1953

The Paper Constitutions of the English Interregnum 1647-1660

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A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

IN

HISTORY

UNIVERSITY OF RHODE ISLAND

1953

ABSTRACT

King Charles I had ruled over the Kingdom of England from 1629-1640 without calling a meeting of Parliament. During the period of his "personal rule", trouble broke out in Scotland as a result of the King's attempt to impose the Church of England upon the Presbyterian Scots. To obtain funds to wage a war, Charles called a Parliament. This Parliament was more interested in reforming the government than in supplying the King with funds. Rebellion in Ireland necessitated the calling out of the militia.

Until this point, the reforms of Parliament had been passed in the ordinary constitutional manner. Now, however, Parliament violated the constitution by declaring the Militia Bill of 1642 to be law, without the royal assent. Civil War was the result. On one side were the supporters of Parliament: the Puritans, the merchant class, and the armed forces. On the other side were found the King, the nobility, the Anglicans, and the landed gentry. After seven years of bloody warfare, the Parliamentarians won, with the execution of the King. The old constitution was overthrown by act of Parliament.

This Parliament became known as the Long Parliament. It and the army had to decide on a substitute for the old monarchical form of government. This paper discusses the various attempts at a constitutional settlement during the

ensuing eleven years--1649-1660. During the last year of the war, 1647, the army drafted a paper constitution which was never adopted. To some extent, it was to be a model for the future proposals. The constitutional schemes discussed include the Heads of the Proposals of 1647, the Agreement of the People of 1649, the Instrument of Government of 1653, and the Humble Petition and Advice of 1657. Only the Instrument had an opportunity to be seen in action.

These proposed constitutional settlements are treated in some detail and the political events and theories behind them are also given consideration. In the Restoration settlement of 1660, the old constitution was restored in almost all of its essentials. There were, however, some lasting influences both in the field of positive law and in the area of political thought.

The paper constitutions contained the provisions for a republican form of government. They all provided for the redistribution of the seats of the House of Commons. The Instrument restored some vestiges of the old system, in regard to the position of the Protector. The Humble Petition restored the House of Lords. In the Restoration Settlement all acts of the Commonwealth were repealed. The principal contributions lay in the field of theory: popular sovereignty, the enhanced position of Parliament in the members minds, and the discredit of republican government.

In 1679 there was an attempt to exclude James, Duke of York, as heir to the throne. The scheme failed, but it led to the reformation of the Privy Council, as planned by Sir William Temple.

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CHAPTER I

INTRODUCTION

The English constitution being largely unwritten custom, it is interesting to look at the one period in which there was a written constitution. The modern British constitution has evolved over a span of nine hundred years. The principal or essential elements were developed by the fourteenth century, but there have been refinements and new emphases throughout its history.

In attempting to sketch the English constitution at any given time, there are two principal problems, the one growing out of the other. First of all, it is not found in one written document, nor for that matter in a group of them -- it is largely unwritten custom. The question is, what is custom? How many precedents does it take to make a custom? It is easier to state what has been the custom than to say what the custom is today. A second problem evolving from the first is, what is the constitution? Is the constitution merely a body of agencies and their automatic procedures, or is it more than that?

The following statement about the maturity of the constitution is valid as far as it goes:

> By the fourteenth century, then, we may say that the machinery of the English government was practically complete,--separate courts of law, a court of chancery,

> a council with important functions separate from Parliament, the House of Lords the highest judicial body in the state, an elective commons whose assent was necessary to legislation, etc.; though of course great changes were yet to occur within nearly all of these and in their relations to each other.[1]

Constitutional theory and practice are two different things generally. As these various foregoing agencies were set up, it was largely with the royal approval; as government grew, however, they became more and more remote from the person of the king. As time went by, the independence of much of the machinery from the personal influence of the king became as much a part of the constitution as the machinery itself. Thus as the struggle with Parliament grew in intensity and as the Parliament began to act in ways which were in violation of the form of the constitution, Charles was able to work within the form, if not the real spirit of it, and claim that Parliament, not he, had violated the constitution.

Another problem is, how can changes be wrought in the constitution except by the long process of evolution? Until the development of the natural rights doctrine during the later days of the Civil War it was felt that the king and Parliament together were omnipotent. Yet the king had still a vast prerogative, but to what extent could he use it to change the constitution?

Thus the machinery of the constitution was in its basic substance complete by the end of the fourteenth century,

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[1] Charles Howard McIlwain, The High Court of Parliament and Its Supremacy: An Historical Essay on the Boundaries between Legislation and Adjudication in England (New Haven, 1910), p. 38.

but the exact definition of the relationships between the various parts was not completely worked out until the last generation, and further refinements are undoubtedly going to be made in the future.

Before the Civil War came to an end in 1649 with the execution of the King, there were at least two attempts at a written constitution. Since the old system, largely based upon custom, was to be cast aside, it would seem only logical that it would have to be replaced by a written plan of government; there would not be time to permit a new set of customs to evolve and firmly imbed themselves in the minds of the people. After the execution of the King and the abolition of monarchy and of the House of Lords, only two alternatives seemed to present themselves: military force or rule by law under a written constitution.

The army, or particular elements thereof, proposed two of the plans of government: the Heads of the Proposals of 1647 and the Agreement of the People of 1649. The latter is credited with being the first real attempt at a written constitution, however abortive it may have been.[1] Following the abolition of the old constitution, there was a gap of four years during which period there was no new constitution, but merely a continuation of certain elements of the old combined with military force. It will be seen, nevertheless, that constitutionally speaking this was the most significant period of the era.

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[1] George Burton Adams, Constitutional History of England (New York, 1938), p. 324.

The misrule of the Long Parliament from 1649-53 led to a reaction in favor of rule by law and by a representative government. As a result, the Instrument of Government was composed, to be followed three years later by the even more conservative Humble Petition and Advice. These constitutions are of interest, not so much for their lasting results, as for the reason that they actually were in operation for a period of time. Another point of interest concerning this state is that it shows how conservative an attempt at a lasting solution had to be.

The period after the Restoration of the House of Stuart is characterized by the restoration of the pre-Civil War constitution in almost all of its essentials. In 1679, there was one final attempt at effecting a workable adjustment by reconstituting the Privy Council, but it, too, was to fail within a matter of weeks.

From all of these seemingly futile attempts at reconstituting the government of England, certain specific contributions were derived along with others of a more indirect, but certainly no less important, nature. This essay will attempt the two-fold task of indicating the nature of these various plans of government and of noting the lasting results with especial emphasis on those features which seem to anticipate the cabinet system of government.

Charles I had ruled without a parliament from 1629 to 1640, in which year he was forced to call upon the representatives of the nation for funds to finance the war with Scotland. This assembly was composed of a majority led by such reformers

as John Pym and John Hampden. They were successful in exacting several constitutional reforms from the King. These included: (1) a triennial act calling for meetings of Parliament at least once in three years; (2) an act preventing the dissolution of this Parliament without its own consent; (3) an act abolishing the prerogative courts such as the Court of Requests, the Court of Star Chamber, the Court of High Commission, and the Councils of the North and of Wales and limiting the appellate jurisdiction of the Privy Council to cases originating outside of England; (4) another act abolishing Ship Money and other extra-legal exactions; and (5) an act basing judges' tenure on the bench on the principle of good behavior rather than the royal pleasure.[1]

Thus several modifications in the constitution had been realized before the onset of the Puritan Revolution. Hostilities commenced over the king's refusal to agree to the Militia Bill which was passed by the Commons as a result of an Irish insurrection. An Irish insurrection was one of the immediate incidents which brought on the English Civil War. Both the King and Parliament realized that if Ireland were to be held, the English militia would have to be mobilized. But if the control of the militia were to be in Charles' hands, there was the danger that he would first send it against the opposition elements in the Commons. Therefore, Parliament passed a bill placing the control of the militia in the hands

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[1] J. R. Tanner, English Constitutional Conflicts of the Seventeenth Century, 1603-1689 (Cambridge, 1928), pp. 96-99.

of Parliament itself. At this point, the common practices of the constitution were being violated by Parliament.

