Introduction to the Study of the Law of the Constitution

*Introduction to the Eighth Edition (1915)**

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The *Law of the Constitution* was first published in 1885. The book was based on lectures delivered by me as Vinerian Professor of English Law. The lectures were given and the book written with the sole object of explaining and illustrating three leading characteristics in the existing constitution of England; they are now generally designated as the Sovereignty of Parliament, the Rule of Law, and the Conventions of the Constitution. The book, therefore, dealt with the main features of our constitution as it stood in 1884-85, that is thirty years ago. The work has already gone through seven editions; each successive edition, including the seventh, has been brought up to date, as the expression goes, by amending it so as to embody any change in or affecting the constitution which may have occurred since the last preceding edition. On publishing the eighth and final edition of this treatise I have thought it expedient to pursue a different course. The constant amendment of a book republished in successive editions during thirty years is apt to take from it any such literary merits as it may originally have possessed. Recurring alterations destroy the original tone and spirit of any treatise which has the least claim to belong to the literature of England. The present edition, therefore, of the *Law of the Constitution* is in substance a reprint of the seventh edition; it is however accompanied by this new Introduction whereof the aim is to compare our constitution as it stood and worked in 1884 with the constitution as it now stands in 1914. It is thus possible to take a general view of the development of the constitution during a period filled with many changes both of law and of opinion[1]. My readers are thus enabled to see how far either legislation or constitutional conventions have during the last thirty years extended or (it may be) limited the application of the principles which in

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1884 lay at the foundation of our whole constitutional system. This Introduction therefore is in the main a work of historical retrospection. It is impossible, however (nor perhaps would it be desirable were it possible), to prevent a writer's survey of the past from exhibiting or betraying his anticipations of the future.

The topics here dealt with may be thus summed up: — The Sovereignty of Parliament[2], the Rule of Law[3], the Law and the Conventions of the Constitution[4], New Constitutional Ideas[5], General Conclusions[6].

Sovereignty of Parliament[7]

The sovereignty of Parliament is, from a legal point of view, the dominant characteristic of our political institutions. And my readers will remember that Parliament consists of the King, the House of Lords, and the House of Commons acting together. The principle, therefore, of parliamentary sovereignty means neither more nor less than this, namely that "Parliament" has "the right to make or unmake any law whatever; and further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament,"[8] and further that this right or power of Parliament extends to every part of the King's dominions[9]. These doctrines appear in the first edition of this work, published in 1885; they have been repeated in each successive edition published up to the present day. Their truth has never been denied. We must now, however, consider whether they are an accurate description of parliamentary sovereignty as it now exists in 1914. And here it should be remarked that parliamentary sovereignty may possibly at least have been modified in two different directions, which ought to be distinguished. It is possible, in the first place, that the constitution or nature of the sovereign power may have undergone a change. If, for example, the King and the Houses of Parliament had passed a law abolishing the House of Lords and leaving supreme legislative power in the hands of the King and of the House of Commons, any one would feel that the sovereign to which parliamentary sovereignty had been transferred was an essentially different sovereign from the King and the two Houses which in 1884 possessed supreme power. It is possible, in the second place, that since 1884 the Imperial Parliament may, if not in theory yet in fact, have ceased as a rule to exercise supreme legislative power in certain countries subject to the authority of the King. Let us consider carefully each of these two possibilities.

Possible Change in Constitution or Character of the Parliamentary Sovereign (Effect of the Parliament Act, 1911)

The matter under consideration is in substance whether the Parliament Act[10], has transferred legislative authority from the King[11] and the two Houses of Parliament to the King and the House of Commons?

The best mode of giving an answer to this question is first to state broadly what were the legislative powers of the House of Lords immediately before the passing of the Parliament Act, 18th August 1911, and next to state the main direct and indubitable effects of that Act on the legislative power of

the House of Lords and of the House of Commons respectively.

The State of Things immediately before the Passing of the Parliament Act

No Act of Parliament of any kind could be passed without the consent thereto both of the House of Lords and of the House of Commons. No doubt the House of Lords did very rarely either alter or reject any Money Bill, and though the Lords have always claimed the right to alter or reject such a Bill, they have only on very special occasions exercised this power. No doubt again their lordships have, at any rate since 1832, acknowledged that they ought to pass any Bill deliberately desired by the nation, and also have admitted the existence of a more or less strong presumption that the House of Commons in general represents the will of the nation, and that the Lords ought, therefore, in general to consent to a Bill passed by the House of Commons, even though their lordships did not approve of the measure. But this presumption may, they have always maintained, be rebutted if any strong ground can be shown for holding that the electors did not really wish such a Bill to become an Act of Parliament. Hence Bill after Bill has been passed by their lordships of which the House of Lords did not in reality approve. It was however absolutely indubitable up to the passing of the Parliament Act that no Act could be passed by Parliament without obtaining the consent of the House of Lords. Nor could any one dispute the legal right or power of the House, by refusing such assent, to veto the passing of any Act of which the House might disapprove. Two considerations, however, must be taken into account. This veto, in the first place, has, at any rate since 1832, been as a rule used by the Lords as a merely suspensive veto. The passing of the Great Reform Act itself was delayed by their lordships for somewhat less than two years, and it may well be doubted whether they have, since 1832, ever by their legislative veto, delayed legislation really desired by the electors for as much as two years. It must again be remembered that the Lords, of recent years at least, have at times rejected Bills supported by the majority of the House of Commons which, as has been proved by the event, had not received the support of the electors. Hence it cannot be denied that the action of the House of Lords has sometimes protected the authority of the nation.

The Direct Effects of the Parliament Act[12]

Such effects can be summed up in popular and intelligible language, rather than with technical precision, as follows:

1. In respect of any Money Bill the Act takes away all legislative power from the House of Lords. The House may discuss such a Bill for a calendar month, but cannot otherwise prevent, beyond a month, the Bill becoming an Act of Parliament[13].

2. In respect of any public Bill (which is not a Money Bill)[14], the Act takes away from the House of Lords *any final* veto, but leaves or gives to the House a *suspensive* veto[15].

This suspensive veto is secured to the House of Lords because under the Parliament Act, s. 2, no such Bill can be passed without the consent of the House which has not fulfilled the following four conditions:

i. That the Bill shall, before it is presented to the King for his assent, be passed by the House of Commons and be rejected by the House of Lords in each of *three successive* sessions[16].

ii. That the Bill shall be sent up to the House of Lords at least one calendar month before the end of each of these sessions[17].

iii. That in respect of such Bill at least two years shall have elapsed between the date of the second reading of the Bill in the House of Commons during the first of those sessions and the date on which it passes the House of Commons in the third of such sessions[18].

iv. That the Bill presented to the King for his assent shall be in every material respect identical with the Bill sent up to the House of Lords in the first of the three successive sessions except in so far as it may have been amended by or with the consent of the House of Lords.

The history of the Government of Ireland Act, 1914, popularly, and throughout this Introduction generally, called the Home Rule Bill or Act, affords good illustrations of the peculiar procedure instituted by the Parliament Act. The Home Rule Bill was introduced into the House of Commons during the first of the three successive sessions on April 11, 1912; it passed its second reading in the House of Commons during that session on May 9, 1912; it was rejected by the House of Lords either actually or constructively[19] in each of the three successive sessions. It could not then possibly have been presented to the King for his assent till June 9, 1914; it was not so presented to the King till September 18, 1914. On that day, just before the actual prorogation of Parliament in the third session, it received the royal assent without the consent of the House of Lords; it thereby became the Government of Ireland Act, 1914. The Act as assented to by the King was in substance identical with the Bill sent up to the House of Lords in the first of the three sessions on January 16, 1913. But here we come across the difficulty of amending a Bill under the Parliament Act after it had once been sent up in the third session to the House of Lords. By June 1914 it was felt to be desirable to amend the Home Rule Bill in respect of the position of Ulster. On June 23 the Government brought into the House of Lords a Bill which should amend the Home Rule Act which was still a Bill, and it is difficult to find a precedent for thus passing an Act for amending a Bill not yet on the statute-book. The attempt to carry out the Government's proposal came to nothing. On September 18, 1914, the Home Rule Bill became the Home Rule Act (or technically the Government of Ireland Act, 1914) unamended, but on the very day on which the Home Rule Act was finally passed it was in effect amended by a Suspensory Act under which the Government of Ireland Act, 1914, cannot come into force until at any rate twelve months from September 18, and possibly will not come into force until the present war has ended. The Suspensory Act evades or avoids the effect of the Parliament Act, but such escape from the effect of a recently passed statute suggests the necessity for some amendment in the procedure created by the Parliament Act.

3. The House of Commons can without the consent of the House of Lords present to the King for his assent any Bill whatever which has complied with the provisions of the Parliament Act, section 2, or rather which is certified by the Speaker of the House of Commons in the way provided by the Act to have complied with the conditions of the Parliament Act, section 2.

The simple truth is that the Parliament Act has given to the House of Commons, or, in plain language, to the majority thereof, the power of passing any Bill whatever, provided always that the conditions of the Parliament Act, section 2, are complied with. But these provisions do leave to the House of Lords a suspensive veto which may prevent a Bill from becoming an Act of Parliament for a period of certainly more, and possibly a good deal more, than two years[20].

In these circumstances it is arguable that the Parliament Act has transformed the sovereignty of Parliament into the sovereignty of the King and the House of Commons. But the better opinion on the whole is that sovereignty still resides in the King and the two Houses of Parliament. The grounds for this opinion are, firstly, that the King and the two Houses acting together can most certainly enact or repeal any law whatever without in any way contravening the Parliament Act; and, secondly, that the House of Lords, while it cannot prevent the House of Commons from, in effect, passing under the Parliament Act any change of the constitution, provided always that the requirements of the Parliament Act are complied with, nevertheless can, as long as that Act remains in force, prohibit the passing of any Act the effectiveness of which depends upon its being passed without delay.

Hence, on the whole, the correct legal statement of the actual condition of things is that sovereignty still resides in Parliament, *i.e.* in the King and the two Houses acting together, but that the Parliament Act has greatly increased the share of sovereignty possessed by the House of Commons and has greatly diminished the share thereof belonging to the House of Lords.

Practical Change in the Area of Parliamentary Sovereignty (Relation of the Imperial Parliament to the Dominions[21]*)*

The term "Dominions" means and includes the Dominion of Canada, Newfoundland, and Commonwealth of Australia, New Zealand, and the Union of South Africa. Each of the Dominions is a self-governing colony, *i.e. a* colony possessed both of a colonial Parliament, or representative legislature, and a responsible government, or in other words, of a government responsible to such legislature. Our subject raises two questions:

First Question. What is the difference between the relation of the Imperial Parliament to a self-governing colony, such, *e.g., as* New Zealand, in 1884, and the relation of the same Parliament to the Dominion, *e.g.* of New Zealand, in 1914?

Before attempting a direct answer to this inquiry it is well to point out that in two respects of considerable importance the relation of the Imperial Parliament[22] to the self-governing colonies, whether called Dominions or not, has in no respect changed since 1884.

In the first place, the Imperial Parliament still claims in 1914, as it claimed in 1884, the possession of absolute sovereignty throughout every part of the British Empire; and this claim, which certainly extends to every Dominion, would be admitted as sound legal doctrine by any court throughout the Empire which purported to act under the authority of the King. The constitution indeed of a Dominion in general originates in and depends upon an Act, or Acts, of the Imperial Parliament; and these constitutional statutes

are assuredly liable to be changed by the Imperial Parliament.

Parliament, in the second place, had long before 1884 practically admitted the truth of the doctrine in vain pressed upon his contemporaries by Burke[23], when insisting upon the folly of the attempt made by the Parliament of England to exert as much absolute power in Massachusetts as in Middlesex, that a real limit to the exercise of sovereignty is imposed not by the laws of man but by the nature of things, and that it was vain for a parliamentary or any other sovereign to try to exert equal power throughout the whole of an immense Empire. The completeness of this admission is shown by one noteworthy fact: the Imperial Parliament in 1884, and long before 1884, had ceased to impose of its own authority and for the benefit of England any tax upon any British colony[24]. The omnipotence, in short, of Parliament, though theoretically admitted, has been applied in its full effect only to the United Kingdom.

A student may ask what is the good of insisting upon the absolute sovereignty of Parliament in relation to the Dominions when it is admitted that Parliament never gives, outside the United Kingdom, and probably never will give, full effect to this asserted and more or less fictitious omnipotence. The answer to this suggestion is that students who do not bear in mind the claim of Parliament to absolute sovereignty throughout the whole of the British Empire, will never understand the extent to which this sovereign power is on some occasions actually exerted outside the limits of the United Kingdom, nor, though this statement sounds paradoxical, will they understand the limits which, with the full assent, no less of English than of colonial statesmen, are in fact, as regards at any rate the Dominions, imposed upon the actual exercise of the theoretically limitless authority of Parliament. It will be found further that even to the Dominions themselves there is at times some advantage in the admitted authority of the Imperial Parliament to legislate for the whole Empire. In the eyes, at any rate, of thinkers who share the moral convictions prevalent in most civilised states, it must seem a gain that the Imperial Parliament should have been able in 1834 to prohibit the existence of slavery in any country subject to the British Crown, and should be able to-day to forbid throughout the whole Empire the revival of the Slave Trade, or of judicial torture.

Let us now turn to the points wherein the relation of the Imperial Parliament to the self-governing colonies in 1884 differed from the existing relation of the Imperial Parliament to the Dominions in 1914.

The relation of the Imperial Parliament in 1884 to a self-governing colony, *e.g.* New Zealand.

The Imperial Parliament, under the guidance of English statesmen, certainly admitted in practice thirty years ago that a self-governing colony, such as New Zealand, ought to be allowed in local matters to legislate for itself. Parliament did, however, occasionally legislate for New Zealand or any other self-governing colony. Thus the existing English Bankruptcy Act, 1883, as a matter of fact transferred, as it still transfers, to the trustee in bankruptcy the bankrupt's property, and even his immovable property situate in any part of the British Empire[25], and a discharge under the English Bankruptcy Act, 1883, was, and

still is, a discharge as regards the debts of the bankrupt contracted in any part of the British Empire[26], *e.g.* in New Zealand or in the Commonwealth of Australia. So again the veto of the Crown was, in one form or another[27] in 1884, and even later, used occasionally to prevent colonial legislation which, though approved of by the people of the colony and by the legislature thereof, might be opposed to the moral feeling or convictions of Englishmen. Thus colonial Bills for legalising the marriages between a man and his deceased wife's sister, or between a woman and her deceased husband's brother, were sometimes vetoed by the Crown, or in effect on the advice of ministers supported by the Imperial Parliament. No doubt as time went on the unwillingness of English statesmen to interfere, by means of the royal veto or otherwise, with colonial legislation which affected only the internal government of a self-governing colony, increased. But such interference was not unknown. There was further, in 1884, an appeal in every colony from the judgments of the Supreme Court thereof to the English Privy Council. And a British Government would in 1884 have felt itself at liberty to interfere with the executive action of a colonial Cabinet when such action was inconsistent with English ideas of justice. It was also in 1884 a dear principle of English administration that English colonists should neither directly nor indirectly take part in negotiating treaties with foreign powers. Nor had either England or the self-governing colonies, thirty years ago, realised the general advantage of those conferences now becoming a regular part of English public life, at which English ministers and colonial ministers could confer upon questions of colonial policy, and could thus practically acknowledge the interest of the colonies in everything which concerned the welfare of the whole Empire. Neither certainly did English statesmen in 1884 contemplate the possibility of a colony standing neutral during a war between England and a foreign power.

The relation of the Imperial Parliament in 1914 to a Dominion[28]. This relation may now, it is submitted, be roughly summed up in the following rules:

Rule 1. In regard to any matter which directly affects Imperial interests the Imperial Parliament will (though with constantly increasing caution) pass laws which apply to a Dominion and otherwise exercise sovereign power in such a Dominion.

But this rule applies almost exclusively to matters which directly and indubitably affect Imperial interests[29].

Rule 2. Parliament does not concede to any Dominion or to the legislature thereof the right —

a. to repeal [except by virtue of an Act of the Imperial Parliament] any Act of the Imperial Parliament applying to a Dominion;

b. to make of its own authority a treaty with any foreign power;

c. to stand neutral in the event of a war between the King and any foreign power, or, in general, to receive any benefit from a foreign power which is not offered by such power to the whole of the British Empire[30].

It must be noted that under these two rules the Imperial Parliament does retain, and sometimes exerts the right to legislate in regard to matters which may greatly concern the prosperity of a Dominion, and also does in some respects seriously curtail both the legislative power of a Dominion Parlia-

ment and the executive power of a Dominion Cabinet. As long, in short, as the present state of things continues, the Imperial Parliament, to the extent I have laid down, still treats any Dominion as on matters of Imperial concern subordinate to the sovereignty of the Imperial Parliament.

Rule 3. The Imperial Parliament now admits and acts upon the admission, that any one of the Dominions has acquired a moral right to as much independence, at any rate in regard to matters occurring within the territory of such Dominion, as can from the nature of things be conceded to any country which still forms part of the British Empire.

Take the following illustration of the extent of such internal independence:

Parliament does not (except at the wish of a Dominion) legislate with respect to matters which merely concern the internal interests of such Dominion, *e.g.* New Zealand[31].

The legislature of any Dominion has within the territorial limits of such Dominion power to legislate in regard to any matter which solely concerns the internal interest of such Dominion.

The power of the Crown, *i.e.* of the British ministry, to veto or disallow in any way[32] any Bill passed by the legislature of a Dominion, *e.g.* New Zealand, is now most sparingly exercised, and will hardly be used unless the Bill directly interferes with Imperial interests or is as regards the colonial legislature *ultra vires*. Thus the Crown, or in other words a British ministry, will now not veto or disallow any Bill passed by the legislature of a Dominion on the ground that such Bill is indirectly opposed to the interests of the United Kingdom, or contradicts legal principles generally upheld in England, *e.g.* the principle of free trade.

The British Government will not interfere with the executive action of the Government (*e.g.* of New Zealand) in the giving or the withholding of pardon for crime, in regard to transactions taking place wholly within the territory of New Zealand[33].

Any Dominion has now a full and admitted right to raise military or naval forces for its own defence. And the policy of England is in the main to withdraw the English Army from the Dominions and to encourage any Dominion to provide for its own defence and to raise for itself a Navy, and thereby contribute to the defensive power of the British Empire.

The Imperial Government is now ready at the wish of a Dominion to exclude from its constitution, either partially or wholly, the right of appeal from the decision of the Supreme Court of such Dominion to the Privy Council[34].

The Imperial Government also is now ready at the wish of a Dominion to grant to such Dominion the power to amend by law the constitution thereof though created under an Act of the Imperial Parliament[35].

Rule 4. The habit has now grown up that conferences should be held from time to time in England, at which shall be present the Premier of England and the Premier of each Dominion, for consultation and discussion on all matters concerning the interest and the policy of the Empire, and that such conferences should be from time to time held may now, it is submitted, be considered a moral right of each Dominion.

These conferences, which were quite unthought of thirty years ago, and which did not receive their present form until the year

1907, mark in a very striking manner a gradual and therefore the more important change in the relations between England and the self-governing colonies.

