



## THE POWERS OF THE CROWN IN ENGLAND

AS EXERCISED DOWN TO THE BEGINNING OF THE PRESENT REIGN.

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THE end of a long and glorious reign naturally suggests reflections upon the position which the Sovereign holds in the British Constitution, and indeed in the structure and working of the system of the British Empire as a whole. Queen Victoria's reign was not only the longest in our annals, and the reign which saw the greatest changes in our social and economic condition. It was also the reign in which the principles of the Constitution first became firmly settled in practice and definitely accepted by all sections and parties in the State. Many questions had remained doubtful down to the Reform Act of 1832 which were not formally, indeed, but virtually determined by that great measure. Yet the five years after 1832, during which William the Fourth was on the throne, were not sufficient to make the new position created by the reform of Parliament plain to the nation. This has been done during the reign of Queen Victoria, and done all the better because that period, although marked by many keen political struggles, has been one in which domestic peace and order have been scarcely at all disturbed.

All educated Englishmen know, though it is hard to make persons in other countries realise the fact, that in England, well settled as the position of the Crown is, its exact powers are not to be found described in any document. They have never been

precisely defined, and, indeed, cannot be defined. No one can state positively just what they are now, though everybody knows that they are much more restricted than they were formerly. Seven hundred years ago the King of England had a power so great and wide that he might do pretty much what he liked so long as he did not provoke his subjects to rise in arms against him. He could make war and peace, issue ordinances, collect taxes, punish offenders, make all appointments. The only restrictions on his authority were that he had powerful vassals who might rebel if he treated them unjustly or cruelly, and that he was expected to respect the ancient customs of the country. One of these customs was that all the great men, earls and barons, bishops and abbots, were from time to time summoned to meet in council, under the King and to advise him about the affairs of the country. When laws were enacted, they were made by the King in this council, with the consent of the great men there present. By slow degrees the Great Council so gained upon the King, and imposed such practical restrictions upon his powers, that when there arose, in the days of Charles the First, and afterwards of James the Second, a conflict between the Great Council and the King, the Crown got the worst of it. The Revolution of 1689 finally decided that the Crown cannot govern against the will of the Parliament, and limited in a variety of ways rights which Kings had previously claimed. The century and a half that elapsed

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QUEEN VICTORIA OPENING HER FIRST PARLIAMENT.

between the Revolution and the accession of the late Queen still further reduced the rights and functions of the Crown, making Parliament the sole legislative authority, and the body of ministers called the Cabinet, which holds office at the pleasure of the House of Commons, the virtual executive authority. But this process has been a gradual, a slow, and an irregular process; and it has generally been carried forward not by positively forbidding the Crown to do things it had formerly been recognised as entitled to do, but by establishing the principle that whatever action the Crown takes must be taken on the advice of ministers who are responsible to Parliament; so that the acts are really their acts, and not the Crown's. Thus the prerogative of the Crown, which is the name lawyers give to the Crown's rights as head of the Executive, has been for many purposes and in many directions kept alive. The difference is that the Sovereign has not in recent times exerted this prerogative on his (or her) own will and motion, but under the guidance of ministers who, though in point of form they take their orders from the Crown, do really act according to their own views, and in conformity with what they believe to be, or profess to believe to be, the wishes of the majority in the House of Commons. Accordingly, that power which at Queen Victoria's accession remained in the hands of the Sovereign, considered as an individual person, may to-day be described as being of the nature rather of influence than of legal power. Now, it is very hard to define influence, for it depends partly on the character and experience of the person who exerts it, partly on the submissiveness or receptivity of the person on whom it is exerted. Influence is not the same in the case of one sovereign or minister as it is in the case of another; and it may be greater or less according to the particular circumstances of the moment, including among these circumstances the popularity with the nation of the ministry (or of the Prime Minister in particular) who are conducting the affairs of the nation for the time being.

These things have to be stated in order to explain the somewhat vague language in which one has to describe the rights and functions—or, if the expression be preferred, the influence—of the Crown in England. Now, let us see in what this influence consists, and what part the Crown has, during the long reign which ended in 1901, played in the working of the British Constitution.