This militia bill was later included as a part of the Nineteen Propositions submitted to Charles, June 2, 1642. Parliament declared the bill to be law, even though the royal assent was not given. War was the result. During the ensuing five years the royalist forces, composed of the majority of the nobility and the landed gentry with their supporters, were eventually defeated by the Roundheads, composed of the majority of the Commons, the merchant class, the navy, the army, and the city of London.

In addition to the political and economic reasons why people gave their allegiance to one side or the other, there was the burning question of religion. From the days of the Elizabethan settlement, the religious beliefs and practices of England had tended toward a certain amount of doctrinal and ceremonial laxity amongst the clergy and laity. There had appeared the Puritans who wished to "purify" the Church of England and also the independent sects such as the Separatists, the Anabaptists, and, after the accession of a Scot to the English throne, the Presbyterians, who followed James I into England.

James I and especially Charles I, both of whom were Anglicans, favored a one-church state. Archbishop Laud, with the support of Charles, labored to restore ceremonial unity to the Church. This was to be done by restoring the full powers of the church hierarchy and by enforcing a rigid form of ritual. He was a man of a certain administrative capacity, but he seemed

to be lacking in his appreciation or understanding of anything approaching the intellectual side of life or religion. He was very persistent, making use of the judicial and executive organs of the state to secure his goal. He naturally stirred up a great deal of antipathy among the more liberal elements within and without the Church, the Scottish Presbyterians in particular.

Upon the assembling of the Long Parliament in 1640, there ensued attacks on the king's ministers, including Laud, who was impeached and imprisoned in the tower. After the signing of the Solemn League and Covenant in 1643, his fate was sealed; January 10, 1644, he was beheaded.[1]

If anti-Laudianism could be called Puritanism, then the statement that the nation was "one in its Puritanism" would be true.[2] When armed revolt against the King commenced, the supporters of the established church were found on the Royalist side, and the Puritans and the sectarians were found to be on the Parliamentary side.

In the early days of the fighting, the Cavaliers had the best of it. Their men were used to life in the saddle and had the fighting spirit and esprit de corps of a class that knew for what it was fighting and knew how to fight, were accustomed to lead, and were skilled in the use of arms. The Roundheads at first were a motley host of untrained recruits

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[1] F. C. Montague, The History of England from the Accession of James I to the Restoration (1603-1660), Vol. VII of The Political History of England, eds. W. Hunt and R. I. Poole (12 vols.; London, 1905-1929), pp. 305-06.

[2] Tanner, Constitutional Conflicts, p. 100.

with no great notion as to what they were really fighting for.

Time was on the side of the Parliamentary forces. They had the monied class behind them, they had control of the seas, and they were to develop leaders of outstanding ability-men who knew how to win battles and how to instill in their men the spirit of crusade. On the other hand, the Cavaliers were led by the king, who was reluctant to seek and use the advice of others, and by military leaders such as Prince Rupert, who fought for the principle of royal absolutism.

The First Civil War came to an end with the battle of Stowe-on-the-Wold, March 26, 1646. Six weeks later, the King surrendered himself to the Scots, who in turn transferred him into the hands of the English Parliament, January 30, 1647. The victors were now left with the task of deciding upon a settlement of the political, social, religious, and economic structure of the kingdom. The magnitude of the undertaking was enhanced by the very nature of the coalition which had been formed to wage the war. In order to obtain the aid of the Scots in the war against Charles, the English Parliament had submitted to and had signed the Solemn League and Covenant in 1643. By this agreement, in return for Scottish military assistance, the Long Parliament was to inaugurate the Presbyterian system of church government. This brought a foreign element upon the scene, which only compounded the difficulties in the years to come.

There were two main forces contending for pre-eminence: the army and Parliament. The entire interregnum was to be plagued by the struggle for power between these

two elements. Further complicating the picture, however, were the presence of three politico-religious factions: on the right were the conservatives, the Presbyterians; in the center were the Independents led by Cromwell; and on the left were the Sectaries led by John Lilburne.

The Presbyterians in 1647 were no longer in control of the army, but they still retained a majority in Parliament; a majority which was enlarged by the support of the Erastians. The English Presbyterians differed from the Scottish in that the former favored more strict state control over the church--they were "tainted with Erastianism". The Presbyterians were supported by the conservative elements in the Roundhead camp - the aristocracy and the wealthy merchants. They wanted to keep the monarchy, having stripped it of its power, because it would serve as a restraining factor in preventing any further revolution of a social nature. Private property with all of its rights was very dear to their hearts.[1]

The faction representing the other extreme was the party of the Sectaries, decendants of the Separatists and the Anabaptists. However, they in turn were divided amongst themselves into two main branches. One advocated quite advanced principles of democracy, such as complete separation of church and state, and of complete personal liberty, mixed with a good deal of economic equalitarianism. The other branch was not secularly minded; on the contrary, it advocated rule by the

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[1] A. S. P. Woodhouse, Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents (Chicago, 1951), p. (15).

Saints, in the name of Jesus Christ. These were the men of the Fifth Monarchy.[1]

In the center was found the bulk of the army officers and a minority of Parliament -- the Independents. They were generally reformed Presbyterians who wanted a settlement of the affairs of the nation along lines as traditional as possible. In 1647, they were still in favor of retaining the monarchy, albeit a limited one. They distrusted the Presbyterians and also the power of Parliament, feeling that a true and a just settlement would not be possible unless it were based upon the principles of religious toleration, representative government, government by law, and the respect for private property. The Independents were opposed to the Presbyterians and the Parliament, which was showing definite signs of being unrepresentative and corrupt. The feeling was that if "new presbyter was but old priest writ large, new Parliament also bore a striking resemblance to old King."[2]

Thus the year 1647 found the English nation honeycombed by faction. The ancient constitution was on the brink of ruin, and the so-called victors were seemingly hopelessly divided among themselves. The first proposals for a solution were to be offered by the Council of the Army, on August 1, 1647, under the authorship of the Independent, Henry Ireton.

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[1] Woodhouse, Puritanism and Liberty, p. (18).

[2] Ibid., p. (17).

CHAPTER II

PRE-COMMONWEALTH PLANS OF SETTLEMENT

The close of the First Civil War found the victors divided among themselves into two factions: the army and the Long Parliament. The former held the actual power of the nation in its hands, while the latter claimed to be the legally constituted governing body. One aspect of the struggle, therefore, was military versus civilian control of the settlement. Was the army to be a tool of Parliament or was it to be a coordinate body with an equal, if not decisive voice, in arriving at a new order of things? The flames of dispute were fanned by the religious differences between the two. Parliament was still in the hands of a small Presbyterian majority, while the army was consistently led by Independents.