The answer then to the question before us[36] as to the difference between the relation of England (or in strictness of the Imperial Parliament) to the self-governing colonies[37] in 1884 and her relation to the Dominions in 1914 can thus be summed up: At the former period England conceded to the self-governing colonies as much of independence as was necessary to give to such colonies the real management in their internal or local affairs. But English statesmen at that date did intend to retain for the Imperial Parliament, and the Imperial Government as representing such Parliament, a real and effective control over the action of the ministry and the legislature of each self-governing colony in so far as that control was not palpably inconsistent with independence as regards the management of strictly local affairs. In 1914 the colonial policy of England is to grant to every Dominion absolute, unfettered, complete local autonomy[38], in so far as such perfect self-government by a Dominion does not dearly interfere with loyalty of the Dominion to the Empire. The two relations of England to the self-governing colonies — now called Dominions — are, it may be objected, simply one and the same relation described in somewhat different language. The objection is plausible, but not sound. My effort has been to describe two different ways of looking at one and the same relation, and the results of this difference of view are of practical consequence. In 1884 it was admitted, as it is to-day, that the self-governing colonies must have rights of self-government. But in 1884 the exercise of self-government on the part of any colony was regarded as subordinate to real control by the English Parliament and Crown of colonial legislation which might be opposed to English interests or to English ideals of political prudence. In 1914 the self-government, *e.g.*, of New Zealand means absolute, unfettered, complete autonomy, without consulting English ideas of expediency or even of moral duty. The one limit to this complete independence in regard to local government is that it is confined to really local matters and does not trench upon loyalty to the Empire. The independence of the Dominion, in short, means nowadays as much of independence as is compatible with each Dominion remaining part of the Empire.

Second Question. What are the changes of opinion which have led up to the altered relation between England and the Dominions?[39]

> In the early Victorian era [and even in the mid-Victorian era] there were two rough-and-ready solutions for what was regarded, with some impatience, by the British statesmen of that day as the "Colonial problem." The one was centralisation — the government, that is, except in relatively trivial matters, of all the outlying parts of the Empire from an office in Downing Street. The other was disintegration — the acquiescence in, perhaps the encouragement of, a process of successive "hivings off" by which, without the hazards or embitterments of coercion, each community, as it grew to political manhood, would follow the example of the American Colonies, and start an independent and sovereign existence of its own. After 70 years' experience of Imperial evolution, it may be said with confidence that neither of these theories commands the faintest support to-day, either at home or in any part of our self-governing Empire. We were saved from their adoption — some people would say by the

favour of Providence — or (to adopt a more flattering hypothesis) by the political instinct of our race. And just in proportion as centralisation was seen to be increasingly absurd, so has disintegration been felt to be increasingly impossible. Whether in the United Kingdom, or in any one of the great communities which you represent, we each of us are, and we each of us intend to remain, master in our own household. This is, here at home and throughout the Dominions, the life-blood of our polity. It is the *articulus stantis aut cadentis Imperil*[40].

These words are a true statement of patent facts, but it will on examination be found that the change during recent years in English opinion, and also in colonial opinion, with regard to the relation between England and the Dominions presents rather more comlexity than at first sight may be apparent[41] to a casual reader of Mr. Asquith's address. Up to the last quarter of the nineteenth century, and even as late as 1884, many Englishmen, including a considerable number of our older statemen, held that the solution of the colonial problem was to be found wholly in the willingness of England to permit and even to promote the separation from the Empire of any self-governing colony which desired independence, provided that this separation should take place without engendering any bad feeling between England and her so-called dependencies. No doubt there existed, at any rate till the middle of the nineteenth century, a limited body of experienced officials who held that our colonial system, as long as it was maintained, implied the active control by England of colonial affairs. But such men in many cases doubted whether the maintenance of the Colonial Empire was of real benefit to England, and thought that on the whole, with respect at any rate to any self-governing colony, the course of prudence was to leave things alone until it should have become manifest to every one that the hour for friendly separation had struck. The self-governing colonies, on the other hand, up at any rate till 1884, just because they were more and more left alone and free to manage their own affairs, though they occasionally resented the interference of the English Government with colonial legislation, were on the whole contented with things as they stood. They certainly did not display any marked desire to secede from the Empire. Still less, however, did they show any active wish to take part in controlling the policy of the Empire, or to share the cost of Imperial defence. Honest belief in the principle of *laissez faire* produced its natural and, as far as it went, beneficial result. It removed causes of discontent; it prevented the rise of ill-will between England and her self-governing colonies. But it did not of itself produce any kind of Imperial patriotism. The change which a student has to note is an alteration of feeling, which did not become very obvious till near the dose of the nineteenth century. This was the growth (to use a current expression) of Imperialism. But this term, like all popular phrases, is from its very vagueness certain to mislead those who use it, unless its meaning be defined with some care. In regard to the British Empire it ought to be used as a term neither of praise nor of blame, but as the name for an idea which, in so far as it is true, is of considerable importance. This idea is that the British Empire is an institution well worth maintaining, and this not on mere grounds of sentiment but for definite and assignable reasons. Upon England and upon every country subject to the King of England the

British Empire confers at least two benefits: it secures permanent peace among the inhabitants of the largest of existing states; it again secures, or ought to secure, to the whole of this vast community absolute protection against foreign attack. The resources of the Empire are, it is felt, practically inexhaustible; the creation of a fleet supported by revenues and also by armies drawn from every country subject to the King of England should, provided England herself stands properly armed, render invasion of the British Empire by any of the great military powers of Europe an impossibility. But then the hugeness of the Empire and the strength of the Empire, if it remains united, are enough to show that the different countries which are parts of the Imperial system would, if they each stood alone, be easily assailable by any state or combination of states which had the command of large military and naval armaments. Neither England, in short, nor any of her self-governing Dominions can fail to see that the dissolution of the Empire might take from both the mother country and the most powerful of the Dominions the means necessary for maintaining liberty and independence. Loyalty to the Empire, typified by loyalty to the King, is in short a sentiment developed by the whole course of recent history. It is a feeling or conviction which places the relation of England and the Dominions in a new light. It amply accounts for the extraordinary difference between the colonial policy accepted both by England and by the self-governing colonies in 1850, and even (to a great extent) in 1884, and the colonial policy acceptable both to England and to her all but independent Dominions in 1914. English statesmen on the one hand now proffer to, and almost force upon, each Dominion every liberty compatible with the maintenance of the Empire; but then English statesmen no longer regard with philosophic calm the dawn of the day when any one of the Dominions may desire to secede from the Empire. The Dominions, on the other hand, have no longer any reason to fear and do not desire any interference with colonial affairs either by the legislation of the Imperial Parliament or by the administrative action of officials at Downing Street who are the servants of the Imperial Parliament. But then statesmen of the Dominions show a willingness to share the cost of the defence of the Empire, and at the same time express at each of the great Conferences, with more and more plainness, the desire that the Dominions should take a more active part in the determination of Imperial policy. It is not my object, at any rate at this part of this Introduction, to consider how far it may be possible to give satisfaction to the desires of rational Imperialists, and still less ought any man of sense to express any confident opinion as to how far the sentiment of Imperialism may in the course of time increase in force or suffer diminution. My immediate aim is to show that this new Imperialism is the natural result of historical circumstances. It is well, however, to bear in mind several considerations which Englishmen of to-day are apt to overlook. The friendly Imperialism which finds expression in the Imperial Conferences is itself the admirable fruit of the old policy of *laissez faire*. The system of leaving the self-governing colonies alone first appeased discontent, and next allowed the growth of friendliness which has made it possible for the English inhabitants, and even in some cases the foreign inhabitants,

of the Dominions to recognise the benefits which the Empire confers upon the Dominions, and for Englishmen at home to see that the Dominions may contribute to the safety of England and to the prosperity of the whole Empire[42]. But we must at the same time recognise that the policy of friendly indifference to secession from the Empire, which nominally, at any rate, was favoured by many English statesmen during the nineteenth century, has come to an end. The war in South Africa was in reality a war waged not only by England but also by the Dominions to prevent secession; the concession further to the South African Union of the full rights of a Dominion is no more inconsistent with resistance to secession than was the restoration to the Southern States of the American Commonwealth of their full right to existence as States of the United States. It must, lastly, be noted, that while the inhabitants of England and of the Dominions express at each Conference their honest pleasure in Imperial unity, the growth of Imperialism already causes to many patriotic men one disappointment. Events suggest that it may turn out difficult, or even impossible, to establish throughout the Empire that equal citizenship of all British subjects which exists in the United Kingdom and which Englishmen in the middle of the nineteenth century hoped to see established throughout the length and breadth of the Empire[43].

The Rule of Law[44]

The rule of law, as described in this treatise, remains to this day a distinctive characteristic of the English constitution. In England no man can be made to suffer punishment or to pay damages for any conduct not definitely forbidden by law; every man's legal rights or liabilities are almost invariably determined by the ordinary Courts of the realm, and each man's individual rights are far less the result of our constitution than the basis on which that consitution is founded.

The principles laid down in this treatise with regard to the rule of law and to the nature of *droit administratif* need little change. My object in this Introduction is first to note a singular decline among modern Englishmen in their respect or reverence for the rule of law, and secondly, to call attention to certain changes in the *droit administratif* of France[45].

Decline in Reverence for Rule of Law

The ancient veneration for the rule of law has in England suffered during the last thirty years a marked decline. The truth of this assertion is proved by actual legislation, by the existence among some classes of a certain distrust both of the law and of the judges, and by a marked tendency towards the use of lawless methods for the attainment of social or political ends.

Legislation. Recent Acts have given judicial or quasi-judicial authority to officials[46] who stand more or less in connection with, and therefore may be influenced by, the government of the day, and hence have in some cases excluded, and in others indirectly diminished, the authority of the law Courts. This tendency to diminish the sphere of the rule of law is shown, for

instance, in the judicial powers conferred upon the Education Commissioners by the Education Act, 1902[47], on various officials by the National Insurance Acts, 1911 and 1913[48], and on the Commissioners of Inland Revenue and other officials by the Finance Act, 1910[49]. It is also shown by the Parliament Act, 1911, s. 3, which enacts that "any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes and shall not be questioned in any Court of law." This enactment, if strictly construed, would protect any Speaker who, either from partisanship or to promote some personal interest of his own, signed a certificate which was notoriously false from being liable to punishment by any Court of law whatever[50]. No doubt the House of Commons has been historically jealous of any judicial interference with persons acting under the authority of the House, and has on more than one occasion claimed in a sense to be above the law of the land. All that can be said is that such claims have rarely been of advantage or credit to the House, and that the present time is hardly the proper season for the curtailment by the House of legitimate judicial power. It must, however, in fairness be noted that the invasion of the rule of law by imposing judicial functions upon officials is due, in part, to the whole current of legislative opinion in favour of extending the sphere of the State's authority. The inevitable result of thus immensely increasing the duties of the Government is that State officials must more and more undertake to manage a mass of public business, *e.g.*, to give one example only, the public education of the majority of the citizens. But Courts are from the nature of things unsuited for the transaction of business. The primary duty of a judge is to act in accordance with the strict rules of law. He must shun, above all things, any injustice to individuals. The well-worn and often absurdly misapplied adage that "it is better that ten criminals should escape conviction than that one innocent man should without cause be found guilty of crime" does after all remind us that the first duty of a judge is not to punish crime but to punish it without doing injustice. A man of business, whether employed by a private firm or working in a public office, must make it his main object to see that the business in which he is concerned is efficiently carried out. He could not do this if tied down by the rules which rightly check the action of a judge. The official must act on evidence which, though strong, may not be at all conclusive. The official must often act with severity towards subordinates whose stupidity, and not their voluntary wrongdoing, gives cause for dismissal. A judge, on the other hand, is far more concerned with seeing that the law is strictly carried out than in showing consideration to individuals. "That hard cases make bad law" is proverbial; the transaction of business, in short, is a very different thing from the giving of judgments: The more multifarious therefore become the affairs handed over to the management of civil servants the greater will be always the temptation, and often the necessity, extending to the discretionary powers given to officials, and thus preventing law Courts from intervening in matters not suited for legal decision.

Distrust of Judges and of Courts. If the House of Commons deliberately excludes the intervention of any law Court in matters which the House may deem (with very dubi-

ous truth) to concern the House alone, we can scarcely wonder that artisans should have no love for judicial decisions. In plain truth, while every man of at all respectable instincts desires what he considers justice for himself and for the class to which he belongs, almost all men desire something more than, and different from, justice for themselves and against their neighbours. This is inevitably the case with persons such as the members of trade unions, who are trying, with a good deal of success, to enforce trade rules which often arouse the censure of the public, and sometimes come into absolute conflict with the law of the land. The blackleg may be, and one may suspect often is, a mean fellow who, to put money into his own pocket, breaks rules which his fellow-workers hold to be just and beneficial to the trade generally. He, for example, has no objection, if properly paid for it, to work with men who are not members of any union. The blackleg, however, all but invariably keeps within the law of the land, and proposes to do nothing which violates any principle established by common law or any enactment to be found in the Statute Book. The trade unionists whom he offends know perfectly well that the blackleg is in the eye of the law no wrong-doer; they therefore feel that the Courts are his protectors, and that, somehow or other, trade unions must be protected against the intervention of judges. Hence the invention of that self-contradictory idea of "peaceful picketing," which is no more capable of real existence than would be "peaceful war" or "unoppressive oppression"; hence, too, that triumph of legalised wrong-doing sanctioned by the fourth section of the Trade Disputes Act[51], 1906. It is however by no means to be supposed that artisans are the only class accustomed to decry a judge or the legislature when the one gives a judgment or the other passes a law opposed to the moral convictions of a particular part of the community.

Lawlessness. Till a time well within the memory of persons now living, it would have been very difficult to find any body of men or women who did not admit that, broadly speaking, a breach of the law of the land was also an act of immorality. No doubt at all times there have existed, as at the present day, a large number of habitual law-breakers, but though a cheat, a pickpocket, or a burglar does constantly break the law, there is no reason to surmise that cheats, pickpockets, or burglars maintain the doctrine that law-breaking is itself a praiseworthy or a moral act. Within the last thirty years, however, there has grown up in England, and indeed in many other civilised countries, a new doctrine as to lawlessness. This novel phenomenon, which perplexes moralists and statesmen, is that large classes of otherwise respectable persons now hold the belief and act on the conviction that it is not only allowable, but even highly praiseworthy, to break the law of the land if the law-breaker is pursuing some end which to him or to her seems to be just and desirable. This view is not confined to any one class. Many of the English clergy (a class of men well entitled to respect) have themselves shown no great hesitation in thwarting and breaking laws which they held to be opposed to the law of the Church. Passive resisters do not scruple to resist taxes imposed for some object which they condemn. Conscientious objectors are doing a good deal to render ineffective the vaccination laws. The militant

suffragettes glorify lawlessness; the nobleness of their aim justifies in their eyes the hopeless and perverse illegality of the means by which they hope to obtain votes for women.

Whence arises this zeal for lawlessness? The following reflections afford an answer, though only a partial answer, to this perplexing inquiry:

In England democratic government has already given votes, if not precisely supreme power, to citizens who, partly because of the fairness and the regularity with which the law has been enforced for generations in Great Britain, hardly perceive the risk and ruin involved in a departure from the rule of law. Democratic sentiment, further, if not democratic principle, demands that law should on the whole correspond with public opinion; but when a large body of citizens not only are opposed to some law but question the moral right of the state to impose or maintain a given law, our honest democrat feels deeply perplexed how to act. He does not know in effect how to deal with lawlessness which is based upon a fundamental difference of public opinion[52]. For such difference makes it impossible that on a given topic the law should be in reality in accordance with public opinion. Thus many Englishmen have long felt a moral difficulty in resisting the claim of a nationality to become an independent nation, even though the concession of such a demand may threaten the ruin of a powerful state and be opposed to the wishes of the majority of the citizens thereof. So the undoubted fact that a large number of Englishwomen desire parliamentary votes seems, in the eyes of many excellent persons, to give to Englishwomen a natural right to vote for members of Parliament. In each instance, and in many other cases which will occur to any intelligent reader, English democrats entertain a considerable difficulty in opposing claims with which they might possibly on grounds of expediency or of common sense have no particular sympathy. The perplexity of such men arises from the idea that, at any rate under a democratic government, any law is unjust which is opposed to the real or deliberate conviction of a large number of citizens. But such a conviction is almost certain to beget, on the part of persons suffering under what they deem to be an unjust law, the belief, delusive though it often is, that any kind of injustice may under a democratic government be rightly opposed by the use of force. The time has come when the fact ought to be generally admitted that the amount of government, that is of coercion, of individuals or classes by the state, which is necessary to the welfare or even to the existence of a civilised community, cannot permanently co-exist with the effective belief that deference to public opinion is in all cases the sole or the necessary basis of a democracy. The justification of lawlessness is also, in England at any rate, suggested if not caused by the misdevelopment of party government. The rule of a party cannot be permanently identified with the authority of the nation or with the dictates of patriotism. This fact has in recent days become so patent that eminent thinkers are to be found who certainly use language which implies that the authority or the sovereignty of the nation, or even the conception of the national will, is a sort of political or metaphysical fiction which wise men will do well to discard. Happily, crises arise from time to time in the history of any great state when, because national existence or

national independence is at stake, the mass of a whole people feel that the authority of the nation is the one patent and the one certain political fact. To these causes of lawlessness honesty compels the addition of one cause which loyal citizens are most anxious not to bring into prominence. No sensible man can refuse to admit that crises occasionally, though very rarely, arise when armed rebellion against unjust and oppressive laws may be morally justifiable. This admission must certainly be made by any reasoner who sympathises with the principles inherited by modern Liberals from the Whigs of 1688. But this concession is often misconstrued; it is taken sometimes to mean that no man ought to be blamed or punished for rebellion if only he believes that he suffers from injustice and is not pursuing any private interest of his own.