Originally the Sovereign chose all the ministers according to his own pleasure, just as the President of the United States chooses the members of his Administration. (I illustrate the position of the Crown by that of the American President, because the comparison between these two great States is that which has the greatest interest for the citizens of each.) Now, however, the ministers of the Crown must be persons who can command the support of the House of Commons, and must all belong to the dominant political party. And since the time of Queen Anne, the practice has very slowly grown up that the Crown, instead of choosing all the ministers, selects one prominent political leader and gives him the commission to form a Cabinet, by selecting colleagues to work with him. It may happen that some one particular statesman is so clearly marked out as the head of his party that there can be no doubt as to his being the proper person whom the Crown should select. When a new Ministry had to be formed in 1885, and again in 1886, and again in 1895, no one doubted that Lord Salisbury (who was then the leader of the Tory party) would be the person whom the Queen would "send for"—*i.e.*, commission to form a Cabinet. So Mr. Gladstone, as unquestioned leader of the Liberal party, was the inevitable person in 1868, in 1886, and in 1892. But sometimes there are several persons, any one of whom might possibly be able to form a Cabinet out of the party dominant in the House of Commons. Thus, in 1880, Lord Hartington was leader of the Liberals in the House of Commons, Lord Granville leader in the House of Lords, while Mr. Gladstone, although the most powerful personality in his party, had not been officially leading it since 1875. The Queen sent first for Lord Hartington, then for Lord Granville, and ultimately for Mr. Gladstone, who formed the Cabinet which remained in power till 1885. Now, cases may be imagined in which it would make a good deal of difference which of several possible persons was first "sent for" by the Sovereign, because the person who forms the Cabinet (popularly called the Prime Minister) may compose his Cabinet according to his own views, and naturally exercises a great influence in it as long as it lasts. Here, therefore, the views or personal preferences of the Crown may count. Moreover, although as a rule the members of the Cabinet are chosen by the Prime Minister according to his own judgment of their abilities or weight in the party,

it may now and then happen that the Crown may consider some particular politician, whom the Prime Minister had not thought of, to be worthy of a post in the Administration, and the Prime Minister may defer to the wishes of the Crown—assuming, as of course may safely be assumed, that the politician was personally unobjectionable. This (one is told) did in fact happen during the Queen's reign.

As the Crown is deemed to choose, so the Crown may in theory dismiss its ministers. But in practice this has not been done during the last sixty years. If ministers lose the confidence of the House of Commons, they either resign, tendering their resignations through the Prime Minister, or else obtain the leave of the Crown to dissolve Parliament, in the hope of getting a new House of Commons which will support them. If it does support them, they hold on; if not, they resign. There are, however, some students of the Constitution who have argued that when the Crown is convinced that ministers do not possess the confidence of the nation (which, of course, implies that the House of Commons, in continuing to support them, does not possess that confidence), it may of its own motion dismiss its ministers and commission some statesman to form a new Administration. It would, of course, be necessary that in taking such a course the Crown should have first of all requested ministers to dissolve Parliament, and that it should feel sure that a man could be found who would be able to form a strong Administration. And those who advance the view I am stating admit that the only justification, from a constitutional point of view, of the course imagined would be that the dissolution of Parliament which would naturally follow, upon the coming in of a new ministry, should show, by producing a House of Commons prepared to support that new ministry, that the Sovereign's view of the political situation had been correct.

Whether such a power as this still remains to the Sovereign is one of those controverted points on which few will venture to speak positively. It may, however, be observed that the power (if still existing) has not been exercised for a very long time; and that it would be imprudent for the Crown to exercise it unless in a very exceptional case, where it was perfectly clear that the House of Commons had ceased to represent the real sentiment of the people, and that ministers were, in fact, disregarding the popular will. This is a highly improbable contingency, for

a ministry would be unlikely to take a course so certain to bring general displeasure upon them.

The same remark applies to another case which has been put by those who like to carry a lamp into the dark places of that old and rambling edifice which we call the British Constitution. Is it consistent with the established use and practice of the Government of England for the Crown to refuse to its ministers permission to dissolve Parliament when they ask for such permission? Suppose that a ministry which has been defeated in the House of Commons believes that a General Election would give it a majority. Ought the Crown, as a matter of course, to assent to a dissolution? To refuse would practically be to dismiss the ministers, for they would, of course, forthwith resign. Here, again, it may be said that there has not been during the reign of Queen Victoria any authority in favour of the doctrine that the Crown might so refuse; and it may be added that nothing but the subsequent approval of a considerable majority of the nation could justify what would be, *primâ facie*, an unusual stretching of the functions of the Crown as they have been understood for many years past. Still, these cases are worth considering, unlikely as they are to arise, because they show that there is an undefined and scarcely definable margin extending beyond the ordinary and familiar duties of the Crown. Similar cases have arisen in some of the British self-governing Colonies, where the Governor holds a constitutional position which corresponds, in a general way, to that held by the Sovereign of the United Kingdom at home; and such cases have in these Colonies given rise to much debate. It is, however, generally held that Colonial usage has hitherto allowed a somewhat wider range to the Governor than has been claimed for the Crown at home. But it may be doubted whether in the Australian Commonwealth, for instance, any such wider range could be claimed for the Governor-General.