At first Parliament took the initiative, not by offering a plan of settlement, but merely by continuing to govern as though there were no other possibility than rule by Parliament, both of the legislative and of the executive facets of government. It had been Parliament which had led the attack on Charles in 1640, it had raised the army in the first place, and it was Parliament which had effected the alliance with the Scots. It seemed only natural, then, to the members that Parliament should continue to rule.

The Presbyterian majority in the Long Parliament had

been steadily reduced during the last years of the war due to bye-elections to fill vacancies. Some of the leading figures of the succeeding decade obtained seats as Independents in this manner. Among them were such men as Robert Blake, the great admiral of the Dutch war 1652-1654; Charles Fleetwood, the military hero and son-in-law of Cromwell; Henry Ireton, who was to take the lead in proposing the Heads of the Proposals; and Algernon Sidney. All told, there were 235 "Recruiters" in Parliament by 1647. While the House of Commons was thus maintaining its numerical strength, the House of Lords was withering away. Most of the Lords had remained loyal to the king and others had died, so that by 1646 there were only twenty-eight members of the Lords. An attempt to readmit the Royalist members upon the payment of a fine was not allowed by the Commons, who prevented it by means of an Ordinance.[1]

With the cessation of hostilities, the most urgent demand of the country was for a reduction in taxation. During the war, Parliament had successfully exacted from the people under its jurisdiction more in taxes than Charles had been able to coerce them to pay during the height of his personal power. The ancient ad valorem charges on real estate and movables had declined in value under Elizabeth I to the point where the crown was forced to turn to extra-legal sources, such as Ship Money, if it were to continue to "live of its

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[1] The Parliamentary Ordinance is an interesting topic which will be treated later. Tanner, Constitutional Conflicts, pp. 134-35.

own." After war began, Parliament revised the tax structure, bringing it more into tune with the increased wealth of the nation. The amount to be collected each month under the New Assessment was determined by Parliament, according to the needs of the day. The individual assessments were drawn up by the County Committees.[1]

Now that the war was over, there was a natural desire for the increased levies to be terminated, but this was no easy thing to do. The vast bulk of the war-time revenue had gone to support the army, thus a tax reduction would necessarily mean a reduction in the size of the army. Thus Parliament was presented with an excuse by which it could reduce the army. It was proposed that the infantry should be disbanded on the national level, but that the cavalry should be maintained at nearly full strength, since cavalry without infantry would not be able to be used as an affective fighting force, thereby assuring the safety of Parliament.[2]

It was to be expected that the army would not look with favor upon any move to reduce or to eliminate all or part of its establishment. There was another major reason for a falling out between Parliament and the army -- the religious question. The army, led by the Independents, was not pleased with the efforts of Parliament to fulfill the obligation undertaken with the signing of the Solemn League and Covenant. In

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[1] George Macaulay Trevelyan, England under the Stuarts, Vol. V of A History of England, ed. Sir Charles Oman (8 vols.; New York, 1904-1938), p. 242. Edition of 1938 was used.

[2] Samuel R. Gardiner, History of the Great Civil War: 1642-1649 (4 vols.; London, 1893), III, 216-17.

spite of the desire of Cromwell to try to reach an understanding with the Parliament, the army was becoming more hostile. A definite parting of the ways came when Parliament tried to remodel in its own interest the City trainbands, which were a formidable force of 18,000 men, and when it was accused of secretly conniving to bring the Scottish army into England to overawe the new model.[1]

The army began to prepare itself for the political struggle ahead by organizing a political unit to serve as the mouthpiece for the vox militaris. The officers had organized themselves into a Council of War and the men in the ranks had created the Council of Agitators, but now they combined forces to form the Grand Council of the Army. In June of 1647, the vox militaris was expressed in a document entitled The Declaration of the Army. This statement of the political views of the military was later embodied in the plan entitled The Heads of the Proposals. Henry Ireton had drawn up the proposals and after tentatively submitting them to the King on August 1, 1647, they were amended by the Council of the Army.[2]

The Heads were unlike anything else in the long course of the English constitution. Their very uniqueness is certainly one reason why they were never accepted and tried in action. The army hoped to achieve three objectives by

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[1] Tanner, Constitutional Conflicts, p. 143.

[2] Samuel R. Gardiner (ed.), The Constitutional Documents of the Puritan Revolution, 1625-1660 (3d ed.; Oxford, 1906), p. xiv.

means of this scheme. One was to reduce the ancient powers of the crown, a second was to make Parliament more representative of the constituencies, and the third was to provide for more individual freedom with a reduction in the power of the state over the individual person.[1]

The provisions of this constitution may be divided into seven main groupings for the purpose of discussion. The original document as found in the Historical Collections of John Rushworth[2] contains sixteen articles and closes with an additional five articles of recommended legislation to enact the preceding provisions. The first group provided for biennial Parliaments and for the redistribution of seats by the elimination of rotten boroughs. Parliament was to sit for at least 120 days before the king could dissolve it. If there were no dissolution or adjournment after 240 days of session, the dissolution was to be automatic. The king would still be free to call extraordinary sessions up to seventy days before the next biennial session, but no extra session could extend beyond a period of sixty days prior to the next regular session.

The paragraph specifying the redistribution of the seats in the Commons was rather vaguely worded. No definite provisions were set forth, but rather the principles upon which such a redistribution should be based. These principles included both quantity and quality: population and amount of

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[1] Gardiner, Constitutional Documents, p. xlvi.

[2] Ibid., p. 316.

tax revenue derived from the respective districts. A balance should be struck so that there would be an equality of representation for counties with equal populations, and also for those paying equal amounts of taxation. The boroughs with a reduced population were to lose seats, while the new centers of population were to be given additional representation.[1]

By making the Commons a more representative body and thus closer to the electorate, the fear of its arbitrariness was lessened. On the other hand, it was to retain, at least temporarily, the control over that body which had been one of the immediate causes of the war -- the militia. The militia, including both the land and the sea forces, was to be completely in the power of both houses of Parliament for a period of ten years. Neither Charles I nor any successor could exercise any control whatsoever over it during that span. Thus the army was willing to remain under the jurisdiction of Parliament, as it had been throughout the war.[2]

The remaining provisions of the second article concerned other employees of the state. It would seem only natural that a certain amount of distrust and resentment towards the old Royalists would be evinced by the victors. All those who had borne arms against Parliament were not to be allowed to hold any public office for the space of five years without the express consent of Parliament or of the Council of State. In addition, such subjects were barred

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[1] Gardiner, Constitutional Documents, pp. 316-17.

[2] Ibid., pp. 318-19.

from membership in either House until after the termination of the second biennial Parliament.[1] In addition, the appointments of the officers of state were to be made by Parliament for a period of ten years, after which time they would nominate three men and the king would choose one.[2] Beyond this, no restrictions seem to have been placed on the royal right of appointment to office.

Another important group of provisions dealt with the organization of a Council of State, which was to assume certain powers in the place of the king, for a period of seven years. The members of the Council were to be "trusty and able" individuals who were to hold office for the entire period of seven years. This Council was to have two principal functions. One was to govern the militia as established by Parliament in both England and Ireland. The other function concerned the conduct of foreign relations: "That the same Council may have power as the King's Privy Council, for and in all foreign negotiations. . . ."[3] Thus a further rein was placed on the royal prerogative.