Comparison between the Present Official Law of England and the Present Droit Administrtate of France[53]

The last thirty years, and especially the fourteen years which have elapsed since the beginning of the twentieth century, show a very noticeable though comparatively slight approximation towards one another of what may be called the official law of England and the *droit administratif* of France. The extension given in the England of to-day to the duties and to the authority of state officials, or the growth, of our bureaucracy[54], to use the expression of an able writer, has, as one would naturally expect, produced in the law governing our bureaucrats some features which faintly recall some of the characteristics which mark the *droit administratif* of France. Our civil servants, indeed, are as yet not in any serious degree put beyond the control of the law Courts, but in certain instances, and notably with regard to many questions arising under the National Insurance Act, 1911, something very like judicial powers have been given to officials closely connected with the Government[55]. And it may not be an exaggeration to say that in some directions the law of England is being "officialised," if the expression may be allowed, by statutes passed under the influence of socialistic ideas. It is even more certain that the *droit administratif* of France is year by year becoming more and more judirialised. The *Conseil d'Etat*, or, as we might term it, the Council, is (as all readers of my seventh edition of this work will know) the great administrative Court of France, and the whole relation between the judicial Courts and the Council still depends, as it has depended now for many years, upon the constitution of the Conflict Court[56], which contains members drawn in equal numbers from the Council of State and from the Court of Cassation. It would be idle to suppose that the decisions of the Council itself when dealing with questions of administrative law do not now very nearly approach to, if indeed they are not in strictness, judicial decisions. The Council, at any rate when acting in a judicial character, cannot now be presided over by the Minister of Justice who is a member of the Cabinet[57]. Still it would be a grave mistake if the recognition of the growth of official law in England and the gradual judicialisation of the Council as an administrative tribunal led any Englishman to suppose that there exists in England as yet any true administrative tribunals or any real administrative law. No doubt the utmost care has

been taken in France[58] to give high authority to the Council as an administrative tribunal and also to the Conflict Court. Still the members of the Council do not hold their position by anything like as certain a tenure as do the judges of die High Court in England, or as do the judges (if we may use English expressions) of the French common law Courts. A member of the Council is very rarely dismissed, but he still is dismissible. It must be noted further that the Minister of Justice is still the legal President of the Conflict Court, though he does not generally preside over it. When, however, the members of the Conflict Court are equally divided as to the decision of any case, the Minister of Justice does preside and give his casting vote. It is indeed said that such a case, which must almost necessarily be a difficult and probably an important one, is in truth again heard before the Minister of Justice and in effect is decided by him. A foreigner without practical acquaintance with the French legal system would be rash indeed were he to form or express an assured opinion as to the extent to which the decisions of the Council or the Conflict Court are practically independent of the wishes and the opinions of the Ministry of the day. Hesitation by a foreign critic is the more becoming, because it is certain, that Frenchmen equally competent to form an opinion would differ in their answer to the inquiry, whether the Council and the Conflict Court ought to be still more completely judicialised. The constitution of the Council of State and of the Conflict Court may suggest to a foreign critic that while neither of these bodies may be greatly influenced by the Ministry of the day, they are more likely to represent official or governmental opinion than are any of our English tribunals. It must further always be remembered that under the French Republic, as under every French government, a kind of authority attaches to the Government and to the whole body of officials in the service of the state (*fonctionnaires*) such as is hardly possessed by the servants of the Crown in England[59], and especially that proceedings for the enforcement of the criminal law are in France wholly under the control of the Government. The high repute of the Council and, as it seems to a foreigner, the popularity of administrative law, is apparently shown by the success with which the Council has of recent years extended the doctrine that the state ought to compensate persons who suffer damage not only from the errors or faults, *e.g.* negligence, of officials, but also for cases in which the law is so carried out that it inflicts special damage upon individuals, that is damage beyond what is borne by their neighbours[60]. The authority again of the Council is seen in the wide extension it has given to the principle that any act done by an official which is not justified by law will, on its illegality being proved, be declared a nullity by the Council. It ought to be noted that this extension of the liability of the state must, it would seem, in practice be a new protection for officials; for if the state admits its own liability to pay compensation for damage suffered by individuals through the conduct of the state's servants, this admission must induce persons who have suffered wrong to forego any remedy which they may have possessed against, say, a postman or a policeman, personally, and enforce their claim not against the immediate wrongdoer but against the state itself.

One singular fact closely connected with the influence in France of *droit administratif*

deserves the notice of Englishmen. In the treatises on the constitutional law of France produced by writers entitled to high respect will be found the advocacy of a new form of decentralisation termed *décentralisation par service*[61], which seems to mean the giving to different departments of civil servants a certain kind of independence, *e.g.* leaving the administration of the Post Office to the body of public servants responsible for the management of the postal system. This body would, subject of course to supervision by the state, manage the office in accordance with their own knowledge and judgment; would, as far as I understand the proposal, be allowed to share in the gains affected by good management; and would, out of the revenue of the Post Office, make good the compensation due to persons who suffered by the negligence or misconduct of the officials. On the other hand, the officials would, because they were servants of the state who had undertaken certain duties to the state, be forbidden either to organise a strike or in any way to interrupt the working of the Post Office. It is a little difficult to see why this proposal should be called "decentralisation," for that term has hitherto borne a very different meaning. To an Englishman the course of proceeding proposed is extremely perplexing; it however is from one or two points of view instructive. This so-called decentralisation looks as if it were a revival under a new shape of the traditional French belief in the merit of administration. This reappearance of an ancient creed possibly shows that French thinkers who have lost all enthusiasm for parliamentary government look for great benefits to France from opening there a new sphere for administrative capacity. It certainly shows that Frenchmen of intelligence are turning their thoughts towards a question which perplexes the thinkers or legislators of other countries. How far is it possible for officials, *e.g.* railway servants and others who undertake duties on the due performance of which the prosperity of a country depends, to be allowed to cease working whenever by so doing they see the possibility of obtaining a rise in the wages paid them? My readers may think that this examination into the recent development of French *droit administratif* digresses too far from the subject which we have in hand. This criticism is, it is submitted, unsound, for the present condition of *droit administratif in* France suggests more than one reflection which is strictly germane to our subject. It shows that the slightly increasing likeness between the official law of England and the *droit administratif* of France must not conceal the fact that *droit administratif* still contains ideas foreign to English convictions with regard to the rule of law, and especially with regard to the supremacy of the ordinary law Courts. It shows also the possible appearance in France of new ideas, such as the conception of the so-called *decentralisation par service* which are hardly reconcilable with the rule of law as understood in England. It shows further that the circumstances of the day have already forced upon France, as they are forcing upon England, a question to which Englishmen have not yet found a satisfactory reply, namely, how far civil servants or others who have undertaken to perform services on the due fulfilment of which the prosperity of the whole country depends, can be allowed to use the position which they occupy for the purpose of obtaining by a strike or by active political agitation concessions from and at the expense of the

state. Nor when once this sort of question is raised is it possible absolutely to reject the idea that England might gain something by way of example from the experience of France. Is it certain that the increasing power of civil servants, or, to use Mr. Muir's expression, of "bureaucrats," may not be properly met by the extension of official law?[62] France has with undoubted wisdom more or less judicialised her highest administrative tribunal, and made it to a great extent independent of the Government of the day. It is at least conceivable that modern England would be benefited by the extension of official law. Nor is it quite certain that the ordinary law Courts are in all cases the best body for adjudicating upon the offences or the errors of civil servants. It may require consideration whether some body of men who combined official experience with legal knowledge and who were entirely independent of the Government of the day, might not enforce official law with more effectiveness than any Division of the High Court.

Conventions of the Constitution[63]

Three different points deserve consideration. They may be summed up under the following questions and the answers thereto:

First Question. Have there been during the last thirty years notable changes in the conventions of the constitution?

Answer. Important alterations have most certainly taken place; these may, for the most part, be brought under two different heads which for the sake of clearness should be distinguished from each other, namely, first, new rules or customs which still continue to be mere constitutional understandings or conventions, and, secondly, understandings or conventions which have since 1884 either been converted into laws or are closely connected with changes of law[64]. These may appropriately be termed "enacted conventions."

Mere Conventions

These have arisen, without any change in the law of the land, because they meet the wants of a new time. Examples of such acknowledged understandings are not hard to discover. In 1868 a Conservative Ministry in office suffered an undoubted defeat at a general election. Mr. Disraeli at once resigned office without waiting for even the meeting of Parliament. The same course was pursued by Mr. Gladstone, then Prime Minister, in 1874, and again, in his turn, by Disraeli (then Lord Beaconsfield) in 1880, and by Gladstone in 1886. These resignations, following as they each did on the result of a general election, distinctly reversed the leading precedent set by Peel in 1834. The Conservative Ministry of which he was the head, though admittedly defeated in the general election, did not resign until they suffered actual defeat in the newly-elected House of Commons. It may be added, that on the particular occasion the Conservatives gained both influence and prestige by the ability with which Peel, though in a minority, resisted in Parliament the attempt to compel his resignation from office; for during this parliamentary battle he was able to bring home to

the electors the knowledge that the Conservative minority, though defeated at the election, had gained thereby a great accession of strength. Peel also was able to show that while he and his followers were prepared to resist any further changes in the constitution, they fully accepted the Reform Act of 1832, and, while utterly rejecting a policy of reaction, were ready to give the country the benefits of enlightened administration. The new convention, which all but compels a Ministry defeated at a general election to resign office, is, on the face of it, an acknowledgment that the electorate constitutes politically the true sovereign power[65]. It also tends to convert a general election into a decision that a particular party shall hold office for the duration of the newly-elected Parliament and, in some instances, into the election of a particular statesman as Prime Minister for that period[66]. This new convention is the sign of many minor political or constitutional changes, such, for example, as the introduction of the habit, quite unknown not only to statesmen as far removed from us as Pitt, but to Peel, to Lord John Russell, or to Lord Palmerston, of constantly addressing, not only when out of office but also when in office, speeches to some body of electors and hence to the whole country. Another change in political habits or conventions unconnected with any legal innovation or alteration has received little attention because of its gradual growth and of its vagueness, but yet deserves notice on account of its inherent importance. It is now the established habit of any reigning king or queen to share and give expression to the moral feelings of British subjects. This expression of the desire on the part of English royalty to be in sympathy with the humane, the generous, and the patriotic feelings of the British people is a matter of recent growth. It may fairly be attributed to Queen Victoria as an original and a noble contribution towards national and Imperial statesmanship. This royal expression of sympathetic feeling, though not unknown to, was rarely practised by George III. or the sons who succeeded him on the throne[67]. It belongs to, but has survived, the Victorian age. It has indeed received since the death of Victoria a wider extension than was possible during a great part of her long reign. On such a matter vagueness of statement is the best mode of enforcing a political fact of immense weight but incapable of precise definition. At the moment when the United Kingdom is conducting its first great Imperial war it is on many grounds of importance to remember that the King is the typical and the only recognised representative of the whole Empire[68].

Another example of new political conventions is found in the rules of procedure adopted by the House of Commons since 1881 with a view to checking obstruction, and generally of lessening the means possessed by a minority for delaying debates in the House of Commons. These rules increase the possibility of carrying through the House in a comparatively short time Bills opposed by a considerable number of members. That the various devices popularly known as the Closure, the Guillotine, and the Kangaroo have enabled one Government after another, when supported by a disciplined majority, to accomplish an amount of legislation which, but for these devices could not have been passed through the House of Commons, is indisputable. Whether the price paid for this result, in the way of curtailment and discussion, has

been too high, is a question which we are not called upon to consider. All that need here be said is that such rules of procedure are not in strictness laws but in reality are customs or agreements assented to by the House of Commons[69].

Enacted Conventions

By this term is meant a political understanding or convention which has by Act of Parliament received the force of law or may arise from a change of law[70]. The best examples of such enacted conventions[71] are to be found in some of the more or less indirect effects[72] of the Parliament Act, 1911.

1. The Parliament Act in regard to the relation in legislative matters between the House of Lords and the House of Commons goes some way towards establishing in England a written or, more accurately speaking, an enacted constitution, instead of an unwritten or, more accurately speaking, an unenacted constitution[73].

2. The Act greatly restrains, if it does not absolutely abolish, the use of the royal prerogative to create peers for the purpose of "swamping the House of Lords" in order to force through the House a Bill rejected by the majority of the peers. Such exercise of the prerogative has never but once, namely under Queen Anne in 1712, actually taken place. The certainty, however, that William IV. would use his prerogative to overcome the resistance of the House of Lords in 1832, carried the great Reform Act. The certainty that George V. would use the same prerogative carried the Parliament Act, 1911. In each case the argument which told with the King in favour of an unlimited creation of peers was that the constitution supplied no other means than this exceptional use or abuse of the royal prerogative for compelling the Lords to obey the will of the country. The Parliament Act deprives this argument of its force. Any king who should in future be urged by Ministers to swamp the House of Lords will be able to answer: "If the people really desire the passing of a Bill rejected by the House of Lords, you can certainly in about two years turn it into an Act of Parliament without the consent of the Lords"[74]. The Parliament Act cuts away then the sole ground which in 1832 or in 1911 could justify or even suggest the swamping of the House of Lords.

3. Under the Parliament Act it may probably become the custom that each Parliament shall endure for its full legal duration, *i.e.* for nearly the whole of five years. For a student of the Act must bear in mind two or three known facts. A House of Commons the majority whereof perceive that their popularity is on the wane will for that very reason be opposed to a dissolution; for until it occurs such majority can carry any legislation it desires, and a dissolution may destroy this power. The payment to all unofficial M.P.s of a salary of £400 a year may induce many M.P.s who belong to a Parliamentary minority to acquiesce easily enough in the duration of a Parliament which secures to each of them a comfortable income. Between the Revolution of 1688 and the year 1784 few, if any, dissolutions took place from any other cause than either the death of a king, which does not now dissolve a Parliament, or the lapse of time under the Septennial Act, and during that period the Whigs, and notably Burke, denied the constitutional right of the King to dissolve Parliament at his plea-

sure; the dissolution of 1784 was denounced as a "penal dissolution." The Parliament of the French Republic sits for four years, but it can be dissolved at any time by the President with the consent of the Senate. This power has been employed but once during the last thirty-seven years, and this single use of the presidential prerogative gives a precedent which no French statesman is tempted to follow. It is highly probable, therefore, that the direct appeal from the House of Commons to the electorate by a sudden dissolution may henceforward become in England almost obsolete. Yet this power of a Premier conscious of his own popularity, to destroy the House of Commons which put him in office, and to appeal from the House to the nation, has been treated by Bagehot as one of the features in which the constitution of England excels the constitution of the United States.

4. The Parliament Act enables a majority of the House of Commons to resist or overrule the will of the electors or, in other words, of the nation. That this may be the actual effect of the Act does not admit of dispute. That the Home Rule Bill was strenuously opposed by a large number of the electorate is certain. That this Bill was hated by a powerful minority of Irishmen is also certain. That the rejection of a Home Rule Bill has twice within thirty years met with the approval of the electors is an admitted historical fact. But that the widespread demand for an appeal to the people has received no attention from the majority of the House of Commons is also certain. No impartial observer can therefore deny the possibility that a fundamental change in our constitution may be carried out against the will of the nation.

5. The Act may deeply affect the position and the character of the Speaker of the House of Commons. It has hitherto been the special glory of the House of Commons that the Speaker who presides over the debates of the House, though elected by a party, has for at least a century and more tried, and generally tried with success, to be the representative and guide of the whole House and not to be either the leader or the servant of a party. The most eminent of Speakers have always been men who aimed at maintaining something like a judicial and therefore impartial character. In this effort they have obtained a success unattained, it is believed, in any other country except England. The recognition of this moral triumph is seen in the constitutional practice, almost, one may now say, the constitutional rule, that a member once placed in the Speaker's chair shall continue to be re-elected at the commencement of each successive Parliament irrespective of the political character of each successive House of Commons. Thus Speakers elected by a Liberal majority have continued to occupy their office though the House of Commons be elected in which a Conservative majority predominates, whilst, on the other hand, a Speaker elected by a Conservative House of Commons has held the Speakership with public approval when the House of Commons exhibits a Liberal majority and is guided by a Cabinet of Liberals. The Parliament Act greatly increases the authority of the Speaker with respect to Bills to be passed under that Act. No Bill can be so passed unless he shall have time after time certified in writing under his hand, and signed by him that the provisions of the Parliament Act have been strictly followed. This is a matter referred to his own knowl-

edge and conscience. There may dearly arise cases in which a fair difference of opinion may exist on the question whether the Speaker can honestly give the required certificate. Is it not certain that a party which has a majority in the House of Commons will henceforth desire to have a Speaker who may share the opinions of such party? This does not mean that a body of English gentlemen will wish to be presided over by a rogue; what it does mean is that they will come to desire a Speaker who is not a judge but is an honest partisan. The Parliament Act is a menace to the judicial character of the Speaker. In the Congress of the United States the Speaker of the House of Representatives is a man of character and of vigour, but he is an avowed partisan and may almost be called the parliamentary leader of the party which is supported by a majority in the House of Representatives.

Second Question. What is the general tendency of these new conventions?

Answer. It assuredly is to increase the power of any party which possesses a parliamentary majority, *i.e.*, a majority, however got together, of the House of Commons, and, finally, to place the control of legislation, and indeed the whole government of the country, in the hands of the Cabinet which is in England at once the only instrument through which a dominant party can exercise its power, and the only body in the state which can lead and control the parliamentary majority of which the Cabinet is the organ. That the rigidity and the strength of the party system, or (to use an American expression) of the Machine, has continued with every successive generation to increase in England, is the conviction of the men who have most thoroughly analysed English political institutions as they now exist and work[75].

Almost everything tends in one and the same direction. The leaders in Parliament each now control their own party mechanism. At any given moment the actual Cabinet consists of the men who lead the party which holds office. The leading members of the Opposition lead the party which wishes to obtain office. Party warfare in England is, in short, conducted by leading parliamentarians who constitute the actual Cabinet or the expected Cabinet. The electors, indeed, are nominally supreme; they can at a general election transfer the government of the country from one party to another. It may be maintained with much plausibility that under the quinquennial Parliament created by the Parliament Act the British electorate will each five years do little else than elect the party or the Premier by whom the country shall be governed for five years. In Parliament a Cabinet which can command a steadfast, even though not a very large majority, finds little check upon its powers. A greater number of M.P.s than fifty years ago deliver speeches in the House of Commons. But in spite of or perhaps because of this facile eloquence, the authority of individual M.P.s who neither sit in the Cabinet nor lead the Opposition, has suffered diminution. During the Palmerstonian era, at any rate, a few of such men each possessed an authority inside and outside the House which is hardly claimed by any member now-a-days who neither has nor is expected to obtain a seat in any Cabinet.

Any observer whose political recollections stretch back to the time of the Crimean War, that is sixty years ago, will

remember occasions on which the words of Roebuck, of Roundell Palmer, of Cobden, and above all, at certain crises of Bright, might be, and indeed were, of a weight which no Government, or for that matter no Opposition, could treat as a trifle. Legislation again is now the business, one might almost say the exclusive business, of the Cabinet. Few if any, as far as an outsider can judge, are the occasions on which a private member not supported by the Ministry of the day, can carry any Bill through Parliament. Any M.P. may address the House, but the Prime Minister can greatly curtail the opportunity for discussing legislation when he deems discussion inopportune. The spectacle of the House of Commons which neither claims nor practices real freedom of discussion, and has no assured means of obtaining from a Ministry in power answers to questions which vitally concern the interest of the nation, is not precisely from a constitutional point of view, edifying or reassuring. But the plain truth is that the power which has fallen into the hands of the Cabinet may be all but necessary for the conduct of popular government in England under our existing constitution. There exists cause for uneasiness. It is at least arguable that important changes in the conventions, if not in the law, of the constitution may be urgently needed; but the reason for alarm is not that the English executive is too strong, for weak government generally means bad administration, but that our English executive is, as a general rule, becoming more and more the representative of a party rather than the guide of the country. No fair-minded man will, especially at this moment, dispute that the passion for national independence may transform a government of partisans into a government bent on securing the honour and the safety of the nation. But this fact, though it is of immense moment, ought not to conceal from us the inherent tendency of the party system to confer upon partisanship authority which ought to be the exclusive property of the nation[76].