In the United States the policy of the Executive is determined by the President, and the Cabinet are only his advisers. In England it is the Cabinet that determine policy, and the Crown incurs no responsibility for it. Accordingly, whereas in the United States the President summons and presides over his own Cabinet, in England the Sovereign is never present at a Cabinet Council. It is, however, the duty of the Prime Minister to report to the Sovereign



HIS MAJESTY KING EDWARD VII., WITH QUEEN ALEXANDRA, OPENING THE FIRST PARLIAMENT OF HIS REIGN, FEBRUARY 14, 1901.

*From the picture by S. Begg.*

all the decisions at which the Cabinet arrives, and thus to give the Sovereign not only the earliest information regarding the steps proposed to be taken, but also a proper opportunity for communicating to the Cabinet his (or her) views regarding those steps. So one may say that though the Crown has not since the days of George the Third claimed the power to direct policy, it has the right to be informed, to remonstrate, and to warn. Walter Bagehot, perhaps the most ingenious and suggestive of all those who have written upon the Constitution of England, has pointed out with singular force the opportunity for exercising an influence beneficial to the State which the power to advise opens up to a judicious and experienced occupant of the Throne.

Bagehot observes that the Sovereign has three great advantages as an adviser. He is detached from party, and can therefore, if cool-headed and fair-minded, see facts as they are better than a party leader. His political experience, which may be longer than that of his Prime Minister, must have been cultivated by frequent intercourse with the ablest statesmen of the country. And, thirdly, his position is so high that his ministers must listen to him with respect and carefully weigh all he has to say. Queen Victoria, from her immensely large experience, from the dignity of her character, from the interest she took in the discharge of her duties, and from the spirit in which she approached them, did acquire no slight influence. The Crown, of course, does well never to obtrude such influence as it possesses, and is careful to abstain from pressure, seeing that inasmuch as responsibility rests not with it, but with its ministers, their freedom of judgment ought not to be interfered with. Power and responsibility must

go together; and the stability of the British monarchy rests upon the doctrine that it is not responsible. Were the Crown to claim the right to take executive decisions, it could not be shielded from responsibility, and its position would become less secure.

There is one department of policy in which the Crown may be specially useful in rendering advice. That department is foreign affairs. The Sovereign has a more intimate knowledge of the reigning families of Europe than any minister can well have, and is probably related to not a few of them, as the English Royal House is to the rulers of Germany, Russia, Belgium, and Denmark, not to mention the minor German princes. Thus the Sovereign has special advantages for knowing the character and purposes of

some foreign rulers, and also for communicating with them in an unofficial way. The personal predilections or jealousies or resentments of most European monarchs do, no doubt, count for less in our time than they did two hundred years ago. But they still count for something; and moments occasionally arrive at which friction may be allayed or misunderstandings removed, or even warnings conveyed through the private communications of monarchs, when despatches from one Government to another would not have quite the same effect. Here, therefore, there is a field in which the Crown may, in the way of giving advice, exert a certain influence, not only as regards ministers at home, but even with foreign States, or at least such as are monarchically governed. It may be said that the latter kind of influence is open to abuse. The Crown might by private communications provoke as well as prevent a quarrel with some foreign potentate. This is true. But it must be remembered that any communication, not purely personal but of a political nature, ought, according to British constitutional practice, to be known to the Foreign Minister of the Sovereign who makes it and sent with the minister's approval. If the minister should deem it unwise, it would be his duty to dissuade it. And it need hardly be added that the cases are rare in which any such communications have been made or can usefully be made. Nevertheless, several are believed to have occurred during the reign of the late Queen, which the ministry of the day were glad that she should make, and whose results were helpful to the maintenance of European peace.\*