Article V contains provisions designed to check the Royalists. All peers created after the twenty-first of May, 1642, were not allowed to take their seats in the House of Lords without the prior consent of both Houses.[4] This provision naturally was designed to limit the king's freedom of choice

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[1] Gardiner, Constitutional Documents, p 319.

[2] Ibid., p. 320.

[3] Ibid., p. 320.

[4] Ibid., p. 320.

in picking new peers and it would prevent him from packing the Lords with his own favorites.

Article VII declared null and void all acts, grants, et cetera, which were made under the Great Seal after it had been taken away by the King. Only those acts passed under the Great Seal with the concurrence of both Houses of Parliament were to be considered valid. And Article VIII provided for the confirmation of the various treaties that had been entered into by England and Scotland.[1] The Solemn League and Covenant was expressly excepted from this provision in Article XIII. It was only natural to expect that the Independent army would not wish to have the Presbyterian system established in England; especially would this be true since the falling out between the army and the Parliament.

The desire of the Council of the army to provide a greater amount of personal freedom and the Independents' desire for religious toleration were indicated in Articles XI through XIII. By Article XI, all coercive power was removed from the hands of the Bishops and other ecclesiastical officials. The Church of England was expressly denied the right to impose any civil penalties upon anyone for any reason. In addition, all civil magistrates are forbidden to use their coercive powers to obtain any ecclesiastical ends. All laws which had been passed to this effect were to be automatically repealed.

In the same vein, Article XII provided for the repeal

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[1] Gardiner, Constitutional Documents, p. 321.

of all acts which would require the use of the Book of Common Prayer, or acts which required attendance at particular religious services, and acts which forbade attendance at other types of religious ceremonies. Since the army still was against toleration of Catholics, new legislation would have to be initiated to provide other means of ferreting out "Papists and Popish recusants", and to provide means of protecting the state from "Jesuits or priests."[1]

Considering that the necessary safeguards had been taken, Article XIV provided for the resumption of the monarchy on its ancient footing. "XIV. That (the things here before proposed being provided, for settling and securing the rights, liberties, peace and safety of the kingdom) His Majesty's person, his Queen, and royal issue, may be restored to a condition of safety, honour and freedom in this nation, without diminution to their personal rights, or further limitation to the exercise of the regal power than according to the particulars foregoing."[2]

By this plan of government the Grand Council of the army hoped that it had sufficiently restored the good aspects of the old, together with the necessary safeguards, which would prevent both the royal absolutism and personal government practiced by Charles I from 1629 to 1640, and the arbitrary rule by an unrepresentative Parliament. The Plan also showed that the army was not attempting to gain a favored position

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[1] Gardiner, Constitutional Documents, p. 321.

[2] Ibid., pp. 321-22.

in the state, but merely wanted to place itself in a position where it could only be used for the good of the constituencies.

In looking at this constitution, the question comes to mind: What effect did the plan have on the future English constitutional developments? Some of the provisions of the Heads anticipate future legislation and future constitutional practices; but this does not mean that the later developments were caused by the earlier. The provisions for the biennial sessions of Parliament do resemble those of the Triennial Act of 1694 and subsequent acts of that nature culminating in the present system of holding a Parliamentary election at least once in five years.

Another point of similarity can be seen in the articles calling for a redistribution of the seats of the House of Commons. Except for the redistribution of the seats during the Interregnum, it wasn't until 1832, with the passage of the Great Reform Bill, that this movement was partially successful. There was probably very little connection, however, between the promulgation of the Reform Bill and any developments of the Civil War era.

The principle of the cabinet system of government is anticipated in the organization and function of the Council of State. The inclusion of this council in the Heads and in the later constitutions of the period was probably due to the experience with the Committee of Both Kingdoms, a body composed of representatives of the English and Scottish Parliaments which served as an executive in commission. The newely proposed Council of State was to differ from the old Privy Council in

that the members of the latter body were appointed and dismissed at the royal pleasure and had the task of carrying out the royal will. The members of the Council of State, on the other hand, were to be named by Parliament in conjunction with the inauguration of the Heads and they were to keep their posts for the duration of the seven year term.

This body approximates the modern cabinet as regards the placing of the real administrative authority over certain areas in its hands with the king not allowed to interfere. Of course, in the present system the monarch is not forbidden by law to interfere; it is only that by custom he accedes to the will of the cabinet. Another point of difference would be that the Councilors were appointed for a fixed term, not even being removable by the Parliament. Today, a ministry lasts only as long as it can continue to command a majority in the House of Commons.

The religious settlement of the Heads also bore a likeness to the future. By restoring the bishops to their religious duties, but stripped of all power to exact obedience by coercive means, and by not enforcing the Covenant, the army was creating the conditions for a considerable amount of toleration. The people were to be spared from the persecution both by the bishops and by the presbyteries. This religious settlement anticipates the Toleration Act of 1689 both in its positive and its negative provisions. Neither was to allow any religious freedom to the Roman Catholics, nor for that matter were they allowed to take part in the ordinary functions of

government.[1]

In summary, the plan appears to have had very little direct effect on the constitutional developments in England.

This, then, was the army's solution to the dislocation of the realm after the close of the First Civil War; but it was to be an abortive one. Cromwell and Ireton had successfully pushed it through the Council of the Army, but in so doing the ire of the man in the ranks had been raised. The Heads had been submitted to Charles, but they were never to serve as a bargaining point. The King first decided to play up the dissension in the army and then he escaped from his prison at Hampton Court, fleeing to Carisbrooke from where he began to treat with the Scots.[2]

In spite of the increasing opposition to the scheme adopted by the Council of the Army, Cromwell and Ireton continued to wait upon the King for his acceptance. They even went to the lengths of incorporating certain modifications into the original text in order to make it more palatable to Charles. The King was convinced, however, that time was on his side and that, with the army divided and with the Scottish Presbyterians behind him, he could win the field and make peace on his own terms. The soldiers seem to have understood the King's motives better than the officers, which only seemed to increase the bitterness between the two.[3]

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[1] Tanner, Constitutional Conflicts, pp. 147-48.

[2] Ibid., pp. 148-49.

[3] Sir A. W. Ward, Sir G. W. Prothero, and Sir Stanley Leathes (eds.), The Cambridge Modern History, Vol.IV, The Thirty Years War (Cambridge, 1934), p. 345.