Third Question. Does the experience of the last thirty years confirm the doctrine laid down in this treatise that the sanction which enforces obedience to the conventions of the constitution is to be found in the close connection between these conventions and the rule of law?[77]

Answer. The doctrine I have maintained may be thus at once illustrated and explained. The reason why every Parliament keeps in force the Mutiny Act or why a year never elapses without a Parliament being summoned to Westminster, is simply that any neglect of these conventional rules would entail upon every person in office the risk, we might say the necessity, of breaking the law of the land. If the law governing the army which is in effect an annual Act, were not passed annually, the discipline of the army would without constant breaches of law become impossible. If a year were to elapse without a Parliament being summoned to Westminster a good number of taxes would cease to be paid, and it would be impossible legally to deal with such parts of the revenue as were paid into the Imperial exchequer. Now it so happens that recent experience fully shows the inconvenience and danger of either violating a constitutional convention or of breaking the law because custom had authorised a course of action which rested on no legal basis. The House of Lords, in order to compel a disso-

lution of Parliament in 1909, rejected the Budget. Their Lordships acted within what was then their legal right, yet they caused thereby great inconvenience, which, however, was remedied by the election of a new Parliament. For years the income tax had been collected in virtue not of an Act but of a resolution of the House of Commons passed long before the income tax for the coming year came into existence. An ingenious person wishing to place difficulties in the way of the Government's proceedings claimed repayment of the sum already deducted by the Bank of England from such part of his income as was paid to him through the Bank. The bold plaintiff at once recovered the amount of a tax levied without legal authority. No better demonstration of the power of the rule of law could be found than is given by the triumph of Mr. Gibson Bowles[78].

Development During the Last Thirty Years of New Constitutional Ideas

These ideas are (1) Woman Suffrage, (2) Proportional Representation, (3) Federalism, (4) The Referendum.

Two general observations. The brief criticism of each of these new ideas which alone in this Introduction it is possible to give, will be facilitated by attending to two general observations which apply more or less to each of the four proposed reforms or innovations.

First Observation. Political inventiveness has in general fallen far short of the originality displayed in other fields than politics by the citizens of progressive or civilised States. The immense importance attached by modern thinkers to representative government is partly accounted for by its being almost the sole constitutional discovery or invention unknown to the citizens of Athens or of Rome[79]. It is well also to note that neither representative government nor Roman Imperialism, nor indeed most of the important constitutional changes which the world has witnessed, can be strictly described as an invention or a discovery. When they did not result from imitation they have generally grown rather than been made; each was the production of men who were not aiming at giving effect to any novel political ideal, but were trying to meet in practice the difficulties and wants of their time. In no part of English history is the tardy development of new constitutional ideas more noteworthy or more paradoxical than during the whole Victorian era (1837 to 1902). It was an age full of intellectual activity and achievement; it was an age rich in works of imagination and of science; it was an age which extended in every direction the field of historical knowledge; but it was an age which added little to the world's scanty store of political or constitutional ideas. The same remark in one sense applies to the years which have passed since the opening of the twentieth century. What I have ventured to term new constitutional ideas are for the most part not original; their novelty consists in the new interest which during the last fourteen years they have come to command.

Second Observation. These new ideas take very little, one might almost say no account, of one of the ends which good legislation ought, if possible, to attain. But this observation requires explanatory comment.

Under every form of popular government, and certainly under the more or less democratic constitution now existing in England, legislation must always aim at the attainment of at least two different ends, which, though both of importance, are entirely distinct from one another. One of these ends is the passing or the maintaining of good or wise laws, that is laws which, if carried out, would really promote the happiness or welfare of a given country, and therefore which are desirable in themselves and are in conformity with the nature of things. That such legislation is a thing to be desired, no sane man can dispute. If, for example, the freedom of trade facilitates the acquisition of good and cheap food by the people of England, and does not produce any grave counterbalancing evil, no man of ordinary sense would deny that the repeal of the corn laws was an act of wise legislation. If vaccination banishes smallpox from the country and does not produce any tremendous counterbalancing evil, the public opinion even of Leicester would hold that a law enforcing vaccination is a wise law. The second of these two different ends is to ensure that no law should be passed or maintained in a given country, *e.g.* in England, which is condemned by the public opinion of the English people. That this where possible is desirable will be admitted by every thoughtful man. A law utterly opposed to the wishes and feelings entertained by the inhabitants of a country, a rule which every one dislikes and no one will obey, is a nullity, or in truth no law at all; and, even in cases where, owing to the power of the monarch who enacts a law opposed to the wishes of his subjects, such a law can to a certain extent be enforced, the evils of the enforcement may far overbalance the good effects of legislation in itself wise. This thought fully justifies an English Government in tolerating throughout India institutions, such as caste, supported by Indian opinion though condemned by the public opinion and probably by the wise opinion of England. The same line of thought explained, palliated, and may even have justified the hesitation of English statesmen to prohibit suttee. Most persons, then, will acknowledge that sound legislation should be in conformity with the nature of things, or, to express the matter shortly, be "wise," and also be in conformity with the demands of public opinion, or, in other words, be "popular," or at any rate not unpopular. But there are few Englishmen who sufficiently realise that both of these two ends cannot always be attained, and that it very rarely happens that they are each equally attainable. Yet the history of English legislation abounds with illustrations of the difficulty on which it is necessary here to insist. Thus the Reform Act, 1832^{80}, is in the judgment of most English historians and thinkers a wise law; it also was at the time of its enactment a popular law. The Whigs probably underrated the amount and the strength of the opposition to the Act raised by Tories, but that the passing of the Reform Act was hailed with general favour is one of the best attested facts of modern history. The Act of Union passed in 1707 was proved by its results to be one of the wisest Acts ever placed on the statute-book. It conferred great benefits upon the inhabitants both of England and of Scotland. It created Great Britain and gave to the united country the power to resist in one age the threatened predominance of Louis XTV., and in another age to withstand and overthrow the tremendous

power of Napoleon. The complete success of the Act is sufficiently proved by the absence in 1832 of any demand by either Whigs, Tories, or Radicals for its repeal. But the Act of Union, when passed, was unpopular in Scotland, and did not command any decided popularity among the electors of England. The New Poor Law of 1834 saved the country districts from ruin; its passing was the wisest and the most patriotic achievement of the Whigs, but the Act itself was unpopular and hated by the country labourers on whom it conferred the most real benefit. Within two years from the passing of the Reform Act it robbed reformers of a popularity which they had hoped might be lasting. Indeed the wisdom of legislation has little to do with its popularity. Now all the ideas which are most dear to constitutional reformers or innovators in 1914 lead to schemes of more or less merit for giving full expression in the matter of legislation to public opinion, *i.e.* for ensuring that any law passed by Parliament shall be popular, or at lowest not unpopular. But these schemes make in general little provision for increasing the chance that legislation shall also be wise, or in other words that it shall increase the real welfare of the country. The singular superstition embodied in the maxim *vox populi vox Dei* has experienced in this miscalled scientific age an unexpected revival. This renewed faith in the pre-eminent wisdom of the people has probably acquired new force from its congeniality with democratic sentiment. May we not conjecture that the new life given to a popular error is in part and indirectly due to the decline in the influence of utilitarianism? Faith in the voice of the people is closely connected with the doctrine of "natural rights." This dogma of natural rights was in England contemned and confuted by Bentham and his disciples[81]. The declining influence of the utilitarian school appears therefore to give new strength to this doctrine. People forget that the dogma of natural rights was confuted not only by Benthamites but by powerful thinkers of the eighteenth and of the nineteenth century who had no sympathy with utilitarianism.

Criticism of Each of the Four New Constituional Ideas[82]

Woman Suffrage. The claim for women of the right to vote for members of Parliament, or, as now urged, to be placed in a position of absolute political equality with men, is no new demand. It was made in England before the end of the eighteenth century[83], but no systematic, or at any rate noticeable, movement to obtain for Englishwomen the right to vote for members of Parliament can be carried back much earlier than 1866-67, when it was supported in the House of Commons by J. S. Mill.

Let my readers consider for a moment first the *causes* which have added strength to a movement which is 1866 attracted comparatively little public attention, and next the *main lines of argument* or of feeling which really tell on the one hand with the advocates and on the other with the opponents of the claim to votes for women[84].

The Causes. These may be thus summarised. Since the beginning of the nineteenth century the number in the United Kingdom of self-supporting and also of unmarried women has greatly increased; and this class

has by success in literature, as well as in other fields, acquired year by year greater influence. In the United Kingdom there exists among the actual population an excess of women over men, and this excess is increased by the emigration of Englishmen to our colonies and elsewhere. The low rate of payment received by women as compared with men, for services of any kind in which men and women enter into competition, has excited much notice. The spreading belief, or, as it used to be considered, the delusion, that wages can be raised by legislation, has naturally suggested the inference that want of a parliamentary vote inflicts severe pecuniary loss upon women. The extension of the power of the state and the enormous outgrowth of social legislation results in the daily enactment of laws which affect the very matters in which every woman has a personal interest. In an era of peace and of social reform the electors themselves constantly claim the sympathy and the active co-operation of women on behalf of causes which are treated, at any rate by partisans, as raising grave moral or religious controversy. Hence the agitation in favour of Woman Suffrage often commends itself to ministers of religion and notably to the English clergy, who believe, whether rightly or not, that the political power of women would practically add to the authority in the political world of the Church of England. These circumstances, and others which may be suggested by the memory or the ingenuity of my readers, are enough to explain the prominence and weight acquired for the movement in favour of giving the parliamentary franchise to women.

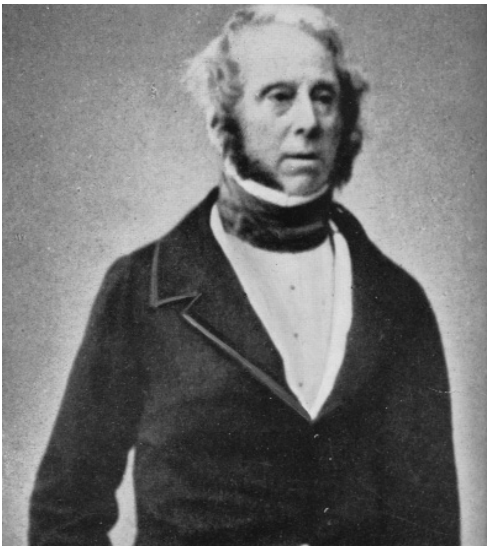
The Main Lines of Argument. These may be brought under two heads; they are most dearly and briefly exhibited if under each head is stated the argument of the Suffragist and the answer or reasoning in reply of the Anti-Suffragist.

First Argument. Every citizen, or, as the point is generally put, every person who pays taxes under the law of the United Kingdom, is entitled as a matter of right to a vote for a member of Parliament. Hence the obvious conclusion that as every Englishwoman pays taxes under the law of the United Kingdom, every Englishwoman is at any *rate prima facie* entitled to a vote.

Answer. This line of reasoning proves too much. It inevitably leads to the conclusion that any form of popular government ought to be based on the existence of strictly universal suffrage. An extreme suffragette will say that this result is not a *reductio ad absurdum*. But there are thousands of sensible Englishmen and Englishwomen who, while they doubt the advisability of introducing into England even manhood suffrage, refuse to admit the cogency of reasoning which leads to the result that every Englishman and Englishwoman of full age must have a right to vote for a member of Parliament. But the full strength of an anti-suffragist's reply cannot be shown by any man who does not go a little further into the nature of things. A fair-minded man prepared to do this will, in the first place, admit that many democratic formulas, *e.g.* the dictum that "liability to taxation involves the right to representation," do verbally cover a woman's claim to a parliamentary vote. His true answer is that many so-called democratic principles, as also many so-called conservative principles, are in reality not principles at all but war-cries, or shibboleths which may contain a good deal of temporary or relative truth but are mixed up

with a vast amount of error. The idea, he will ultimately say, that the possession of a vote is a personal right is a delusion. It is in truth the obligation to discharge a public duty, and whether this miscalled right should be conferred upon or withheld from Englishwomen can be decided only by determining whether their possession of the parliamentary vote will conduce to the welfare of England.

Second Argument. The difference of sex presents no apparent or necessary reason for denying to Englishwomen the same political rights as are conferred upon Englishmen. It is found by experience, as suffragists will add, that some women have in many ways even greater capacity for the exercise of government than have some men. This argument may best be put in its full strength if it be placed, as it often is, in the form of a question: Was it reasonable that Florence Nightingale should not have possessed the right to vote for a member of Parliament when even in her day her footman or her coachman, if he had happened to be a ten-pound householder, or a forty-shilling freeholder, might have exercised a right denied to a lady who, as appears from her biography, possessed many statesmanlike qualities, who did in fact in some lines of action exert more political power than most M.P.s, and who always exercised power disinterestedly, and generally exercised it with admitted benefit to the country? There is not the remotest doubt that the argument involved in this inquiry (in whatever form it is stated) seems to many women, to a great number of parliamentary electors, and also to a considerable number of M.P.s, to afford an unanswerable and conclusive reason in favour of giving parliamentary votes to women.



Henry John Temple, Viscount Palmerston.

Answer. The claim of parliamentary votes for women as now put forward in England is in reality a claim for the absolute political equality of the two sexes. Whether its advocates are conscious of the fact or not, it is a demand on behalf of women for seats in Parliament and in the Cabinet. It means that Englishwomen should share the jury box and should sit on the judicial bench. It treats as insignificant for most purposes that difference of sex which, after all, disguise the matter as you will, is one of the most fundamental and far-reaching differences which can distinguish one body of human beings from another. It is idle to repeat again and again reasoning which, for the last thirty years and more, has been pressed upon the attention of every English reader and elector. One thing is certain: the real strength (and it is great) of the whole conservative argument against the demand of votes for women lies in the fact that this line of reasoning, on the

face thereof, conforms to the nature of things. The anti-suffragists can re-echo the words of Burke whilst adapting them to a controversy unknown to him and practically unknown to his age:

> The principles that guide us, in public and in private, as they are not of our devising, but moulded into the nature and the essence of things, will endure with the sun and moon — long, very long after whig and tory, Stuart and Brunswick [suffragist, suffragette, and anti-suffragist], and all such miserable bubbles and playthings of the hour, are vanished from existence and from memory[85].

Proportional Representation[86]. The case in favour of the introduction of proportional representation into England rests on the truth of three propositions.

First Proposition. The House of Commons often fails to represent with precision or accuracy the state of opinion *e.g.* as to woman suffrage, existing among the electorate of England. In other words, the House of Commons often fails to be, as it is sometimes expressed, "the mirror of the national mind," or to exactly reflect the will of the electors.

Second Proposition. It is quite possible by some system of proportional representation to frame a House of Commons which would reflect much more than at present the opinion of the nation, or, in other words, of the electorate.

Third Proposition. It is pre-eminently desirable that every opinion *bona fide* existing among the electors should be represented in the House of Commons in as nearly as possible the same proportion in which it exists among the electors, or, to use popular language, among the nation.

Now of these three propositions the substantial truth of the first and second must, in my judgment, be admitted. No one can doubt the possibility, and even the high probability, that, for example, the cause of woman suffrage may, at the present moment, obtain more than half the votes of the House of Commons while it would not obtain as many as half the votes of the electorate. Nor again is it at all inconceivable that at some other period the cause of woman suffrage should, while receiving the support of half the electorate, fail to obtain the votes of half the House of Commons. No one, in the second place, can, I think, with reason dispute that, among the numerous plans for proportional representation thrust upon the attention of the public, some one, and probably several, would tend to make the House of Commons a more complete mirror of what is called the mind of the nation than the House is at present; and this concession, it may with advantage be noted, does not involve the belief that under any system of popular government whatever, a representative body can be created which at every moment will absolutely and with complete accuracy reflect the opinions held by various classes of the people of England. Now my belief in the substantial truth of the first and the second of our three propositions makes it needless for me, at any rate for the purpose of this Introduction, to consider the reservations with which their absolute accuracy ought to be assumed. For the sake of argument, at any rate, I treat them as true. My essential objection to the system of proportional representation consists in my grave doubt as to the truth of the third of the above three

propositions, namely, that it is desirable that any opinion existing among any large body of electors should be represented in the House of Commons as nearly as possible in the same proportion in which it exists among such electors. Before, however, any attempt is made to state the specific objections which in my judgment lie against the introduction of proportional representation into the parliamentary constitution of England, it is essential to discriminate between two different ideas which are confused together under the one demand for proportional representation. The one of these ideas is the desirability that every opinion entertained by a substantial body of Englishmen should obtain utterance in the House of Commons, or, to use a vulgar but effective piece of political slang, "be voiced by" some member or members of that House. Thus it has been laid down by the leader of the Liberal party that

> it was infinitely to the advantage of the House of Commons, if it was to be a real reflection and mirror of the national mind, that there should be no strain of opinion honestly entertained by any substantial body of the King's subjects which should not find there representation and speech[87].

To this doctrine any person who has been influenced by the teaching of Locke, Bentham, and Mil will find it easy to assent, for it is well known that in any country, and especially in any country where popular government exists, the thoughts, even the bad or the foolish thoughts, of the people should be known to the national legislature. An extreme example will best show my meaning. If among the people of any land the hatred of the Jews or of Judaism should exist, it would certainly be desirable that this odious prejudice should find some exponent or advocate in the Parliament of such country, for the knowledge of popular errors or delusions may well be essential to the carrying out of just government or wise administration. Ignorance is never in truth the source of wisdom or of justice. The other idea or meaning attached by Proportionalists to proportional representation is that every influential opinion should not only find utterance in the House of Commons, but, further, and above all, be represented in the House of Commons by the same proportionate number of votes which it obtains from the voters at an election. Thus the eminent man who advocated the desirability of every opinion obtaining a hearing in the House of Commons, used on another occasion the following words: "It is an essential and integral feature of our policy that we shall go forward with the task of making the House of Commons not only the mouthpiece but the mirror of the national mind"[88]. Now the doctrine of proportional representation thus interpreted is a dogma to which a fair-minded man may well refuse his assent. It is by no means obviously true; it is open to the following (among other) objections that admit of dear statement.

Objections to the Third Proposition

First Objection. The more complicated any system of popular election is made, the more power is thrown into the hands of election agents or wire-pullers. This of itself increases the power and lowers the character of the party machine; but the greatest political danger with which England is now threatened is the inordinate influence of party mechanism. This objection was long ago insisted upon by Bage-

hot[89]. It explains, if it does not wholly justify, John Bright's denunciation of fancy franchises.

Second Objection. The House of Commons is no mere debating society. It is an assembly entrusted with great though indirect executive authority; it is, or ought to be, concerned with the appointment and the criticism of the Cabinet. Grant, for the sake of argument, that every influential opinion should in the House of Commons gain a hearing. This result would be obtained if two men, or only one man, were to be found in the House who could ensure a hearing whenever he spoke in favour of some peculiar opinion. The argument for woman suffrage was never stated with more force in Parliament than when John Mill represented Westminster. The reasons in its favour would not, as far as argument went, have commanded more attention if a hundred members had been present who shared Mill's opinions but were not endowed with his logical power and his lucidity of expression. But where a body of men such as constitute the House of Commons are at all concerned with government, unity of action is of more consequence than variety of opinion. The idea, indeed, of representation may be, and often is, carried much too far. A Cabinet which represented all shades of opinion would be a Ministry which could not act at all. No one really supposes that a Government could in ordinary circumstances be formed in which two opposite parties balanced one another. Nor can it often be desirable that an opinion held by, say, a third of a ministerial party should necessarily be represented by a third of the Cabinet. It may well be doubted whether even on commissions appointed partly, at any rate, for the purpose of inquiry, it is at all desirable that distinctly opposite views should obtain recognition. The Commission which laid down the leading lines of Poor Law Reform in 1834 rendered an immense service to England. Would there have been any real advantage in placing on that Commission men who condemned any change in the existing poor law?

