free. More responsible to Parliament, they have become less dependent upon the crown. The confidence of the one has guarded them from the displeasure of the other.

No cause of ministerial weakness has been more frequent than disunion. It is the common lot of men acting together; and is not peculiar to any time, or political conditions. Yet when ministers looked to the crown for support, and relied upon the great territorial lords for a parliamentary majority,—what causes were so fruitful of jealousies and dissensions, as the intrigues of the court, and the rivalries of the proprietors of boroughs? Here, again, governments deriving their strength and union from Parliament and the people, have been less

exposed to danger in this form. Governments have, indeed, been weakened, as in former times, by [97] divisions among their own party. but they have been, in some measure, protected from faction, by the greater responsibility of all parties to public opinion. This protection will be more assured, when the old system of government, by influence and patronage, shall have given place to the recognition of national interests, as the sole basis of party.

The responsibility of ministers has been further simplified, by the dominant power of the Commons. The Lords may sometimes thwart a ministry, reject or mutilate its measures, and even condemn its policy: but they are powerless to overthrow a ministry supported by the Commons, or to uphold a ministry which the Commons have condemned. Instead of many masters, a government has only one. Nor can it be justly said, that this master has been severe, exacting, or capricious.

It can neither be affirmed that strong governments were characteristic of the parliamentary system, subverted by the reform act—nor that weak governments have been characteristic of the new system, and the result of it. In both periods, the stability of administrations has been due to other causes. If in the latter period, ministers have been overthrown, who, at another time might have been upheld by the influence of the crown; there have yet been governments supported by a parliamentary majority and public approbation, stronger in moral force,—and more capable of overpowering interests adverse to the national welfare,—than any ministries deriving their power from less popular sources.

[98] After the reform act, Earl Grey's ministry was all-powerful, until it was dissolved by disunion in the cabinet. No government was ever stronger than that of Sir Robert Peel, until it was broken up by the repeal of the corn laws. Lord Aberdeen's cabinet was scarcely less strong, until it fell by disunion and military failures. What government was more powerful than Lord Palmerston's first administration, until it split upon the sunken rock of the Orsini conspiracy?

On the other hand, the ministry of Lord Melbourne was enfeebled by the disunion of the Liberal party. The first ministry of Sir Robert Peel, and the ministries of Lord Derby, in 1852 and 1858, were inevitably weak,—being formed upon a hopeless minority in the House of Commons. Such causes would have produced weakness at any time; and are not chargeable upon the caprices, or ungovernable temper, of a reformed Parliament. And throughout this period, all administrations,—whether strong or weak, and of whatever political party,—relying mainly upon public confidence, have laboured successfully in the cause of good government; and have secured to the people more sound laws, prosperity, and contentment, than have been enjoyed at any previous epoch, in the history of this country.

Footnotes.

1. Many papers, however, can only be obtained by address to the Crown.
2. Feb. 27th and March 4th, 1782; Parl. Hist., xxii. 1064, 1086, 1087
3. Feb. 11th, 1793; May 22nd, 1815; March 27th. 1854, etc.
4. Dec. 8th. 1795; Oct. 29th, 1801; Jan. 31st, 1856, etc.
5. Supra, p. 23, etc.
6. Supra, Vol. I. 73.
7. Supra, Vol. I. 141.
8. 'His answer was full and manly, that the right is absolute, and unquestionable for the exercise.' Lord Chatham to Lord Temple, Nov. 8th, 1769; Grenville Papers, iv. 479.
9. Supra, Vol. I. p. 142.
10. Supra, Vol. I. p. 125, 143; Hans. Deb., 1st Ser., xxiii. 249.
11. Having gone abroad pending his impeachment, an Act of banishment and incapacity was passed by Parliament.

12. Not being brought to trial, he was admitted to bail by the Court of King's Bench, after an imprisonment of five years. St. Tr., xi. 871.
13. Oxford was imprisoned for two years in the Tower. Bolingbroke and Ormond, having escaped, were attainted.
14. May 22nd, 1685. Lords' Journ., xiv 11. This decision was reversed, in the case of the Earl of Oxford, May 25th. 1717; Ibid. xx. 475.
15. Lord Thurlow, Lord Kenyon, Sir Richard Arden, Sir Archibald Macdonald, Sir John Scott, Mr. Mitford, and Mr. Erskine contended for the abatement: Lord Mansfield, Lord Camden, Lord Loughborough, and Sir William Grant, maintained its continuance.

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