The men in the ranks of the army had developed the ideas of democracy to a much more advanced stage than had the officers. The members of the radical movement led by John Lilburne were called the Levellers. In substance, their goals could be summarized as universal suffrage, republicanism, and religious toleration. Unlike the officers, they believed also that the power of the sword should be used as a means to obtain their desired ends, which were certainly non-military in character.[1]

The political thought of the Levellers was very advanced for the time, anticipating the natural rights school of the later seventeenth and eighteenth centuries.[2] During the first years of the struggle between King and Parliament, the former had made use of Common Law doctrines. Here was found support for a vast, but indefinite royal prerogative, which Charles could always fall back upon for a moral justification. During the course of the war it was Parliament, more than the King, that was violating the age-old laws of the realm. Thus Parliament was forced to look elsewhere than to the Common Law for its justification. In consequence the concept of a fundamental law was devised. The fundamental law approaches the idea of the natural law in its theoretical ramifications. In speaking of the sectaries, Edwards, a Presbyterian minister and author of "Gangraena", says: "Though

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[1] Trevelyan, England under Stuarts, p. 283

[2] Theodore C. Pease, Leveller Movement, a Study in the History and Political Theory of the English Great Civil War (Washington, 1916).

the lawes and customes of a kingdom be never so plain and cleer against their wayes, yet they will not submit, but cry out for naturall rights derived from Adam and right reason."[1]

The central right upon which all of the others revolved for the Levellers was that of equality of all men. They specifically embraced the rights of "life, liberty and property, freedom of conscience and expression, and equality in political privilege".[2] Together with these principles they propounded a theory of sovereignty which had its culmination in the written constitution entitled The Agreement of the People. It was accepted as fundamental law that the government of England should be by law and not by men, which they felt to be the tendency at the time under the rule of Parliament, as it had been under the personal rule of Charles.[3]

The views of the Levellers were first embodied in a manifesto presented to the officers, October 18, 1647, by Lilburne: The Case of the Army truly stated. This document advocated manhood suffrage and implied by omission, that the monarchy and the House of Lords were to be abolished. The prosentation of these extreme views by the Agitators, as the representatives of the ranks were called, resulted in the men being sent back to their regiments on November 8. A week later, a mutiny broke out, but the officers successfully quashed it. Any future expression of army opinion was to

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[1] William Archibald Dunning, A History of Political Theories from Luther to Montesquieu (New York, 1938), p. 236.

[2] Dunning, Political Theories, p. 236

[3] McIlwain, High Court of Parliament, pp. 91-92.

come from the officers, and the latter abolished the Grand Council of the Army.[1]

While the Levellers were being disciplined by their superiors, the King was completing his negotiations with the Scots. On December 26, the two parties signed the Engagement. By this treaty, Charles promised to establish Presbyterianism in England for three years and to take measures to suppress the thought and activities of the various sects. For their part, the Scots agreed that no one should be punished for not acknowledging the Presbyterian system, as long as one did not join one of the sectarian movements.

War did not break out immediately, however. During the course of the next few months the old Royalists began to stir throughout the realm, but they were successfully put down by the army. Finally, on July 8, 1648, the Scottish army invaded England. This was to be the final test for the Independents and they won it in grand style. The battle of Preston, August 17 to 19, rivaling Marston Moor and Naseby in scope, witnessed the triumph of Independency over Presbyterianism.[2]

While Cromwell and the army were busily engaged fighting the Scots, Parliament was carrying on negotiations with the King. After the resumption of fighting in the summer of 1648, some of the Presbyterian members who had vacated their parliamentary seats during the quarrel with the army returned,

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[1] Tanner, Constitutional Conflicts, pp. 148-49.

[2] Ibid., p. 150.

thus once again assuring a Presbyterian majority in the Commons. Charles was always quick to offer to bargain, but he never was ready to make any concessions. The Treaty of Newport, as these negotiations were called, was never completed. After the disastrous defeat of the Scots at Preston, Charles looked to Ireland or Holland for assistance, but he would not compromise his position.[1]

The army was becoming ever more restless over the seeming futility of the negotiations with the King. The Council of Officers was swamped with petitions from both soldiers and civilians asking for some sort of definite action which would bring the war to a final conclusion. It was Ireton, Cromwell's son-in-law, who took the initiative and drew up the "Remonstrance of the Army." He indicated that any further negotiations with the King were senseless; both because of the personality of the King and his thorough belief in the "inalienable rights of the Crown," Charles would not be bound for long to any agreement of which he was not wholeheartedly in favor. Consequently, Ireton, insisted upon the "sovereignty of the People." No one, not even a king, he concluded, should be exempt from the laws and Charles Stuart should be tried and executed for his violations of the fundamental law.[2]

The Remonstrance was submitted to the Council of Officers under the presidency of Fairfax. The Council was

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[1] Samuel R. Gardiner, The First Two Stuarts and the Puritan Revolution: 1603-1660 (New York, 1898,) p. 158.

[2] Cambridge Modern History, IV, 253.

still not ready for any extreme action and decided to let negotiations with the King proceed. Whereas the negotiations had originally been between the King and the Parliament, the army was now to take part also. The officers had a list of conditions which they expected to be incorporated in any settlement, and they were determined that this settlement with Charles was to be final and definite. The officers, as well as the soldiers, were impatient for an ending of the crisis. The conditions laid down by the Council of Officers were largely taken from the Heads of the Proposals; however, the army was not to be disbanded until after the assembling of the first biennial parliament. The officers were still in a conciliatory mood, to the extent that they would consider making concessions to Charles; but the King still hoped to remedy his situation, so he rejected the officers terms outright. This was to be his last act as king; "By this refusal he practically signed his own death-warrant."[1]

Cromwell and Fairfax, with the other officers, were now ready to go along with the "Remonstrance of the Army" which Ireton had drawn up, and the document was sent to Parliament for its consideration. Even though the army was showing a new willingness to work with the Parliament, the latter was in no mood to reciprocate, delaying any consideration of the Remonstrance. Once the officers had decided that Charles must go, they were in no mood for any such delays and

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[1] Cambridge Modern History, IV, 353.

so they took the matter into their own hands. On December 1, a detachment went to Newport, took the King prisoner, and removed him to Hurst Castle, located on an island in the Needles. The following day, the army, still under the nominal leadership of Fairfax, moved into London. The struggle for supremacy between army and Parliament was soon to reach its climax.[1]

Although Cromwell was not yet the nominal leader of the army, he was the great military hero of the Civil War and was more and more to exercise the power which accompanied his popularity. It has been popular to accuse this man of an inordinate personal ambition to take the crown from Charles Stuart, only to place it upon his own head; in later years he did have such designs, but this was not the case in 1648. Right up until the failure of the final negotiations with the King, Oliver stood for a settlement as nearly in keeping with the old as was feasible. He maintained this position even against great opposition from his comrades in arms, upon whose support his own strength ultimately depended. But now Oliver decided that Charles was to go, and the Presbyterian Parliament with him.[2]

To the army only two methods of handling Parliament seemed to present themselves--dissolution or purgation. Before the officers had made up their minds, the decision was

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[1] Cambridge Modern History, IV, 354.

[2] Thomas Babington Macaulay, The History of England from the Accession of James II (5 vols.; New York, (N.D.), I, 123.

made for them by Colonel Thomas Pride. On December 6, he stationed his men at the various entrances to the House of Commons and turned back or arrested the obnoxious members. Before he was through, he had arrested forty-seven and turned back ninety-six. The seated remnant of the Long Parliament was to be known as the Rump, for obvious anatomical reasons.[1]

After the Purge, which was approved by Cromwell, the latter took his seat in Parliament and was received as a hero by the House. The government of England was now in the hands of an unrepresentative Parliament and the army. On January 6, 1649, Parliament passed an act creating a High Court of Justice to try the King, and the end, not only of Charles Stuart, but of the monarchy itself was fast approaching.

To assist the Rump in arriving at a settlement of the constitution for the new commonwealth, the army transmitted to Parliament a revised version of the original Agreement of the People, which Lilburne and the Levellers had first drawn up in the fall of 1647, based in turn on the Case of the Army truly stated. The Agreement was submitted, not as a finished product, but merely as a foundation upon which Parliament could begin its own work of preparing a constitution. G. B. Adams says that it is the first written constitution for a great state.[2]

In general, it can be said that the Agreement was based on the Heads of the Proposals, with the major exception

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[1] Montague, History of England, p. 345.