One branch of the Crown's influence remains to be considered, that which relates to appointments to posts in the public service, civil, military, and ecclesiastical. Here, again, it is hard to say anything more definite than this, that although the responsibility for every appointment rests with some minister, and he is never permitted to relieve himself of, or even to reduce, that responsibility by pleading the wishes of the Crown, still if the Crown were to express a preference for one out of several persons equally or almost equally suitable for the post, that expression

of preference would be likely to have weight. It would, of course, very rarely happen that any preference would be expressed, and the occasions when it was would be even less frequent as respects the civil service than as respects naval and military appointments or those which are made in the Established Church. The Army and Navy are by long tradition a little more closely connected with the Crown than is the Civil Service; and a similar tradition has preserved the right of the Sovereign to influence the choice for bishoprics—and especially, of course, for archbishoprics—of persons who enjoy his or her confidence. The same principle applies to the deaneries of Westminster and Windsor, both of which partake of the nature of private chaplaincies—of course, of a very dignified type—to the Monarch. It has frequently been stated by those who had good means of knowing, that the personal judgment of the late Queen was a principal cause for the selection (or non-selection) of particular persons to be prelates; and instances have been mentioned in which that judgment was proved by the result to have been eminently wise. There is no class of appointments which present more difficulties to a Prime Minister, nor any in which Prime Ministers have sometimes shown more lack of discrimination; so the advice of the Sovereign has been generally deemed—at least, by the great bulk of the laity of the Anglican Church—to have been judiciously given. It need hardly be added that in the conferring of peerages and of titles of honour, such as places in the orders of knighthood, opportunities are open to the Sovereign of expressing (of course, with the assent of ministers) his or her personal appreciation of meritorious services rendered.

The reader will have gathered from these observations that, although the influence of the Crown may be somewhat wider than is generally realised in England, it is much narrower than it is generally supposed in other countries to be, and in particular is narrower than most people in the United States believe, for in that country men are naturally led, by comparing the head of the British Executive with the head of their own, to attribute to the English Sovereign powers resembling those vested in their own President. Since the time when George the Third's illness prevented him from taking part in the affairs of State, and still more since A.D. 1832, when the great Parliamentary Reform Act made the will of the people the indisputably predominant

\* Those who are curious regarding the position of the Crown as regards foreign relations will find, in Sir Theodore's Martin's "Life of the Prince Consort," an interesting account of the questions which arose between the Queen and Lord Palmerston when he was Foreign Secretary, in 1851.

authority in Britain, the Monarchs of the United Kingdom have ceased to interfere with the ordinary conduct of public business. It is in the Prime Minister, or rather, perhaps, in the collective Cabinet, that the British parallel to the American President must be sought. Nevertheless, there is a sphere in which the influence of the Crown may still be exerted without infringing the rules and usages of the Constitution, so that it would be going much too far to say that the personal qualities of the late Queen did not make a difference to the well-being of the nation. They did make a difference, and not merely a social, but, though in a less marked way, also a political difference, for there were not a few occasions on which a want of judgment on her part would have caused serious trouble. But the influence which she exercised depended upon two things. One, of course, was the large measure of personal judgment and good sense which made that influence useful and respected. The other was the belief of the ministers, of Parliament, and, above all, of the people at large, that their Sovereign was thoroughly imbued with constitutional principles and had no wish or intent to go beyond the limits which established custom had assigned to her action. Her reign was, as has been already remarked, the first in which those limits had been pretty well settled, although even now some points may remain doubtful. And one reason why the late Queen secured a reverence and, indeed, an affection from the

whole nation such as can scarcely be paralleled from earlier days, was because the nation has so fully believed that she thoroughly understood and had been invariably faithful to the doctrines of the Constitution regarding her own position. Thus one result of her reign was to give the monarchy a hold upon the respect and confidence of the whole people which it had not enjoyed for many generations.

It has not been necessary to refer to the British Colonies or to India, because the functions of the Crown in relation to these external dominions are, like its other functions, exercised through responsible ministers. But I must not omit to add that, for the purpose of maintaining a political tie between the Mother Country and her Colonies, it has been a great advantage to Britain to have in the Crown a visible embodiment and symbol of the unity of the British people all over the world. In this respect the monarchy has proved eminently valuable. No President, elected by the inhabitants of the United Kingdom, could effect what is effected by the descendants of Kings who reigned over the peoples of England and Scotland when those peoples were still confined within the narrow limits of an island. And the power of this tie has been strengthened by the feelings entertained throughout the Colonies for Queen Victoria, who had been the most conspicuous and respected figure in her Empire during a period the beginning of which few among her subjects could remember.