Third Objection. Proportional representation, just because it aims at the representation of opinions rather than of persons, tends to promote the existence in the House of Commons of numerous party groups and also fosters the admitted evil of log-rolling. The working of English parliamentary government has owed half of its success to the existence of two leading and opposed parties, and of two such parties only. Using somewhat antiquated but still intelligible terms, let me call them by the name of Tories and Whigs[90]. These two parties have, if one may speak in very broad terms, tended, the one to uphold the rule of the well-born, the well-to-do, and therefore, on the whole, of the more educated members of the community; the other has promoted the power of numbers, and has therefore aimed at increasing the political authority of the comparatively poor, that is, of the comparatively ignorant. Each tendency has obviously some good and some bad effects. If, for a moment, one may adopt modern expressions while divesting them of any implied blame or praise, one may say that Conservatism and Liberalism each play their part in promoting the welfare of any country where popular government exists. Now, that the existence of two leading parties, and of two such parties only, in England has favoured the development of English constitutionalism is past denial. It is also certain that during the nineteenth century

there has been a notable tendency in English public life to produce in the House of Commons separate groups or parties which stood more or less apart from Tories and Whigs, and were all but wholly devoted to the attainment of some one definite change or reform. The Repealers, as led by O'Connell, and still more the Free Traders, as led by Cobden[91] are early examples of such groups. These groups avowedly held the success of the cause for which they fought of greater consequence than the maintenance in office either of Tories or of Whigs. Even in 1845 they had perplexed the working of our constitution; they had gone far to limit the operation of the very valuable rule that a party, which persuades Parliament to adopt the party's policy, should be prepared to take office and carry that policy into effect. The Free Traders, in fact, give the best, if not the earliest, example of an English group organised to enforce the adoption by the English Parliament of an opinion, doctrine, or theory to which that group was devoted. Now an observer of the course of events during the last sixty years will at once note the increasing number of such groups in the House of Commons. To-day we have Ministerialists and Unionists (corresponding roughly with the old Whigs and Tories), we have also Irish Nationalists and the Labour Party. These parties have each separate organisations. But one can easily observe the existence of smaller bodies each devoted to its own movement or cause, such, for example, as the temperance reformers, as the advocates of woman suffrage, or as the members who hold that the question of the day is the disestablishment of the Church. This state of things already invalidates our constitutional customs. Nor is it easy to doubt that any fair system of proportional representation must increase the number of groups existing in Parliament, for the very object of Proportionalists is to ensure that every opinion which exists among an appreciable number of British electors shall have an amount of votes in Parliament proportionate to the number of votes it obtains among the electors. If, for example, a tenth of the electors should be anti-vaccinators, the anti-vaccinators ought, under a perfect scheme of representation, to command sixty-seven votes in the House of Commons. Sixty-seven anti-vaccinators who might accidentally obtain seats in the House of Commons, *e.g.* as Conservatives or Liberals, would, be it noted, constitute a very different body from sixty-seven members sent to the House of Commons to represent the cause of anti-vaccination. The difference is this: In the first case each anti-vaccinator would often perceive that there were matters of more pressing importance than anti-vaccination; but the sixty-seven men elected under a system of proportional representation to obtain the total repeal of the vaccination laws would, one may almost say must, make that repeal the one dominant object of their parliamentary action. That the multiplication of groups might weaken the whole system of our parliamentary government is a probable conjecture. That proportional representation might tend to extend the vicious system of log-rolling is all but demonstrable. Let me suppose the sixty-seven anti-vaccinators to be already in existence; let me suppose, as would probably be the case, that they are elected because of their firm faith in anti-vaccination, and that, both from their position and from their creed, they feel that to destroy the vaccination laws is the supreme object at which every good man should aim. They will

soon find that their sixty-seven votes, though of high importance, are not enough to save the country. The course which these patriots must follow is obvious. They are comparatively indifferent about Home Rule, about Disestablishment, about the objects of the Labour Party. Let them promise their support to each of the groups advocating each of these objects in return for the help in repealing legislation which originates, say our anti-vaccinators, in the delusions of Jenner. A political miracle will have been performed. A majority in favour of anti-vaccination will have been obtained; the voice of fanatics will have defeated the common sense of the nation. Let me, as an illustration of my contention, recall to public attention a forgotten fact. Some forty years ago the Claimant, now barely remembered as Arthur Orton, was a popular hero. His condemnation to imprisonment for fourteen or fifteen years excited much indignation. He obtained one representative, and one representative only, of his grievances in the House of Commons. Under a properly organised system of proportional representation, combined with our present household suffrage, he might well have obtained twenty. Does any one doubt that these twenty votes would have weighed with the Whips of any party in power? Is it at all certain that the Claimant might not, thus supported, have obtained a mitigation of his punishment, if not a re-trial of his case? This is an extreme illustration of popular folly. For this very reason it is a good test of a logical theory. I do not contend that proportional representation cannot be defended by weighty considerations; my contention is that it is open to some grave objections which have not received an adequate answer[92].

Federalism[93]

In 1884 the peculiarities and the merits of federal government had not attracted the attention of the English public. Here and there a statesman whose mind was turned towards the relation of England and her colonies had perceived that some of the self-governing colonies might with advantage adopt federal constitutions. In 1867 Parliament had readily assented to the creation of the Canadian Dominion and thereby transformed the colonies possessed by England on the continent of America into a federal state. In truth it may be said that the success of the Northern States of the American Commonwealth in the War of Secession had, for the first time, impressed upon Englishmen the belief that a democratic and a federal state might come with success through a civil war, carried on against states which asserted their right to secede from the Republic of which they were a part. Still in 1884 hardly a statesman whose name carried weight with Englishmen advocated the formation of a federal system as a remedy for the defects, whatever they were, of the English constitution, or as the means for uniting the widely scattered countries which make up the British Empire. Walter Bagehot was in his day, as he still is, the most eminent of modern English constitutionalists. He compared the constitution of England with the constitution of the United States. But the result of such comparison was, in almost every case, to illustrate some hitherto unnoted merit of the English constitution which was not to be found in the constitution of the great American Republic. Sir Henry Maine was in his time the most brilliant of the writers who had incidentally turned their thoughts towards constitutional problems.

Maine's Popular Government, published in 1885, expressed his admiration for the rigidity or the conservatism of American federalism. But he never hinted at the conviction, which he probably never entertained, that either the United Kingdom or the British Empire would gain by transformation into a federal state. Thirty years ago the nature of federalism had received in England very inadequate investigation[94]. In this, as in other matters, 1914 strangely contrasts with 1884. The notion is now current that federalism contains the solution of every constitutional problem which perplexes British statesmanship. Why not, we are told, draw closer the bonds which maintain peace and goodwill between the United Kingdom and all her colonies, by constructing a new and grand Imperial federation governed by a truly Imperial Parliament, which shall represent every state, including England, which is subject to the government of the King? Why not, we are asked, establish a permanent reconciliation between England and Ireland by the conversion of the United Kingdom into a federalised kingdom whereof England, Scotland, Ireland, and Wales, and, for aught I know, the Channel Islands and the Isle of Man, shall form separate states? This new constitutional idea of the inherent excellence of federalism is a new faith or delusion which deserves examination. My purpose, therefore, is to consider two different matters — namely, first, the general characteristics of federalism; secondly, the bearing of these characteristics on the proposal popularly known as Imperial federalism, for including England[95] and the five self-governing colonies in a federal constitution, and also the proposal (popularly known as Home Rule all round) for federalising the United Kingdom.

Leading Characteristics of Federal Government[96]

Federalism is a natural constitution for a body of states which desire union and do not desire unity. Take as countries which exhibit this state of feeling the United States, the English federated colonies, the Swiss Confederation, and the German Empire, and contrast with this special condition of opinion the deliberate rejection by all Italian patriots of federalism, which in the case of Italy presented many apparent advantages, and the failure of union between Sweden and Norway to produce any desire for unity or even for a continued political connection, though these Scandinavian lands differ little from each other in race, in religion, in language, or in their common interest to maintain their independence against neighbouring and powerful countries. The physical contiguity, further, of countries which are to form a confederated state is certainly a favourable, and possibly a necessary, condition for the success of federal government. The success of federal government is greatly favoured by, if it does not absolutely require, approximate equality in the wealth, in the population, and in the historical position of the different countries which make up a confederation. The reason for this is pretty obvious. The idea which lies at the bottom of federalism is that each of the separate states should have approximately equal political rights and should thereby be able to maintain the "limited independence" (if the term may be used) meant to be secured by the terms of federal union. Hence the provision contained in the constitution of the United States under which two Senators, and no more, are given to each state, though one be as populous, as large, and as

wealthy as is New York, and another be as small in area and contain as few citizens as Rhode Island. Bagehot, indeed, points out that the equal power in the Senate of a small state and of a large state is from some points of view an evil. It is, however, an arrangement obviously congenial to federal sentiment. If one state of a federation greatly exceed in its numbers and in its resources the power of each of the other states, and still more if such "dominant partner," to use a current expression, greatly exceed the whole of the other Confederated States in population and in wealth, the confederacy will be threatened with two dangers. The dominant partner may exercise an authority almost inconsistent with federal equality. But, on the other hand, the other states, if they should possess under the constitution rights equal to the rights or the political power left to the dominant partner, may easily combine to increase unduly the burdens, in the way of taxation or otherwise, imposed upon the one most powerful state. Federalism, when successful, has generally been a stage towards unitary government. In other words, federalism tends to pass into nationalism. This has certainly been the result of the two most successful of federal experiments. The United States, at any rate as they now exist, have been well described as a nation concealed under the form of a federation. The same expression might with considerable truth be applied to Switzerland. Never was there a country in which it seemed more difficult to produce national unity. The Swiss cantons are divided by difference of race, by difference of language, by difference of religion. These distinctions till nearly the middle of the nineteenth century produced a kind of disunion among the Swiss people which in 1914 seems almost incredible. They forbade the existence of a common coinage; they allowed any one canton to protect the financial interest of its citizens against competition by the inhabitants of every other canton. In 1847 [me] Sonderbund threatened to destroy the very idea of Swiss unity, Swiss nationality, and Swiss independence. Patriots had indeed for generations perceived that the federal union of Switzerland afforded the one possible guarantee for the continued existence of their country. But attempt after attempt to secure the unity of Switzerland had ended in failure. The victory of the Swiss federalists in the Sonderbund war gave new life to Switzerland: this was the one indubitable success directly due to the movements of 1847-48. It is indeed happy that the victory of the federal armies took place before the fall of the French Monarchy, and that the Revolution of February, combined with other movements which distracted Europe, left the Swiss free to manage their own affairs in their own way. Swiss patriotism and moderation met with their reward. Switzerland became master of her own fate. Each step in the subsequent progress of the new federal state has been a step along the path leading from confederate union to national unity. A federal constitution is, as compared with a unitary constitution, a weak form of government. Few were the thinkers who in 1884 would have denied the truth of this proposition. In 1914 language is constantly used which implies that a federal government is in itself superior to a unitary constitution such as that of France or of England. Yet the comparative weakness of federalism is no accident. A true federal government is based on the division of powers. It means the constant effort

of statesmanship to balance one state of the confederacy against another. No one can rate more highly than myself the success with which a complicated system is worked by the members of the Swiss Council or, to use expressions familiar to Englishmen, by the Swiss Cabinet. Yet everywhere throughout Swiss arrangements you may observe the desire to keep up a sort of balance of advantages between different states. The members of the Council are seven in number; each member must, of necessity, belong to a different canton. The federal Parliament meets at Bern; the federal Court sits at Lausanne in the canton of Vaud; the federal university is allotted to a third canton, namely Zurich. Now rules or practices of this kind must inevitably restrict the power of bringing into a Swiss Cabinet all the best political talent to be found in Switzerland. Such a system applied to an English or to a French Cabinet would be found almost unworkable. Federalism again would mean, in any country where English ideas prevail, the predominance of legalism or, in other words, a general willingness to yield to the authority of the law courts. Nothing is more remarkable, and in the eyes of any impartial critic more praiseworthy, than the reverence paid on the whole by American opinion to the Supreme Court of the United States. Nor must one forget that the respect paid to the opinion of their own judges, even when deciding questions on which political feeling runs high, is, on the whole, characteristic of the citizens of each particular state. The Supreme Court, *e.g.*, of Massachusetts may be called upon to determine in effect whether a law passed by the legislature of Massachusetts is, or is not, constitutional; and the decision of the Court will certainly meet with obedience. Now, what it is necessary to insist upon is that this legalism which fosters and supports the rule of law is not equally displayed in every country. No French court has ever definitely pronounced a law passed by the French legislature invalid, nor, it is said, has any Belgian court ever pronounced invalid a law passed by the Belgian Parliament. Whether English electors are now strongly disposed to confide to the decision of judges questions which excite strong political feeling is doubtful. Yet — and this is no insignificant matter — under every federal system there must almost of necessity exist some body of persons who can decide whether the terms of the federal compact have been observed. But if this power be placed in the hands of the Executive, the law will, it may be feared, be made subservient to the will of any political party which is for the moment supreme. If it be placed in the hands of judges, who profess and probably desire to practise judicial impartiality, it may be very difficult to ensure general respect for any decision which contradicts the interests and the principles of a dominant party. Federalism, lastly, creates divided allegiance. This is the most serious and the most inevitable of the weaknesses attaching to a form of government under which loyalty to a citizen's native state may conflict with his loyalty to the whole federated nation. Englishmen, Scotsmen, and Irishmen have always, as soldiers, been true to the common flag. The whole history of the Sonderbund in Switzerland and of Secession in the United States bears witness to the agonised perplexity of the noblest among soldiers when called upon to choose between loyalty to their country and loyalty to their canton or state. One example of this difficulty is

amply sufficient for my purpose. General Scott and General Lee alike had been trained as officers of the American Army; each was a Virginian; each of them was determined from the outbreak of the Civil War to follow the dictates of his own conscience; each was placed in a position as painful as could be occupied by a soldier of bravery and honour; each was a victim of that double allegiance which is all but inherent in federalism. General Scott followed the impulse of loyalty to the Union. General Lee felt that as a matter of duty he must obey the sentiment of loyalty to Virginia. In any estimate of the strength or the weakness of federal government it is absolutely necessary not to confound, though the confusion is a very common one, federalism with nationalism. A truly federal government is the denial of national independence to every state of the federation. No single state of the American Commonwealth is a separate nation; no state, it may be added, *e.g.* the State of New York, has anything like as much of local independence as is possessed by New Zealand or by any other of the five Dominions[97]. There is of course a sense, and a very real sense, in which national tradition and national feeling may be cultivated in a state which forms part of a confederacy. The French inhabitants of Quebec are Frenchmen to the core. But their loyalty to the British Empire is certain. One indisputable source of their Imperial loyalty is that the break-up of the Empire might, as things now stand, result to Canada in union with the United States. But Frenchmen would with more difficulty maintain their French character if Quebec became a state of the Union and ceased to be a province of the Dominion. In truth national character in one sense of that term has less necessary connection than Englishmen generally suppose with political arrangements. It would be simple folly to assert that Sir Walter Scott did not share the sentiment of Scottish nationalism; yet the influence of Scott's genius throughout Europe was favoured by, and in a sense was the fruit of, the union with England. But the aspiration and the effort towards actual national independence is at least as inconsistent with the conditions of a federal as with the conditions of a unitary government. Any one will see that this is so who considers how patent would have been the folly of the attempt to establish a confederacy which should have left Italy a state of the Austrian Empire. Nor does historical experience countenance the idea that federalism, which may certainly be a step towards closer national unity, can be used as a method for gradually bringing political unity to an end.

The Characteristics of Federal Government in Relation to Imperial Federalism

Many Englishmen of to-day advocate the building up of some grand federal constitution which would include the United Kingdom (or, to use popular language, England) and at any rate the five Dominions. This splendid vision of the advantages to be obtained by increased unity of action between England and her self-governing colonies is suggested by obvious and important facts. The wisdom of every step which may increase the reciprocal goodwill, strong as it now is, of England and her Dominions is proved by the success of each Imperial Conference. It is perfectly plain already, and

will become every day plainer both to Englishmen and to the inhabitants of the British Empire outside England, that the existence of the Empire ought to secure both England and her colonies against even the possibility of attack by any foreign power. It to-day in reality secures the maintenance of internal peace and order in every country inhabited by British subjects. It is further most desirable, it may probably become in no long time an absolute necessity, that every country throughout the Empire should contribute in due measure to the cost of Imperial defence. To this it should be added that the material advantages accruing to millions of British subjects from the Imperial power of England may more and more tend to produce that growth of loyalty and goodwill towards the Empire which in 1914 is a characteristic and splendid feature both of England and of her colonies. Any man may feel pride in an Imperial patriotism grounded on the legitimate belief that the Empire built up by England furthers the prosperity and the happiness of the whole body of British subjects[98]. But, when every admission which the most ardent of Imperialists can ask for, is made of the benefits conferred in every quarter of the world upon the inhabitants of different countries, by the existence of England's Imperial power, it is quite possible for a calm observer to doubt whether the so-called federalisation of the British Empire is an object which ought to be aimed at by the statesmen either of England or of the Dominions. The objections to the creed of federalism, in so far as it means the building up of a federal constitution for the Empire, or rather for England and her Dominions, may be summed up in the statement that this belief in a new-fangled federalism is at bottom a delusion, and a delusion perilous not only to England but to the whole British Empire. But this general statement may be best justified by the working out of two criticisms.