[2] Constitutional History, p. 324.

that all reference to the king has been deleted. This document, which was recorded by John Rushworth, the secretary to the Council of War, contains, in addition to the preamble, ten articles. The complete title tries to give the impression that this plan emanated from the collective will of the people of England: "An Agreement of the People of England, and the places therewith incorporated, for a secure and present peace, upon grounds of common right, freedom and safety."

The need for a new constitution, as outlined in the preamble, is because of the infrequent calling of parliament by the king, and because of the unrepresentative character of the parliaments once they were called. The redistribution of the seats of the House of Commons was included in all of the plans of reform during the Civil War and the Commonwealth. It is another practical indication of the belief in the popular government which was held by the men in the ranks--the Levellers--who had inspired the original Agreement.

The first article provided for the dissolution of the current Parliament by the end of April, 1649. There followed in the second article a county by county list of seat allotments for the counties and the "Boroughs, Towns and Parishes therein." The new parliament or "Representative" as it was formally styled, was not to excede four hundred members and was to consist of one house only; the House of Lords was not retained. The listing of the seat allotments included Wales, but the total of the assigned seats only added up to 356, so the provision was made that the first or second "Representative" could assign the remainder to those constituencies which

they judged to be unrepresented as time went on. Future Representatives were also granted the power to effect further redistribution of a moderate sort, if it were found in practice that some districts were "not competent alone to elect a representer."[1]

Very elaborate procedural arrangements for the elections were outlined in the third article. These elections were to be held every two years, on the first Thursday in May, by eleven in the morning. The Representative was to convene the second Thursday in the following June at Westminster, or any other place that might have been designated by a preceding Representative, or by the Council of State. Five rules according to which the elections were to be conducted were next defined. (1) Suffrage was limited to those who were assessed for the relief of the poor, or were householders who had resided in their district for the span of seven years. They must be twenty-one, except in elections for university seats, in which age is not specified. Anyone who had fought for or aided the Royalist cause during the War, however, was barred from participating in the elections for a period of seven years after the dissolution of the current Parliament. (2) Only those who actively supported the Roundhead cause were eligible for election to the first two Representatives, and those who were barred from voting because of aiding the Royalists were not allowed a seat for fourteen years. (3) Anyone who interfered with elections or anyone who voted illegally

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[1] Gardiner, Constitutional Documents, pp. 359-63.

was to pay a fine of fifty pounds or face imprisonment up to three months. (4) To prevent corruption and faction, no Councilor of State, army officer, or keeper or receiver of public funds could be elected to the Representative. (5) A committee was appointed to handle the arrangements whereby any constituency which was to elect three or more representatives would be subdivided into units so that no one meeting of the electors would elect more than three men. Details two pages long outlined the specific procedure for the conduct of the election meetings and the certification procedure.[1]

The fourth article provided that a quorum of 150 would be needed to pass any bills which would affect the people but that a quorum of sixty could carry on debate and pass preparatory resolutions. The succeeding article (5) provided for the appointment of the Council of State. Within twenty days after the convening of the first Representative, this body was to appoint the Council members who would hold office until ten days after the convening of the second Representative, unless this Representative wished to end their term earlier. During their term of office, the Councilors were to act according to whatever instructions or limitations the Representative might wish to issue.[2]

In addition to the regular biennial sessions of the Representative, the sixth article stipulated that the Council of State could call a special or extraordinary session which

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[1] Gardiner, Constitutional Documents, pp. 363-67.

[2] Ibid., p. 368.

could continue up to eighty days. No special session, however, could last beyond a period fifty days prior to a regular session.

The seventh article was a reverse of the fourth paragraph of the third article in that it prohibited any representative from holding any other public office during his term, except that of a Councilor of State.

By the eighth article, the Representative was declared to be the highest organ of authority within the government. It was given complete jurisdiction over all civil and judicial matters but is specifically denied any jurisdiction over things spiritual. After proclaiming the wide area of its power, the article proceeded to list six particulars over which the Representative had no authority. (1) The Representative was forbidden to force anyone into military service except to repel a foreign invader, or to put down rebellion; even then a person could be exempted if he could find a substitute to replace him. (2) The future Representatives were barred from questioning anyone about his previous relations with the Royalists except according to the laws of the current House of Commons, although anyone who had been in receipt of public funds would continue to remain liable for them. (3) The Representative could not declare to be null and void any debts legally entered into by the preceding Parliaments, although any gifts or other grants promised by a previous Parliament could be repudiated. (4) No laws enacted by a future Representative could grant anyone the privilege of being exempt from adhering to the terms of any contract, charter, or tenure to which they had given their

acceptance at one time. (5) By this fifth particular, the Representative was prohibited from judging a person for an act concerning which there was no law at the time the act was committed (no bill of attainder or ex post facto laws). However, this was not to interfere with the punishment of public servants who abused their public trust. And (6), certain "fundamental" rights were protected:

> That no Representative may in any wise render up, or give, or take away, any of the foundations of common right, liberty and safety contained in this Agreement, nor level men's estates, destroy property, or make all things common; and that, in all matters of such fundamental concernment, there shall be a liberty to particular members of the said Representatives to enter their dissents from the major vote. 1

This quotation shows that the views of the Levellers, who drew up the original Agreement of the People, had been modified by the officers on the question of private property. The Independents believed in the sanctity of private property, just as the Presbyterians and the Royalists did. This is another indication that the revolution was not to go beyond the political sphere. On this point, all in command of the situation agreed.

The ninth article contains four paragraphs. (1) The Christian religion was to be the established religion in the Commonwealth, but there was to be toleration for various beliefs with the exception, of course, of Catholics or any who profess "Popery or Prelacy". The Representative is to recommend a particular set of doctrines and ritual in order to make

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1 Gardiner, Constitutional Documents, pp. 368-69.

for harmony and truth. The clergy was to be paid from the public treasury. Of course, only those preachers who were acceptable to the Representative would be paid by the state. (2) No one was to be forced to adhere to the doctrines which the Representative has approved; conformity should be achieved by education, and by the truth which sound doctrine manifested. (3) All except those that believe in popery and prelacy were to have complete freedom of worship in public places, providing that the liberties of one group did not injure any other group. (4) All laws and ordinances which have previously been passed, and that were not in accord with the liberties recited in this article, were declared to be null and void.

The tenth article contained a very interesting and unique provision. Certain portions of the Agreement were declared to be Fundamental Law and therefore unchangeable by any future Representative.[1] Among these were the provisions relating to the dissolution of the present Parliament, the redistribution of the seats, the holding of biennial Representatives, the qualifications for the seating and the electing of representatives, the duties of the Council of State, the calling of extraordinary sessions of the Representative, the religious liberties, and the tenth article itself.

Thus the constitutional settlement which the army had prepared did differ in some respects from that of the Heads, especially over such issues as that of the nature of the constitution itself and also over the provisions for the powers

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[1] Gardiner, Constitutional Documents, pp. 370-71.

and duties of the Council of State. The position of the Levellers on many of the issues, especially those concerning the religious settlement and the placing of the powers of the legislature within definite bounds, had been adopted. The legislature was to be the most important organ within the government, having been designed to be quite representative of the people. The position of the Independents on religious liberty had been adopted, as well as their position on the rights of private property. This was to be expected, for the officers came largely from middle class families--Cromwell's family were of the landed gentry.

The Council of State under the Heads was to serve for a seven year term and was to have complete jurisdiction over the military, and over foreign relations. In comparison, the Council, as defined by the Agreement, was very weak. It was the creature of the Representative and was to act only within limits laid down by the legislature. The Council of the Heads, as advisers of the crown, resembled the modern cabinet to a much greater extent than did the Council established by the Agreement. The latter was more a committee of the Representative than an executive branch of government. The modern cabinet is a committee of Parliament in essence, but it also is a servant of the Crown and has a wide discretionary authority. It is a committee of Parliament, but it leads the Parliament and is not led by it. If the latter situation arises, the cabinet falls, being replaced by one that can provide the

necessary leadership.[1]

This constitution was submitted to the Rump Parliament to be revised at a "convenient" time, but this "convenient" time never came. As a result, the government of England for the next four years was to be an indefinite balance between the Rump and the army, with the latter holding the ultimate power in its hands, naturally. Before this same month of January, 1649, was over, the King had been tried and executed, and England set out on a new tack for an eleven year interval.

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[1] Walter Bagehot, The English Constitution (Oxford, 1928), pp. 11-13.

CHAPTER III

GOVERNMENT OF THE COMMONWEALTH, 1649-1653.

While the army was concerning itself over the constitutional nature of the settlement, Parliament was proceeding with the preparation of a formal charge against the King, which could be presented before the High Court of Justice. The theory underlying this charge is of great constitutional significance, for the ancient doctrine that treason is a crime against the king is sidestepped and a new definition is presented. It is based on the principle that the people are the sovereign, not the king. The last two paragraphs of the charge, completed on January 20, contain these principles:

> All which wicked designs, wars, and evil practices of him, the said Charles Stuart, have been, and are carried on for the advancement and upholding of a personal interest of will, power, and pretended prerogative to himself and his family, against the public interest, common right, liberty, justice, and peace of the people of this nation, by and from whom he was entrusted as aforesaid.
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> By all which it appeareth that the said Charles Stuart hath been, and is the occasioner, author, and continuer of the said unnatural, cruel and bloody wars; and therein guilty of all the treasons, murders, rapines, burnings, spoils, desolations, damages and mischiefs to this nation, acted and committed in the said wars, or occasioned thereby. [1]

The verdict of the High Court was that Charles Stuart was guilty of treason and should be beheaded before the public. On January 30, 1649, this sentence was duly executed, and by

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[1] Gardiner, Constitutional Documents, pp. 373-74.

this act the regicides sealed their own fate, for the reaction in favor of monarchy began immediately. The public forgot its grievances against the man and put their faith once again in the institution of monarchy and the venerated rights of Englishmen with which it was entwined.[1]

Charles was more regal in his death scene than he had been as a ruler. His last remarks outlined his personal position and also, it seems, those of the vast majority of his subjects:

> Thus you see that I speak not for my own right alone, as I am your King, but also for the true liberty of all my subjects, which consists not in the power of government, but in living under such laws, such a government, as may give themselves the best assurance of their lives, and property of their goods. . . . Besides all this, the peace of the kingdom is not the least in my thoughts; and what hope of settlement is there, so long as power reigns without rule or law, changing the whole frame of that government under which this kingdom hath flourished for many hundred years? . . . and by this time it will be too sensibly evident, that the arms I took up were only to defend the fundamental laws of this kingdom against those who have supposed my power hath totally changed the ancient government. [2]

The irrevocable step had been taken and now as Cromwell had once said, instead of having Charles I as a captive they had Charles II on the loose in Scotland and France, where he could plot and work for the Restoration. The next few months were busy months for Parliament, for it had to pass a series of acts abolishing the monarchy, the House of Lords, creating the Council of State, and proclaiming the

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[1] Macaulay, History of England, I, 125.

[2] Gardiner, Constitutional Documents, pp. 375-76.

Commonwealth. The army was to be busy in securing its victory, already the Royalists were organizing revolts in Ireland and Scotland. Some of Cromwell's greatest victories were yet to come, together with the black name he was to earn in Ireland.

The next four years were to witness the culmination of the long struggle between the army and Parliament. Supposedly, since the Purge of the Long Parliament by Col. Pride, the two bodies were to work in harmony, but this was not to be the case for long. Vested interest and faction were to raise their ugly heads, especially among the members of the Rump. This remnant of the Long Parliament was the last vestige of the old constitution; government by King, Lords, and Commons had been reduced to government by Commons, or a remnant thereof, by the grace of the army.

The abolition of the monarchy, of course, was a much more drastic action than was the abolition of the House of Lords, for the entire government had been built around the former, while the latter had been in the process of losing much of its authority since the Wars of the Roses. But all of the changes were not in the political realm--the Church of England had been remodeled after the signing of the covenant in 1643. This had a marked affect on the life of the people, for in addition to the religious services performed by the church, it had levied a tax, the tithe; it had maintained the Court of High Commission, which was a prerogative court formed in the reign of Elizabeth I to enforce religious uniformity by whatever means it thought necessary; it had handled testamentary matters; and all matrimonial disputes

had been judged by the Church. The abolition of these functions left a void in some phases of administration which would have to be filled by other agencies.[1]

At the time it first assembled in 1640, the Long Parliament had a roster of 505 members in the Commons. By 1649, only 150 were left, and of this number only fifty were to be found in attendance at the House at any particular time. Yet, these fifty men were really the legal government of England, and because the act of 1641 was still in force, they could not be dissolved without their own consent. But who now had the right to dissolve a parliament, anyway? This Parliament was now no longer a representative body, and as time went on this became more and more evident, but what could be done? A free election was unthinkable because it would undoubtedly return a royalist house.[2]

In one respect, the death of the King served as a unifying factor; that is, the various factions lined up either for the Commonwealth or for the monarchy. Due to the fear of a royalist restoration, Parliament devised an oath which was to be taken by all members of the House, Councilors of State, all members of the armed forces, all judges and officials of the law courts, members of the Inns of Court, municipal officers and councilors, graduates and officers of the Universities, teachers at the Colleges of Eton, Winchester, and Westminster, and all beneficed clergy and clergy receiving state

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[1] Edward Jenks, The Constitutional Experiments of the Commonwealth. A Study of the Years 1649-1660 (Cambridge, 1890), pp. 7-9.

[2] Tanner, Constitutional Conflicts, p. 164.

funds. This oath was very simple: "I do declare and promise that I will be true and faithful to the Commonwealth of England as the same is now established, without a King or House of Lords."[1]

Many of those who subscribed to this oath did so reluctantly, and many others refused to take it. Among this latter group the Presbyterians were especially prominent.[2] It was the hope of the Commons that, if all connected with the government had to swear to their loyalty to that government and if only those who had not supported the Royalist cause had the franchise, the existing situation could be perpetuated and that even free elections could eventually be held.

A month before the Kingship and the House of Lords were actually abolished by Act of Parliament, the Council of State was created. This was on February 13, 1649. This Council was to consist of forty-one members, and of this number thirty-one also happened to be members of Parliament. This body was to have the executive authority over the military, and to have the responsibility for maintaining the peace and safety of the new regime.[3] In actual practice the Council had little real independence; it was really just a committee of Parliament.