First: The attempt to form a federal constitution for the Empire is at this moment full of peril to England, to the Dominions, and, it may well be, to the maintenance of the British Empire. The task imposed upon British and upon colonial statesmanship is one of infinite difficulty. As we all know, the creation of the United States was for the thirteen independent colonies a matter of absolute necessity. But the highest statesmanship of the ablest leaders whom a country ever possessed was hardly sufficient for the transformation of thirteen different states into one confederated nation. Even among countries differing little in race, religion, and history, it was found all but impossible to reconcile the existence of state rights with the creation of a strong central and national power. If any one considers the infinite diversity of the countries which make up the British Empire, if he reflects that they are occupied by different races whose customs and whose civilisation are the product of absolutely different histories, that the different countries of the Empire are in no case contiguous, and in many instances are separated from England and from each other by seas extending over thousands of miles, he will rather wonder at the boldness of the dreams entertained by the votaries of federal Imperialism, than believe that the hopes of federalising the Empire are likely to meet with fulfilment. I shall be reminded, however, and with truth, that Imperial federalism, as planned by even its most sanguine advocates, means something very different from the attempt to frame a constitution of which the United Kingdom, the

Dominions, the Crown colonies, and British India shall constitute different states. Our Imperialists really aim, and the fact must be constantly borne in mind, at federalising the relation not between England and the rest of the Empire, but between England and the five self-governing Dominions. But then this admission, while it does away with some of the difficulties besetting the policy which is miscalled *Imperial* federalism, raises a whole body of difficult and all but unanswerable questions. Take a few of the inquiries to which sanguine reformers, who talk with easy confidence of federalism being the solution of all the most pressing constitutional problems, must find a reply. What is to be the relation between the new federated state (consisting of England and the five Dominions) and British India? Will the millions who inhabit India readily obey a new and strange sovereign, or will the states of the new confederacy agree that the rest of the Empire shall be ruled by the Parliament and Government of England alone? Is the whole expense of Imperial defence to be borne by the federated states, or will the new federation of its own authority impose taxes upon India and the Crown colonies for the advantage of the federated state? Is it certain, after all, that the mutual goodwill entertained between England and the Dominions really points towards federalism? No doubt England and the states represented at the Imperial Conferences entertain a genuine and ardent wish that the British Empire should be strong and be able, as against foreigners, and even in resistance to secession, to use all the resources of the whole Empire for its defence and maintenance. But then each one of the Dominions desires rather the increase than the lessening of its own independence. Is there the remotest sign that, for example, New Zealand, though thoroughly loyal to the Empire, would tolerate interference by any Imperial Parliament or Congress with the internal affairs of New Zealand which even faintly resembled the authority exerted by Congress in New York, or the authority exerted by the Parliament of the Canadian Dominion in Quebec? But if the Dominions would not tolerate the interference with their own affairs by any Parliament, whatever its title, sitting at Westminster, is there the remotest reason to suppose that the existing Imperial Parliament will consent to become a Parliament of the Empire in which England, or rather the United Kingdom, and each of the five Dominions shall be fairly represented? But here we come to a further inquiry, to which our new federalists hardly seem to have given a thought: What are they going to do with the old Imperial Parliament which has, throughout the whole history of England, inherited the traditions and often exerted the reality of sovereign power? Under our new federation is the Imperial Parliament to become a Federal Congress wherein every state is to have due representation? Is this Federal Congress to be for Englishmen the English Parliament, or is there to be in addition to or instead of the ancient Parliament of England a new local English Parliament controlling the affairs of England alone? This question itself is one of unbounded difficulty. It embraces two or three inquiries the answers whereto may trouble the thoughts of theorists, and these replies, if they are ever discovered, may give rise throughout England and the British Empire to infinite discord. Is it not one example of the perplexities involved in any plan of Imperial federalism, and of the

intellectual levity with which they are met, that our Federalists never have given a dear and, so to speak, intelligible idea of what is to be under a federal government the real position not of the United Kingdom but of that small country limited in size, but still of immense power, which is specifically known by the august name of England? The traditional feuds of Ireland and the ecclesiastical grievances of Wales, the demand of some further recognition of that Scottish nationality, for which no sensible Englishman shows or is tempted to show the least disrespect, all deserve and receive exaggerated attention. But England and English interests, just because Englishmen have identified the greatness of England with the prosperity of the United Kingdom and the greatness and good government of the Empire, are for the moment overlooked. I venture to assure all my readers that this forgetfulness of England — and by England I here mean the country known, and famous, as England before the legal creation either of Great Britain or of the United Kingdom — is a fashion opposed both to common sense and to common justice, and, like all opposition to the nature of things, will ultimately come to nothing[99]. The questions I have mentioned are numerous and full of complexity. The present time, we must add, is intensely unfavourable to the creation of a new federalised and Imperial constitution. The Parliament and the Government of the United Kingdom may be chargeable with grave errors: they have fallen into many blunders. But they have never forgotten — they will never, one trusts, forget — that they hold

> a common trusteeship, whether it be in India or in the Crown Colonies, or in the Protectorates, or within our own borders, of the interests and fortunes of fellow-subjects who have not yet attained, or perhaps in some cases may never attain, to the full stature of self-government[100].

Is it credible that, for instance, the peoples of India will see with indifference this trusteeship pass from the hands of an Imperial Parliament (which has more or less learned to think imperially, and in England has maintained the equal political rights of all British subjects) into the hands of a new-made Imperial Congress which will consist in part of representatives of Dominions which, it may be of necessity, cannot give effect to this enlarged conception of British citizenship?[101]

Second: The unity of the Empire does not require the formation of a federal or of any other brand-new constitution. I yield to no man in my passion for the greatness, the strength, the glory, and the moral unity of the British Empire[102]. I am one of the thousands of Englishmen who approved, and still approve, of the war in South Africa because it forbade secession. But I am a student of the British constitution; my unhesitating conviction is that the constitution of the Empire ought to develop, as it is actually developing, in the same way in which grew up the constitution of England[103]. The relation between England and the Dominions, and, as far as possible, between England and the colonies which are not as yet self-governing countries, need not be developed by arduous feats of legislation. It should grow under the influence of reasonable understandings and of fair customs. There are, as I have intimated[104], two objects on which every Imperialist should fix his eyes. The one is the contribution by

every country within the Empire towards the cost of defending the Empire. The second object is the constant consultation between England and the Dominions. The English taxpayer will not, and ought not to, continue for ever paying the whole cost of Imperial defence. The Dominions cannot for an indefinite period bear the risks of Imperial wars without having a voice in determining if such wars should begin, and when and on what terms they should be brought to an end. Imperial statesmanship is rapidly advancing in the right direction. The system of Imperial Conferences[105] and other modes of inter-communication between England and the Dominions will, we may hope, result in regulating both the contribution which the Dominions ought to make towards the defence of the Empire, and the best method for collecting colonial opinion on the policy of any war which may assume an Imperial character. My full belief is that an Imperial constitution based on goodwill and fairness may within a few years come into real existence, before most Englishmen have realised that the essential foundations of Imperial unity have already been firmly laid. The ground of my assurance is that the constitution of the Empire may, like the constitution of England, be found to rest far less on parliamentary statutes than on the growth of gradual and often unnoted customs.

Characteristics of Federal Government in Relation to Home Rule All Round

Advocates of the so-called "federal solution" apparently believe that the United Kingdom as a whole will gain by exchanging our present unitary constitution for some unspecified form of federal government. To an Englishman who still holds, as was universally held by every English statesman till at the very earliest 1880, that the union between England and Scotland was the wisest and most fortunate among the achievements of British statesmanship, there is great difficulty in understanding the new belief that the federalisation of the United Kingdom will confer benefit upon any of the inhabitants of Great Britain[106]. A candid critic may be able to account for the existence of a political creed which he does not affect to share.

The faith in Home Rule all round has been stimulated, if not mainly created, by the controversy, lasting for thirty years and more, over the policy of Home Rule for Ireland. British Home Rulers have always been anxious to conceal from themselves that the creation of a separate Irish Parliament, and a separate Irish Cabinet depending for its existence on such Parliament, is a real repeal of the Act of Union between Great Britain and Ireland. This refusal to look an obvious fact in the face is facilitated by the use of that most ambiguous phrase, "Home Rule all round." Federalism has, no doubt, during the last thirty, or one may say fifty, years acquired a good deal of new prestige. The prosperity of the United States, the military authority of the German Empire, may by federalists be put down to the credit of federal government, though in matter of fact no two constitutions can, either in their details or in their spirit, bear less real resemblance than the democratic and, on the whole, unmilitary constitution of the United States and the autocratic Imperial and, above all, military government of Germany. Federal government has also turned

out to be the form of government suitable for some of the British Dominions. It has been an undoubted success in the Canadian Dominion. It has not been long tried but has not been a failure in the Australian Commonwealth. It may become, Englishmen are inclined to think it is, the best form of government for the states included in the Union of South Africa. Little reflection, however, is required in order to see that none of these federations resemble the constitution of England either in their historical development or in their actual circumstances. Then, too, it is thought that whereas English statesmen find it difficult to regulate the relation between Great Britain and Ireland, the task will become easier if the same statesmen undertake to transform, by some hocus-pocus of political legerdemain, the whole United Kingdom into a federal government consisting of at least four different states. It is supposed, lastly, though the grounds for the supposition are not very evident, that the federalisation of the United Kingdom is necessary for, or conducive to, the development of Imperial federalism.

Federalism, in short, has at present the vague, and therefore the strong and imaginative, charm which has been possessed at one time throughout Europe by the parliamentary constitutionalism of England and at another by the revolutionary republicanism of France. It may be well, therefore, to state with some precision why, to one who has studied the characteristics of federal government, it must seem in the highest degree improbable that Home Rule all round, or the federal solution, will be of any benefit whatever to any part of the United Kingdom.

1. There is no trace whatever of the existence of the federal spirit throughout the United Kingdom. In England, which is after all by far the most important part of the kingdom, the idea of federalism has hitherto been totally unknown. Politicians may have talked of it when it happened to suit their party interest, but to the mass of the people the idea of federation has always been, and I venture to assert at this moment is, unknown and all but incomprehensible. Scotsmen sometimes complain that Great Britain is often called England. They sometimes talk as though they were in some mysterious manner precluded from a fair share in the benefits accruing from the unity of Great Britain. To any one who investigates the actual course of British politics, and still more of British social life since the beginning of the nineteenth century, these complaints appear to be utterly groundless. The prejudices which, say, in the time of Dr. Johnson, kept Scotsmen and Englishmen apart, have in reality vanished. To take one example of disappearing differences, we may note that while many leading Englishmen fill in Parliament Scottish seats many Scotsmen fill English seats. What is true is that the course of events, and the way in which the steam-engine and the telegraph bring the world everywhere closer together, are unfavourable to that prominence in any country which at one time was attainable by particular localities, or by small bodies of persons living somewhat apart from the general course of national life. This change has, like all other alterations, its weak side. It is quite possible honestly to regret the time when Edinburgh possessed the most intellectual society to be found in Great Britain or Ireland. It is also possible honestly to wish that Lichfield and Norwich might still have, as they had at the beginning of the nineteenth century, a little and

not unfamous literary coterie of their own. There is a sense in which the growth of large states is injurious to the individual life of smaller communities. The Roman Republic and the Roman Empire did not produce thinkers or writers who did as much for the progress of mankind as was done by the philosophers, the historians, and the poets of Greece, and the fruits of Greek genius were mainly due to the intellectual achievements of Athens during not much more than a century. Ireland is, as regards most of its inhabitants, discontented with the Union. But it is idle to pretend that Ireland has ever desired federalism in the sense in which it was desired by the colonies which originally formed the United States, or by the inhabitants of what are now the provinces of the Canadian Dominion. O'Connell for a very short time exhibited a tendency to substitute federalism for repeal. He discovered his mistake and reverted to repeal, which with his more revolutionary followers meant nationalism. No one who reads the last and the strangest of the biographies of Parnell can doubt that "Ireland a Nation" was the cry which met his own instinctive feeling no less than the wishes of his followers, except in so far as their desires pointed towards a revolutionary change in the tenure of land rather than towards the claim for national independence.

2. There is good reason to fear that the federalisation of the United Kingdom, stimulating as it would the disruptive force of local nationalism, might well arouse a feeling of divided allegiance. This topic is one on which I have no wish to dwell, but it cannot be forgotten by any sensible observer who reflects upon the history of secession in the United States, or of the Sonderbund in Switzerland, or who refuses to forget the preeminently uneasy connection between the different parts of the Austrian Empire and the deliberate determination of Norway to sever at all costs the union with Sweden. Nor is it possible to see how the federalisation of the United Kingdom should facilitate the growth of Imperial federalism.

3. Federalism, as the dissolution of the United Kingdom, is absolutely foreign to the historical and, so to speak, instinctive policy of English constitutionalists. Each successive generation from the reign of Edward I onwards has laboured to produce that complete political unity which is represented by the absolute sovereignty of the Parliament now sitting at Westminster. Let it be remembered that no constitutional arrangements or fictions could get rid of the fact that England would, after as before the establishment of Home Rule all round, continue, in virtue of her resources and her population, the predominant partner throughout the United Kingdom, and the partner on whom sovereignty had been conferred, not by the language of any statute or other document, but by the nature of things. It would be hard indeed to prevent the English Parliament sitting at Westminster from not only claiming but exercising sovereign authority; and to all these difficulties must be added one ominous and significant reflection. To every foreign country, whether it were numbered among our allies or among our rivals, the federalisation of Great Britain would be treated as a proof of the declining power alike of England and of the British Empire[107].

The Referendum[108]

The word Referendum is a foreign expression derived from Switzerland. Thirty years ago it was almost unknown to Englishmen, even though they were interested in political theories. Twenty years ago it was quite unknown to British electors. The word has now obtained popular currency but is often misunderstood. It may be well, therefore, to define, or rather describe, the meaning of the "referendum" as used in this Introduction and as applied to England. The referendum is used by me as meaning the principle that Bills, even when passed both by the House of Commons and by the House of Lords[109], should not become Acts of Parliament until they have been submitted to the vote of the electors and have received the sanction or approval of the majority of the electors voting on the matter. The referendum is sometimes described, and for general purposes well described, as "the people's veto." This name is a good one; it reminds us that the main use of the referendum is to prevent the passing of any important Act which does not command the sanction of the electors. The expression "veto" reminds us also that those who advocate the introduction of the referendum into England in fact demand that the electors, who are now admittedly the political sovereign of England, should be allowed to play the part in legislation which was really played, and with popular approval, by *e.g.* Queen Elizabeth at a time when the King or Queen of England was not indeed the absolute sovereign of the country, but was certainly the most important part of the sovereign power, namely Parliament[110]. In this Introduction the referendum, or the people's veto, is considered simply with reference to Bills passed by the Houses of Parliament but which have not received the royal assent. The subject is dealt with by no means exhaustively, but with a view in the first place to bring out the causes of the demand in England for the referendum; and in the next place to consider carefully and examine in turn first by far the strongest argument against, and secondly the strongest argument in favour of introducing the referendum into the constitution of England.

The Causes

During forty years faith in parliamentary government has suffered an extraordinary decline or, as some would say, a temporary eclipse[111]. This change is visible in every civilised country. Depreciation of, or contempt for, representative legislatures dearly exists under the parliamentary and republican government of France, under the federal and republican constitution of the Swiss Confederacy, or of the United States, under the essential militarism and the superficial parliamentarism of the German Empire, and even under the monarchical and historical constitutionalism of the British Empire. This condition, whether temporary or permanent, of public opinion greatly puzzles the now small body of surviving constitutionalists old enough to remember the sentiment of the mid-Victorian era, with its prevalent belief that to imitate the forms, or at any rate to adopt the spirit of the English constitution, was the best method whereby to confer upon the people of any civilised country the combined blessings of order and of progress. To explain in any substantial degree the alteration in popular opinion it

would be necessary to produce a treatise probably longer and certainly of more profound thought than the book for which I am writing a new Introduction. Yet one or two facts may be noted which, though they do not solve the problem before us, do to some slight extent suggest the line in which its solution must be sought for. Parliamentary government may under favourable circumstances go a great way towards securing such blessings as the prevalence of personal liberty and the free expression of opinion. But neither parliamentary government nor any form of constitution, either which has been invented or may be discovered, will ever of itself remove all or half the sufferings of human beings. Utopias lead to disappointment just because they are Utopias. The very extension of constitutional government has itself led to the frustration of high hopes; for constitutions have by force of imitation been set up in states unsuited to popular government. What is even more important, parliamentary government has by its continued existence betrayed two defects hardly suspected by the Liberals or reformers of Europe, or at any rate of England, between 1832 and 1880. We now know for certain that while popular government may be under wise leadership a good machine for simply destroying existing evils, it may turn out a very poor instrument for the construction of new institutions or the realisation of new ideals. We know further that party government, which to many among the wisest of modern constitutionalists appears to be the essence of England's far-famed constitution, inevitably gives rise to partisanship, and at last produces a machine which may well lead to political corruption and may, when this evil is escaped, lead to the strange but acknowledged result that a not unfairly elected legislature may misrepresent the permanent will of the electors. This fact has made much impression on the political opinion both of England and of the United States. The above considerations taken as a whole afford some explanation of a demand for that referendum which, though it originates in Switzerland, flourishes in reality, though not in name, in almost every state of the American Commonwealth.

The Main Argument Against the Referendum

To almost all Englishmen the chief objection to the referendum is so obvious, and seems to many fair-minded men so conclusive, that it ought to be put forward in its full strength and to be carefully examined before the reader is called upon to consider the possible advantages of a great change in our constitution. This objection may be thus stated:

In England the introduction of the referendum means, it is urged, the transfer of political power from knowledge to ignorance. Let us put this point in a concrete form. The 670 members of the House of Commons together with the 600 and odd members of the House of Lords[112] contain a far greater proportion of educated men endowed with marked intellectual power and trained in the exercise of some high political virtues than would generally be found among, say, 1270 electors collected merely by chance from an electorate of more man 8,000,000. The truth of this allegation can hardly be disputed; the inference is drawn therefrom that to substitute the authority of the electorate for the authority of the House of Commons and the House of

Lords is to transfer the government of the country from the rule of intelligence to the rule of ignorance. This line of argument can be put in various shapes. It is, in whatever form it appears, the reasoning on which the most capable censors of the referendum rely. Oddly enough (though the matter admits of explanation) this line of reasoning is adopted at once by a thoughtful conservative, such as Maine, and by revolutionists who wish to force upon England, through the use of authoritative legislation, the ideals of socialism. Maine saw in the referendum a bar to all reasonable reforms. He impresses upon his readers that democracy is not in itself a progressive form of government, and expresses this view in words which deserve quotation and attention:

> The delusion that democracy when it has once had all things put under its feet, is a progressive form of government, lies deep in the convictions of a particular political school; but there can be no delusion grosser. ... All that has made England famous, and all that has made England wealthy, has been the work of minorities, sometimes very small ones. It seems to me quite certain that, if for four centuries there had been a very widely extended franchise and a very large electoral body in this country, there would have been no reformation of religion, no change of dynasty, no toleration of Dissent, not even an accurate Calendar. The threshing-machine, the power-loom, the spinning-jenny, and possibly the steam-engine, would have been prohibited. Even in our day, vaccination is in the utmost danger, and we may say generally that the gradual establishment of the masses in power is of the blackest omen for all legislation founded on scientific opinion, which requires tension of mind to understand it, and self-denial to submit to it[113].

And he thence practically infers that democracy as it now exists in England would, combined with the referendum, be probably a death-blow to all reasonable reform[114]. To Maine, in short, the referendum is the last step in the development of democracy, and his censure of the referendum is part of a powerful attack by an intellectual conservative on democratic government which he distrusted and abhorred. Now revolutionists who probably think themselves democrats have of recent years attacked the referendum on grounds which might have been suggested by Maine's pages. The referendum, we are told by socialistic writers, will work steadily to the disadvantage of the Liberal Party[115]. Would not, we are asked, the anti-reforming press exhaust itself in malignant falsehoods calculated to deceive the people? Such suggestions and others of the same quality may be summed up in an argument which from a socialistic point of view has considerable force. The people, it is said, are too stupid to be entrusted with the referendum; the questions on which the electors are nominally called upon to decide must never be put before them with such clearness that they may understand the true issues submitted to their arbitrament. The party machine, think our new democrats, may be made the instrument for foisting upon the people of England changes which revolutionary radicals or enthusiasts know to be reforms, but which the majority of the electorate, if they understood what was being done, might condemn as revolution or confiscation. The attacks of conservatives and the attacks of socialistic democrats to a certain extent balance one another, but they contain a common element of truth. The referendum is a mere veto. It may indeed often stand in the way of salutary reforms, but it may on the other hand delay or forbid innovations condemned by the weight

both of the uneducated and of the educated opinion of England. Thus it is, to say the least, highly probable that, if the demand of votes for women were submitted to the present electorate by means of a referendum, a negative answer would be returned, and an answer of such decision as to check for years the progress or success of the movement in favour of woman suffrage. It must, in short, be admitted that a veto on legislation, whether placed in the hands of the King, or in the hands of the House of Lords, or of the House of Commons, or of the 8,000,000 electors, would necessarily work sometimes well and sometimes ill. It might, for example, in England forbid the enforcement or extension of the vaccination laws; it might forbid the grant of parliamentary votes to Englishwomen; it might have forbidden the passing of the Government of Ireland Act, 1914; it might certainly have forbidden the putting of any tax whatever on the importation of corn into the United Kingdom. Now observe that if you take any person, whether an Englishman or Englishwoman, he or she will probably hold that in some one or more of these instances the referendum would have worked ill, and that in some one or more of these instances it would have worked well. All, therefore, that can be conclusively inferred from the argument against the referendum is that the people's veto, like any other veto, may sometimes be ill, and sometimes be well employed. Still it certainly would be urged by a fair-minded opponent of the referendum that there exists a presumption that the Houses of Parliament acting together will exhibit something more of legislative intelligence than would the mass of the electorate when returning their answer to a question put to them by the referendum. But a reasonable supporter of the referendum, while admitting that such a presumption may exist, will however maintain that it is of very slight weight. The Parliament Act gives unlimited authority to a parliamentary or rather House of Commons majority. The wisdom or experience of the House of Lords is in matters of permanent legislation thereby deprived of all influence. A House of Commons majority acts more and more exclusively under the influence of party interests. It is more than possible that the referendum might, if introduced into England, increase the authority of voters not deeply pledged to the dogmas of any party. The referendum, as I have dealt with it, cannot, be it always borne in mind, enforce any law to which at any rate the House of Commons has not consented. It has the merits as also the weaknesses of a veto. Its strongest recommendation is that it may keep in check the inordinate power now bestowed on the party machine.

The Main Argument in Favour of the Referendum

The referendum is an institution which, if introduced into England, would be *strong* enough to curb the absolutism of a party possessed of a parliamentary majority. The referendum is also an institution which in England promises some *considerable diminution* in the most patent defects of party government. Consider first the *strength* of the referendum. It lies in the fact that the people's veto is at once a democratic institution, and, owing to its merely negative character, may be a strictly conservative institution. It is democratic, for it is in

reality, as also on the face thereof, an appeal to the people. It is conservative since it ensures the maintenance of any law or institution which the majority of the electors effectively wish to preserve. Nor can any one who studies the present condition of English society seriously believe that, under any system whatever, an institution deliberately condemned by the voice of the people can for a long time be kept in existence. The referendum is, in short, merely the dear recognition in its negative form of that sovereignty of the nation of which under a system of popular government every leading statesman admits the existence. But the mere consonance of a given arrangement with some received doctrine, such as "the sovereignty of the people," must with a thoughtful man carry little weight, except in so far as this harmony with prevalent ideas promises permanence to some suggested reform or beneficial institution. Let us then consider next the *tendency* of the referendum to *lessen the evils* of the party system. An elected legislature may well misrepresent the will of the nation. This is proved by the constant experience of Switzerland and of each of the States which make up the American Commonwealth. This danger of misrepresenting the will of the nation may exist even in the case of an honest and a fairly-elected legislative body. This misrepresentation is likely or even certain to arise where, as in England, a general election comes more and more to resemble the election of a given man or a given party to hold office for five years. Partisanship must, under such a system, have more weight than patriotism. The issues further to be determined by the electors will year by year become, in the absence of the referendum, more complicated and confused. But in the world of politics confusion naturally begets intrigue, sometimes coming near to fraud. Trust in elected legislative bodies is, as already noted, dying out under every form of popular government. The party machine is regarded with suspicion, and often with detestation, by public-spirited citizens of the United States. Coalitions, log-rolling, and parliamentary intrigue are in England diminishing the moral and political faith in the House of Commons. Some means must, many Englishmen believe, be found for the diminution of evils which are under a large electorate the natural, if not the necessary, outcome of our party system. The obvious corrective is to confer upon the people a veto which may restrict the unbounded power of a parliamentary majority. No doubt the referendum must be used with vigilance and with sagacity. Perpetual watchfulness on the part of all honest citizens is the unavoidable price to be paid for the maintenance of sound popular government. The referendum futher will promote or tend to promote among the electors a kind of intellectual honesty which, as our constitution now works, is being rapidly destroyed. For the referendum will make it possible to detach the question, whether a particular law, *e.g. a* law introducing some system of so-called tariff reform, shall be passed, from the totally different question, whether Mr. A or Mr. B shall be elected for five years Prime Minister of England. Under the referendum an elector may begin to find it possible to vote for or against a given law in accordance with his real view as to its merits or demerits, without being harassed through the knowledge that if he votes against a law which his conscience and his judgment condemns, he will also be vot-

ing that A, whom he deems the fittest man in England to be Prime Minister, shall cease to hold office, and that B, whom the elector happens to distrust, shall at once become Prime Minister. And no doubt the referendum, if ever established in England, may have the effect, which it already has in Switzerland, of making it possible that a minister or a Cabinet, supported on the whole by the electorate, shall retain office honestly and openly, though some proposal made by the Prime Minister and his colleagues and assented to by both Houses of Parliament is, through the referendum, condemned by the electorate. These possible results are undoubtedly repulsive to men who see nothing to censure in our party system. But, as I have throughout insisted, the great recommendation of the referendum is that it tends to correct, or at lowest greatly to diminish, the worst and the most patent evils of party government.

No effort has been made by me to exhaust the arguments against or in favour of the referendum. My aim in this Introduction has been to place before my readers the strongest argument against and also the strongest argument in favour of the introduction of the referendum into the constitution of England. It is certain that no man, who is really satisfied with the working of our party system, will ever look with favour on an institution which aims at correcting the vices of party government. It is probable, if not certain, that any one, who realises the extent to which parliamentary government itself is losing credit from its too close connection with the increasing power of the party machine, will hold with myself that the referendum judiciously used may, at any rate in the case of England, by checking the omnipotence of partisanship, revive faith in that parliamentary government which has been the glory of English constitutional history.

Conclusions

1. The sovereignty of Parliament is still the fundamental doctrine of English constitutionalists. But the authority of the House of Lords has been gravely diminished, whilst the authority of the House of Commons, or rather of the majority thereof during any one Parliament, has been immensely increased. Now this increased portion of sovereignty can be effectively exercised only by the Cabinet which holds in its hands the guidance of the party machine. And of the party which the parliamentary majority supports, the Premier has become at once the legal head and, if he is a man of ability, the real leader[116]. This gradual development of the power of the Cabinet and of the Premier is a change in the working of the English constitution. It is due to at least two interconnected causes. The one is the advance towards democracy resulting from the establishment, 1867 to 1884, of Household Suffrage; the other is the increasing rigidity of the party system. The result of a state of things which is not yet fully recognised inside or outside Parliament is that the Cabinet, under a leader who has fully studied and mastered the arts of modern parliamentary warfare, can defy, on matters of the highest importance, the possible or certain will of the nation. This growth of the authority obtained by the men who can control the party machine is the more formidable if we adopt the view propounded by the ablest of the critics of the

Government of England, and hold with Lowell that party government has been for generations not the accident or the corruption but, so to speak, the very foundation of our constitutional system[117]. The best way to measure the extent of a hardly recognised alteration in the working of parliamentary government in England is to note the way in which a system nominally unchanged worked in the days of Palmerston, *i.e.* from 1855 to 1865, that is rather less than sixty years ago. He became Premier in 1855. He was in 1857 the most popular of Prime Ministers. After a contest with a coalition of all his opponents, a dissolution of Parliament gave to the old parliamentary hand a large and decisive majority. For once he lost his head. He became for the minute unpopular in the House of Commons. A cry in which there was little of real substance was raised against him amongst the electors. In 1858 he resigned office; in 1859 another dissolution restored to office the favourite of the people. He remained Premier with the support of the vast majority of the electors till his death in 1865. These transactions were natural enough in the Palmerstonian era; they could hardly recur in 1914. Palmerston, as also Gladstone, did not hold power in virtue of the machine. The Parliament Act is the last and greatest triumph of party government.

2. The increasing influence of the party system has in England, and still more throughout the British Empire, singularly coincided with the growth of the moral influence exercisable by the Crown. From the accession of Victoria to the present day the moral force at the disposal of the Crown has increased. The plain truth is that the King of England has at the present day two sources of moral authority of which writers on the constitution hardly take enough account in regard to the future. The King, whoever he be, is the only man throughout the British Empire who stands outside, if not above, the party system. The King is, in lands outside the United Kingdom, the acknowledged, and indeed the sole, representative and centre of the Empire[118].

3. The last quarter of the nineteenth and, still more dearly, the first fourteen years of the twentieth century are, as already pointed out, marked by declining faith in that rule of law which in 1884 was one of the two leading principles of constitutional government as understood in England.

4. The various ideas for the improvement of the constitution which now occupy the minds of reformers or innovators are intended, at any rate, to provide against the unpopularity of legislation, but for the most part are hardly framed with the object of promoting the wisdom of legislation. No doubt some of these schemes may indirectly increase the chance that injudicious legislation may receive a check. Proportional representation may sometimes secure a hearing in the House of Commons for opinions which, though containing a good deal of truth, command little or comparatively little popularity. The referendum, it is hoped, may diminish the admitted and increasing evil of our party system. Still, as I have insisted, the main object aimed at by the advocates of political change is for the most part to ensure that legislation shall be in conformity with popular opinion[119].

The conclusions I have enumerated are certainly calculated to excite anxiety in the minds of sensible and patriotic Englishmen. Every citizen of public spirit is forced to put to himself this question: What will be the outcome of the democratic constitu-

tionalism now established and flourishing in England? He is bound to remember that pessimism is as likely to mislead a contemporary critic as optimism. He will find the nearest approach to the answer which his inquiry requires in a sermon or prophecy delivered in 1872 by a constitutionalist who even then perceived possibilities and perils to which forty-two years ago our leading statesmen were for the most part blind. Listen to the words of Walter Bagehot:

> In the meantime, our statemen have the greatest opportunities they have had for many years, and likewise the greatest duty. They have to guide the new voters in the exercise of the franchise; to guide them quietly, and without saying what they are doing, but still to guide them. The leading statesmen in a free country have great momentary power. They settle the conversation of mankind. It is they who, by a great speech or two, determine what shall be said and what shall be written for long after. They, in conjunction with their counsellors, settle the programme of their party — the "platform," as the Americans call it, on which they and those associated with them are to take their stand for the political campaign. It is by that programme, by a comparison of the programmes of different statesmen, that the world forms its judgment. The common ordinary mind is quite unfit to fix for itself what political question it shall attend to; it is as much as it can do to judge decently of the questions which drift down to it, and are brought before it; it almost never settles its topics; it can only decide upon the issues of these topics. And in settling what these questions shall be, statesmen have now especially a great responsibility if they raise questions which will excite the lower orders of mankind; if they raise questions on which those orders are likely to be wrong; if they raise questions on which the interest of those orders is not identical with, or is antagonistic to, the whole interest of the State, they will have done the greatest harm they can do. The future of this country depends on the happy working of a delicate experiment, and they will have done all they could to vitiate that experiment. Just when it is desirable that ignorant men, new to politics, should have good issues, and only good issues, put before them, these statesmen will have suggested bad issues. They will have suggested topics which will bind the poor as a class together; topics which will excite them against the rich; topics the discussion of which in the only form in which that discussion reaches their ear will be to make them think that some new law can make them comfortable — that it is the present law which makes them uncomfortable — that Government has at its disposal an inexhaustible fund out of which it can give to those who now want without also creating elsewhere other and greater wants. If the first work of the poor voters is to try to create a "poor man's paradise," as poor men are apt to fancy that Paradise, and as they are apt to think they can create it, the great political trial now beginning will simply fail. The wide gift of the elective franchise will be a great calamity to the whole nation, and to those who gain it as great a calamity as to any[120].

This is the language of a man of genius, who being dead yet speaketh. Whether the warning which his words certainly contain was unnecessary, or whether his implied prophecy of evil has not already been partially fulfilled or may not at some not distant date obtain more complete fulfilment, are inquiries which must be answered by the candour and the thoughtfulness of my readers. The complete reply must be left to the well-informed and more or less impartial historian, who in 1950 or in 2000 shall sum up the final outcome of democratic government in England. Still it may be allowable to an author writing in 1914, though more than half blinded, as must be every critic of the age in which he lives, by the ignorance and the partialities of his own day, to remember that the present has its teaching no less than the past or the

future. National danger is the test of national greatness. War has its lessons which may be more impressive than the lessons, valuable as they always are, of peace. The whole of a kingdom, or rather of an Empire, united for once in spirit, has entered with enthusiasm upon an arduous conflict with a nation possessed of the largest and the most highly trained army which the modern world can produce. This is in itself a matter of grave significance. England and the whole British Empire with her have taken up the sword and thereby have risked the loss of wealth, of prosperity, and even of political existence. And England, with the fervent consent of the people of every land subject to the rule of our King, has thus exchanged the prosperity of peace for the dangers and labours of war, not for the sake of acquiring new territory or of gaining additional military glory, for of these things she has enough and more than enough already, but for the sake of enforcing the plainest rules of international justice and the plainest dictates of common humanity. This is a matter of good omen for the happy development of popular government and for the progress, slow though it be, of mankind along the path of true fortitude and of real righteousness. These facts may rekindle among the youth of England as of France the sense that to be young is very heaven; these facts may console old men whom political disillusion and disappointment which they deem undeserved may have tempted towards despair, and enable them to rejoice with calmness and gravity that they have lived long enough to see the day when the solemn call to the performance of a grave national duty has united every man and every class of our common country in the determination to defy the strength, the delusions, and the arrogance of a militarised nation, and at all costs to secure for the civilised world the triumph of freedom, of humanity, and of justice.

[1] Compare the Introduction to the second edition *of Law and Public Opinion in England during the Nineteenth Century*.

[2] See Part I. Chaps. I.-III.,*post*.

[3] See Part II. Chaps. IV. -XIII., *post*.

[4] See Part III. Chaps. XIV., XV., *post*.

[5] See p. lxxvi, *post*.

[6] A student who wishes to understand the statements in the Introduction should read with care that part of the book on which they are a comment; thus the portions of the Introduction referring to the Sovereignty of Parliament ought to be read in connection with Part I. Chapters I.-III., *post*.

[7] See Chaps. *I.-III., post*.

[8] See Chap. I. p. 3, *post*. Parliament may itself by Act of Parliament either expressly or impliedly give to some subordinate legislature or other body the power to modify or add to a given Act of Parliament. Thus under the Commonwealth Act, 63 & 64 Viet. c. 12, the Imperial Parliament has given to the Parliament of the Australian Commonwealth power to modify many provisions of the Commonwealth Act, and the Imperial Parliament, under the National Insurance Act, 1911, has given power to the Insurance Commissioners and to the Board of Trade to modify some provisions of the Insurance Act.

[9] See pp. 47-61, *post*.

[10] See especially the Parliament Act, 1911, ss. 1-3, and Appendix, Note XIII., the Parliament Act.

[11] The Parliament Act in no way diminishes the prerogatives of the King as they existed immediately before the passing of that Act, and it is enacted (Parliament Act. s. 6) that "nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons."

[12] See as to "indirect effects," p. lxix, *post*.

[13] See Parliament Act, ss. 1 and 3.

[14] Except a Bill for extending the maximum duration of Parliament beyond five years. See Parliament Act, s. 2, sub-s. 1.

[15] See s. 2.

[16] Sees. 2(1).

[17] *Ibid*.

[18] S. 2 (1) Proviso. Under this enactment the House of Lords may insist upon a delay of at least two years and one calendar month, and a powerful opposition in the House of Commons may lengthen this delay.

[19] Constructive rejection arises under the Parliament Act, s. 2, sub-s. 3, which runs as follows: "A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses." The Home Rule Bill was actually rejected by the vote of the House of Lords in its first and second session. It was constructively rejected in the third session by the House of Lords simply by the House not passing the Bill during such session.

[20] The Parliament Act leaves the existing rights and privileges of the House of Commons untouched (*ibid*. sect. 6). No reference whatever is therein made to the so-called "veto" of the King. Its existence is undoubted, but the veto has not been exercised for at least two centuries. The well-known words of Burke, however, should always be borne in mind: "The king's negative to bills," he says, "is one of the most indisputed of the royal prerogatives; and it extends to all cases whatsoever. I am far from certain, that if several laws which I know had fallen under the stroke of that sceptre, the public would have had a very heavy loss. But it is not the *propriety* of the exercise which is in question. The exercise itself is wisely forborne. Its repose may be the preservation of its existence; and its existence may be the means of saving the constitution itself, on an occasion worthy of bringing it forth." — Burke, *Letter to the Sheriffs of Bristol*, vol. iii., ed. 1808, pp. 180, 181; ed. 1872, vol. ii. p. 28. Experience has confirmed the soundness of Burke's doctrine. The existence of this "negative" has greatly facilitated the development of the present happy relation between England and her self-governing colonies. It has enabled English and colonial statesmanship to create that combination of Imperial unity with something coming near to colonial independence which may ultimately turn out to be the salvation of the British Empire.

[21] For this use of the term Dominions see British Nationality & Status of Aliens Act, 1914, 4 & 5 Geo. V. c. 17, ist Schedule. Compare especially as to British colonies with representative and responsible government pp. 47 to 61, *post*. The Dominions for the most part consist either of a country which was a self-governing colony, or of countries which were self-governing colonies in 1884. But this statement does not apply with perfect accuracy to every one of the Dominions. Western Australia, for instance, which is now one of the states of the Commonwealth of Australia, did not obtain responsible government till 1890, and Natal, now a state of the Union of South Africa, did not obtain such government till 1893. The Union of South Africa itself consists to a great extent of states which in 1884, though subject to the suzerainty of the King, were (under the government of the Boers) all but independent countries. Throughout this Introduction, unless the contrary is expressly stated, or appears from the context, no reference is made

to the position either of (i.) the Crown colonies, or (ii.) the three colonies, viz. the Bahamas, Barbadoes, and Bermuda, which possess representative but not responsible government, or (iii.) British India. This Introduction, in short, in so far as it deals with the relation of the Imperial Parliament to the colonies, refers exclusively, or all but exclusively, to the relation between the Imperial Parliament and the five Dominions.

[22] This term means what an English writer on our constitution would generally call simply "Parliament," that is the Parliament of the United Kingdom. The term "Imperial Parliament" is, however, a convenient one when we have to deal, as in this Introduction, with the relation between the Parliament of the United Kingdom and the Dominions, every one of which has representative legislatures of their own which are always popularly, and sometimes in Acts of Parliament, termed Parliaments. The term "Imperial Parliament" is used in colonial statutes, *e.g.*, in the Interpretation Act of the Commonwealth of Australia, No. 2 of 1901.

[23] "Who are you," to quote his words, "that should fret and rage, and bite the chains of nature? Nothing worse happens to you, than does to all nations who have extensive empire; and it happens in all the forms into which empire can be thrown. In large bodies, the circulation of power must be less vigorous at the extremities. Nature has said it. The Turk cannot govern Egypt, and Arabia, and Curdistan, as he governs Thrace; nor has he the same dominion in the Crimea and in Algiers which he has at Brusa and Smyrna. Despotism itself is obliged to truck and huckster. The Sultan gets such obedience as he can. He governs with a loose rein, that he may govern at all; and the whole of the force and vigour of his authority in the centre is derived from a prudent relaxation in all his borders. Spain, in her provinces, is, perhaps, not so well obeyed as you are in yours. She complies too; she submits; she watches times. This is the immutable condition, the eternal law, of extensive and detached empire." — Burke, *Conciliation with America*, vol. iii. (ed. 1808), pp. 56, 57.

[24] This renunciation by the Imperial Parliament of the right to impose taxes upon a colony, whether a self-governing colony or not, has passed through two stages. Since 1783 taxation imposed by an Imperial Act has always been, even in the case of a Crown colony, imposed for the benefit of the colony, and the proceeds thereof have been paid to the colony. But until the repeal of the Navigation Laws in 1849 Parliament, in support of our whole navigation system, retained the practice of imposing duties on goods imported into the colonies, though the proceeds thereof were paid to the colonies so taxed. Since 1849 no Imperial Act has been passed for the taxation of any colony, and no colony is compelled by the Imperial Parliament to contribute anything in the way of taxation towards the cost of the government of the United Kingdom or towards the defence of the British Empire.

The Imperial Parliament does still impose customs duties upon the Isle of Man. See 3 & 4 Geo. V. c. 18.

[25] See Dicey, *Conflict of Laws* (2nd ed.), pp. 329-333.

[26] *Ibid.*, *p.* 441, and *Ellis* v. *McHenry* (1871), L. R. 6, C. P. 228, 234-236; but contrast *New Zealand Loan, etc, Co.* v. *Morrison* [1898], A. C. 349, cited *Conflict of Laws*, p. 342.

[27] See pp. 56-61, *post*.

[28] See as to meaning of Dominion, pp. xlii-xliii, note 21, *ante*.

[29] See Keith, *Responsible Government in the Dominions*, p. 1316.

[30] *Ibid*. pp. 1119-1122.

[31] See Keith, *Responsible Government in the Dominions*, pp. 1316-1328.

[32] See pp. 56-57, *post*.

[33] See Keith, *Responsible Government in the Dominions*, p. 1583.

[34] See Commonwealth of Australia Constitution, s. 74; South Africa Act, 1909, s. 106.

[35] See especially South Africa Act, 1909, s. 106.

[36] See first question, p. xliii, *ante*.

[37] The difference between the expression "self-governing colonies" and "Dominions" is worth noticing. The first is appropriate to 1884, the second is appropriate to 1914.

[38] See Minutes of Proceedings of Imperial Conference, 1911 [Cd. 5745], p. 22.

[39] See *Law and Opinion*, pp. 450-457.

[40] Minutes of Proceedings of the Imperial Conference, 1911 [Cd. 5745]. Opening address of the President (Mr. Asquith), p. 22. Compare "Message of King to Governments and Peoples of the Self-governing Dominions," *Times*, Sept. 10, 1914.

[41] Compare Dicey, *Law and Opinion*, pp. 450-457.

[42] As they now [1914] are contributing.

[43] The kind of equality among British subjects which Englishmen, whether wisely or not, hoped to establish throughout the whole Empire is best seen by considering the sort of equality which actually exists and has for many years existed in England. Speaking broadly, every British subject has in England at the present day the same political rights as every natural-born Englishman, *e.g.* an Englishman born in England and the son of English

parents settled in England. Thus a British subject, whatever be the place of his birth, or the race to which he belongs, or I may now add the religion which he professes, has, with the rarest possible exceptions, the same right to settle or to trade in England which is possessed by a natural-born Englishman. He has further exactly the same political rights. He can, if he satisfies the requirements of the English electoral law, vote for a member of Parliament; he can, if he commends himself to an English constituency, take his seat as a member of Parliament. There is no law which forbids any British subject, wherever he be born, or to whatever race he belongs, to become a member of the English Cabinet or a Prime Minister. Of course it will be said that it is extremely improbable that the offices I have mentioned will, in fact, be filled by men who are not in reality Englishmen by race. This remark to a certain extent is true, though it is not wholly true. But the possession of theoretically equal political rights does certainly give in England, or rather to be strictly accurate in the United Kingdom, to every British subject an equality which some British subjects do not possess in some of the Dominions.

44 See Part II., and especially Chap. IV., *post*.

45 See Chap. XII. *post*.

46 See generally on this point Muir, *Peers and Bureaucrats,* especially pp. 1-94.

47 See sect. 7, and *R.* v. *Board of Education (Swansea Case)* [1910], 2 K.B. 167; *Board of Education* v. *Rice* [1911], A. C. 179.

48 See National Insurance Act, 1911, ss. 66, 67, 88 (1), and generally *Law and Opinion* (2nd ed.), pp. 41-43.

49 See especially sect. 2, sub-s. 3, ss. 33 and 96.

50 Would this enactment protect the Speaker against an impeachment for giving a certificate which he knew to be false?

51 See *Law and Opinion*, pp. xliv-xlvi, and compare the Trade Union Act, 1913, *ibid*. p. xlviii.

52 See especially Lowell, *Public Opinion and Popular Government,* chap. iii.

53 See Chap. XII., especially pp. 242-267, *post; Law and Opinion,* pp. xxxii-liii.

54 Muir, *Peers and Bureaucrats*.

55 See *Law and Opinion*, pp. xxxix-xliii.

56 As to the constitution of this Court see p. 239 and Appendix, Note XI. pp. 416-417, *post*.

57 See Poincaré, *How France is Governed, Trans. B. Miall.* (T. Fisher Unwin, 1913), p. 272.

58 Administrative law has in some other continental countries, *e.g.* in Germany, been far less judicialised than in France.

59 Note, for instance, the absence of any law like the Habeas Corpus Act and the wide and arbitrary powers still left to the police under the head of the *régime de police;* Duguit, *Traité de Droit Constitutionnel,* ii. pp. 24-26, 33-45, and also the protection still extended in some instances to officials acting under the orders of their superior.

60 See pp. 262-264, *post*.

61 Duguit, *Traité de Droit Constitutional*, 1. pp. 460-467.

62 Consider the Official Secrets Acts.

63 See Chaps. XIV. and XV. *post*.

64 See especially the indirect effects of the Parliament Act, p. li, *post*.

65 See as to the possible distinction between "legal" and "political" sovereignty, pp. 27- 29, *post*.

66 It is certain that at the general election of 1880 the liberal electors who gained a victory meant that Lord Beaconsfield should resign office that Mr. Gladstone should be appointed Prime Mister.

67 As the King's speech when addressing the House of Parliament became more and more, and was known to have become, the utterance rather of ministerial than of royal opinion, the necessity inevitably arose of the monarch's finding some means for expressing his personal sympathy with the joy, and, above all, with the sorrow, of his people.

68 See p. cviii, note 107, *post*.

69 As to the essential difference between the laws and the conventions of the constitution, see pp. cxl-cxlvi, *post*.

70 See Provisional Collection of Taxes Act, 1913.

71 A critic may indeed say, and with truth, that a convention converted by statute into a law is in strictness not a convention at all but a part of the law of the constitution. This I will not deny; but such an enacted convention may indirectly so affect the working of conventional understandings or arrangements that its indirect effects are conveniently considered when dealing with the conventions of the constitution.

72 For the direct effects of the Act see p. xxxix, *ante*.

73 See as to this distinction, p. cxliii, *post*, and note especially Parliament Act, s. I, sub-ss. 2, 3, which give a statutable definition of a Money Bill, and also contain a special provision as to the mode of determining whether a Bill is a Money Bill.

74 See the Parliament Act, s. 7, "Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715."

75 See Lowell, *Government of England*, part ii. chaps. xxiv-xxxvii.; Low, *The Governance of England*, chaps. i. to vii. Ramsay Muir, in his essay on Bureaucracy (see *Peers and Bureaucrats*, pp. 1-94), would apparently agree with Mr. Lowell and Mr. Low, though he maintains that power tends at present under the English constitution to fall from the hands of

the parliamentary Cabinet into the hands of the permanent civil servants.

[76] Several recent occurrences show the occasional appearance of ideas or practices which may mitigate rather than increase the rigidity of the party system. *In re Sir Stuart Samuel* [1913], A. C. 514, shows that under the Judicial Committee Act, 1833, s. 4, a question of law on which depends the right of a Member of Parliament to sit in Parliament may be referred to the Privy Council and be adequately and impartially dealt with by a body of eminent lawyers. The thought suggests itself that other questions affecting the conduct and the character of M.P.s which cannot be impartially investigated by any Committee of the House of Commons might be referred to the same high tribunal. The public statement, again, of Lord Kitchener that he took office in no way as a partisan, but simply as a general whose duty it was to provide for the carrying on of a war in which the welfare and honour of the nation is concerned set a precedent which might be followed in other spheres than that of military affairs. Is it of itself incredible that a Foreign Secretary of genius might without any loss of character retain office for years both in Liberal and in Conservative Cabinets? Is there any thing absurd in supposing that a Lord Chancellor respected for his legal eminence and for his judgment might serve the country as the highest of our judges and give his legal knowledge to Cabinets constituted of men with whose politics he did not agree? The English people would gain rather than lose by a check being placed on the constantly increasing power of the party system.

[77] See pp. 296-302, post.

[78] *Bowles* v. *Bank of England* [1913], I Ch. 57.

[79] It is hardly an exaggeration to say that there exist very few other modern political conceptions (except the idea of representative government) which were not criticised by the genius of Aristotle. Note however that the immense administrative system known as the Roman Empire lay beyond, or at any rate outside, the conceptions of any Greek philosopher.

[80] See J. R. M. Butler, *The Passing of the Great Reform Bill* (Longmans, Green & Co., 1914). This is an excellent piece of historical narrative and inquiry.

[81] *See Law and Opinion*, pp. 309, 171, 172.

[82] 82 It would be impossible, and it is not my aim in this Introduction, to state or even summarise all the arguments for or against each of these ideas; my sole object is to bring into light the leading thoughts or feelings which underlie the advocacy of, or the opposition to, each of these new ideas. See p. lxxiv-lxxv, *ante*.

[83] *See the Vindication of the Rights of Women*, by Mary Wollstonecraft, published 1792. Little was heard about such rights during the great French Revolution. There is no reason to suppose that Madame Roland ever claimed parliamentary votes for herself or for her sex.

[84] For an examination of all the main arguments alleged on either side see Dicey, *Letters to a Friend on Votes for Women*.

[85] Burke, *Correspondence*, i. pp. 332, 333.

[86] See Humphreys, *Proportional Representation;* J. Fischer Williams, *Proportional Representation and Bntish Politics;* Lowell, *Public Opinion and Popular Government*, pp. 122-124.

[87] See Mr. Asquith's speech at St. Andrews, Feb. 19, 1906, cited by J. Fischer Williams, *Proportional Representation*, p. 17.

[88] Mr. Asquith at Burnley, Dec. 5, 1910, cited by J. Fischer Williams, *Proportional Representation*, p. 17.

[89] Bagehot, *English Constitution*, pp. 148-159.

[90] I choose these old expressions which have been in use, at any rate from 1689 till the present day, because they make it easier to keep somewhat apart from the burning controversies of 1914.

[91] Cobden would have supported any Premier, whether a Tory or a Whig, who undertook to repeal the Corn Laws. O'Connell would have supported any Premier who had pledged himself to repeal the Act of Union with Ireland; but O'Connell's position was peculiar. He took an active interest in English politics, he was a Benthamite Liberal; and during a part of his career acted in alliance with the Whigs.

[92] Proportional representation was in Mill's day known as minority representation. The change of name is not without significance. In 1870 the demand for minority representation was put forward mainly as the means for obtaining a hearing for intelligent minorities whose whisper might easily be drowned by the shouts of an unintelligent majority. In 1914 minority representation is recommended mainly as the means of ensuring that the true voice of the nation shall be heard. It was once considered a check upon democracy; it is now supported as the best method for giving effect to the true will of the democracy.

[93] Compare especially as to federal government, Chap. III. p. 73, *post*.

[94] In Chap. III., *post*, federalism was analysed (1885) as illustrating, by way of contrast, that sovereignty of the English Parliament which makes England one

of the best examples of a unitary state.

95 In treating of Imperial federalism, as often in other parts of this book, I purposely and frequently, in accordance with popular language, use "England" as equivalent to the United Kingdom.

96 See especially Chap. III. p. 73, *post*. It is worth observing that the substance of this chapter was published before the production by Gladstone of his first Home Rule Bill for Ireland.

97 As to meaning of "Dominions" see p. xlii, note 21, *ante*.

98 "But this Empire of ours is distinguished from [other Empires] by special and dominating characteristics. From the external point of view it is made up of countries which are not geographically conterminous or even contiguous, which present every variety of climate, soil, people, and religion, and, even in those communities which have attained to complete self-government, and which are represented in this room to-day, does not draw its unifying and cohesive force solely from identity of race or of language. Yet you have here a political organisation which, by its mere existence, rules out the possibility of war between populations numbering something like a third of the human race. There is, as there must be among communities so differently situated and circumstanced, a vast variety of constitutional methods, and of social and political institutions and ideals. But to speak for a moment for that part of the Empire which is represented here to-day, what is it that we have in common, which amidst every diversity of external and material conditions, makes us and keeps us one? There are two things in the self-governing British Empire which are unique in the history of great political aggregations. The first is the reign of Law: wherever the King's writ runs, it is the symbol and messenger not of an arbitrary authority, but of rights shared by every citizen, and capable of being asserted and made effective by the tribunals of the land. The second is the combination of local autonomy — absolute, unfettered, complete — with loyalty to a common head, co-operation, spontaneous and unforced, for common interests and purposes, and, I may add, a common trusteeship, whether it be in India or in the Crown Colonies, or in the Protectorates, or within our own borders, of the interests and fortunes of fellow-subjects who have not yet attained, or perhaps in some cases may never attain, to the full stature of self-government." — See speech of the Right Hon. H. H. Asquith (President of the Conference), Minutes of Proceedings of the Imperial Conference, 1911 [Cd. 5745], p. 22.

99 Sir Joseph Ward is an eminent colonial statesman; he is also an ardent Imperialist of the colonial type. In his plan for an Imperial Council, or in other words for an Imperial Parliament representing the United Kingdom, or rather the countries which now make it up, and also the Dominions, he calmly assumes that Englishmen will without difficulty allow the United Kingdom to be broken up into four countries ruled by four local Parliaments. He supposes, that is to say, as a matter of course, that Englishmen will agree to a radical change in the government of England which no sane English Premier would have thought of pressing upon the Parliaments of the self-governing colonies which now constitute the Dominion of Canada or which now constitute the Commonwealth of Australia. See Minutes of Proceedings of the Imperial Conference, 1911 [Cd. 5745], pp. 59-61.

100 See Mr. Asquith's address, cited pp. xcviii-xcix, note 98, *ante*.

101 See p. liv, and note 43, *ante*.

102 See *A Fool's Paradise*, p. 24.

103 This conviction is strengthened by the facts now daily passing before our eyes (Sept. 1914).

104 See pp. xcviii, xrix, *ante*; and see ^4 *Fool's Paradise*, p. 25.

105 Consider the gradual, the most hopeful, and the most successful development of these conferences from 1887 to the last conference in 1911. A sort of conference was held in 1887, and the conferences of 1897 and 1902 were held in connection with some other celebration. The first regular conference for no other purpose than consultation was held in 1907, in which the Imperial Conference received by resolution a definite constitution. The conference of 1911 was held under the scheme thus agreed upon in 1907.

106 The omission of reference to the policy of Home Rule for Ireland as embodied in the Government of Ireland Act, 1914, is intentional. The true character and effect of that Act cannot become apparent until some years have passed. The Act itself stands in a position never before occupied by any statute of immense and far-reaching importance. It may not come into operation for an indefinite period. Its very authors contemplate its amendment before it shall begin to operate. The Act is at the moment detested by the Protestants of Ulster, and a binding though ambiguous pledge has been given that the Act will not be forced upon Ulster against her will. The people of Great Britain will insist on this pledge being held sacred. To a constitutionalist the Act at present affords better ground for wonder than for criticism. If any

reader should be curious to know my views on Home Rule he will find them in a general form in *England's Case against Home Rule,* published in 1887; and as applied to the last Home Rule Bill, in *A fool's Paradise*, published in 1913.

[107] Any great change in the form of the constitution of England, *e.g.* the substitution of an English republic for a limited monarchy, might deeply affect the loyalty of all the British colonies. Can any one be certain that New Zealand or Canada would, at the bidding of the Parliament of the United Kingdom, transer their loyalty from George V. to a President chosen by the electorate of the United Kingdom, and this even though the revolution were carried out with every legal formality including the assent of the King himself, and even though the King were elected the first President of the new Commonwealth? Is it certain that a federated union of England, Ireland, Scotland, and Wales would command in our colonies the respect paid to the present United Kingdom? These questions may well seem strange: they are not unimportant. The King is what the Imperial Parliament has never been, the typical representative of Imperial unity throughout every part of the Empire.

[108] *Lowell, Public Opinion and Popular Government*, part iii. chaps, xi-xv., especially chaps, xii. and xiii. (best thing on the subject); Lowell, *Government of England*, i. p. 411; "The Referendum and its Critics," by A. V. Dicey, *Quarterly Review*, No. 423, April 1910; *Vie Crisis of Liberalism*, by J. A. Hobson; Lowell, *Governance of England,* Intro, p. xvii; "Ought the Referendum to be introduced into England?" by A. V. Dicey, *Contemporary Review*, 1890, and *National Review*, 1894.

[109] And *a fortiori* when passed under the Parliament Act, without the consent of the House of Lords.

[110] The referendum, it should be noted, can be applied to legislation for different purposes and in different ways. It may, for instance, be applied only to a Bill affecting fundamental changes in the constitution, *e.g.* to a Bill affecting the existence of the monarchy, or to any Bill which would in popular language be called a Reform Bill, and to such Bill after it has been passed by the two Houses. In this case the object of the referendum would be to ensure that no Act of transcendent importance shall be passed without the undoubted assent of the electors. The referendum may again be applied, as it is applied in the Commonwealth of Australia, for preventing "deadlocks," as they are called, arising from the fact of one House of Parliament having carried repeatedly, and the other having repeatedly rejected, a given Bill.

[111] Compare *Law and Opinion* (2nd ed.), pp. 440-443.

[112] Strictly, 638 members. See Whitaker's Almanack, 1914, p. 124.

[113] Maine, *Popular Government*, pp. 97-98.

[114] See *ibid*. pp. 96-97.

[115] See *Against the Referendum* and *Quarterly Review*, April 1910, No. 423, pp. 551, 552.

[116] Lowell, *Government of England*, chaps, xxiv-xxvii., and especially i. pp. 441-447; *Public Opinion and Popular Government*, part ii. pp. 57-110.

[117] See note on preceding page.

[118] See p. lxviii, *ante*.

[119] See pp. lxxvii-lxxx, *ante*.

[120] Bagehot, *English Constitution* (2nd ed.). pp. xvii-xix.