In March, Parliament passed the acts by which the Monarchy and the House of Lords were abolished. Then on May 19 England was declared to be a Commonwealth:

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1 Samuel R. Gardiner, History of the Commonwealth and Protectorate: 1649-1660 (3d ed., 3 vols.; London, 1901), I, 196-97.

2 Henry Hallam, The Constitutional History of England from the Accession of Henry VII to the Death of George II (5th ed.; New York, 1847), p. 368.

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> Be it declared and enacted by this present Parliament, and by the authority of the same, that the people of England, and of all the dominions and territories thereunto belonging, are and shall be, and are hereby constituted, made, established, and confirmed, to be a Commonwealth and Free State, and shall from henceforth be governed as a Commonwealth and Free State by the supreme authority of this nation, the representatives of the people in Parliament, and by such as they shall appoint and constitute as officers and ministers under them for the good of the people, and that without any King or House of Lords. [1]

The executive functions of government were now exercised by Parliament and its creature, the Council of State. In order to facilitate the day by day administration of the executive, Parliament had to devise a method of procedure. The answer was the establishment of the committee system. Standing committees were formed to deal with such matters as the following: "advance of money, sequestrations, compounding, plundered ministers, indemnity, sale of crown lands, army, mint, revenue, accounts, obstructions, Whitehall. . . . " The division of Parliament into committees was nothing new, but the use of Parliamentary committees for executive purposes was a procedure which had been used only in revolutionary times, until the seventeenth century.[2]

Professor McIlwain has said that Parliament has evolved through three stages in its long development. The first stage found Parliament as a court, a body which declared what was the law. In its second stage, it became a law-making body, and in the third stage it is a government-

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[1] Gardiner, Constitutional Documents, p. 388.

[2] Jenks, Constitutional Experiments, pp. 11-12.

making body. He has said that the developments of the seventeenth century definitely saw the shift from the first to the second stage. That was to be one of the lasting achievements of the twenty years of revolution. The government-making stage was not to come for another century. This aspect of the Long Parliament's authority was to be swept away with the Restoration.

McIlwain has also pointed out that the new spirit in political theory was the principle of "legislative sovereignty" rather than the "supremacy of law". Both Royalists and Parliamentarians were now agreed that law could be made afresh, but they differed as to whom they considered to be the just legislator. The Royalists felt the King was the supreme law maker, while the Parliamentarians felt that Parliament was the supreme legislator. But both sides now agreed with Hobbes: "It is not wisdom, but authority that makes a law."[1]

This turning away from the Common Law, as was indicated earlier, occurred even though both sides in the struggle were able to use it to their own advantage in the period of the first year and a half of the Long Parliament. The Commons had looked to the great documents of the past, such as Magna Carta, and found a legal support for their charges against the King's usurpation. After Parliament had violated the Constitution by declaring the Militia Bill to be law without the royal assent, the King was able to make use of the Common Law to prove that the Parliament, not he, was the transgressor.

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[1] McIlwain, High Court, pp. 93-95.

The Levellers were against the maintenance of the Common Law, not only because the political but also much of the economic and social systems of the nation were grounded upon it, and they were for a complete change in all of these spheres.[1]

This new theory and practice of Parliamentary sovereignty can be witnessed in the first days of the Long Parliament--in 1641. Until the calling of this body, the term "Ordinance" had generally stood for an act or a declaration by the king without the concurrence of Parliament. They were to have the force of law just as any act of Parliament, for the law was to be declared and the king could do it either in or out of Parliament. In August, 1641, the "House caught at the idea" and passed an "Ordinance" which was declared to be a law without the royal assent. The first few times that this device was used the matter at hand was relatively unimportant, so no great controversy arose over it. But the next year, Parliament used it to give the Militia Bill the force of law--Civil War was the result.[2]

This new sovereign authority--the Parliament--took all matters into its own hands. The Council of State, which it had created, was to be a very weak executive. The powers which were delegated to it were strictly defined each year when a new Council was appointed. Even though the Council was reconstituted annually, the same members were generally returned, and the practice came to be that the office of the

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[1] McIlwain, High Court, p. 93.

[2] C. H. Firth and R. S. Rait, Acts and Ordinances of the Interregnum: 1642-1660 (3 vols.; London, 1911), III, xiii, xv.

President of the Council was retained each year by the same man. This same procedure was happening in the other Parliamentary committees as well. The custom was in violation of the rule forbidding perpetual chairmen, so Parliament had to pass an act expressly forbidding the Presidents of the Council to serve in that capacity for more than one year.

The Council could take little or no independent action; it had to report all of its activities regularly and in detail to the House. On two counts then, this Council differed from the modern cabinet: it did not control the various executive and administrative departments of the government as the modern cabinet does, and it could not dissolve Parliament and appeal to the electorate.[1] Instead of providing the leadership in Parliament, it was a tool of the House. However, since most of the members of the Council were amongst the most influential members of Parliament there was undoubtedly some indirect influence by the former over the latter.

As Parliament was divided into a host of committees to facilitate its work, so was the Council of State. It had subdivided itself into no less than eighty sub-committees, each of which was responsible for a particular phase of the Council's work. The Council as a whole was largely a deliberative body, as was Parliament itself. It resembled the Scottish Lords of the Articles, which was a committee of the Scottish Parliament in charge of administration.

The one great problem of Parliament during the first

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[1] Jenks, Constitutional Experiments, pp. 33-34.

years after its commencement was that of defending itself against the remnants of the Royalist forces in Scotland and Ireland. Cromwell was sent to Ireland to subdue the forces under Ormond and Fairfax went to Scotland. The "barbaric" manner in which Cromwell treated the inhabitants of Drogheda won for him the undying hatred of the Irish, even to this day. After completing the subjection of Ireland, he returned to England, thence hastening to Scotland to complete the work there. The young King Charles II had been proclaimed in Scotland, where he arrived from exile in France in 1650. He had taken the Covenant and thereby had obtained the aid of the Presbyterians in both England and Scotland. His lack of good faith was to be demonstrated later.[1]

These wars in Ireland and Scotland were costly. To raise the necessary revenue, three taxes were levied by Parliament, of which two were destined to be a part of the modern tax structure. These taxes had first been levied by Parliament during the period of the first Civil War, and were retained after the establishment of the Commonwealth. The first of these was a monthly "assessment" on income and property, "based upon a calculation of the highest return ever made for a subsidy". This was a very lucrative tax. The second tax was the "Weekly Meal Tax", which was the price of one meal per week to be paid by every adult. This produced an income of 100,000 pounds a year for six years. The third levy was an excise tax, or the "New Impost." This was

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[1] Gardiner, First Stuarts, p. 164.

a very unpopular measure, being considered a violation of the home, but it was very profitable and was retained.[1]

On the average, the Commonwealth was much more successful in raising revenue than the crown had ever been; especially was this true during the Wars themselves.

The Commonwealth and its rule by an unrepresentative Parliament met with firm opposition from three sides, from the moment of its inception. In opposition there were the Royalists, the Presbyterians, and the Levellers. Naturally, the Royalists had not reconciled themselves to the "regicides" and were waiting for the day when they could tear down the Commonwealth and restore the old constitution. In England itself, the Royalists lay low throughout most of the interregnum, but they did have the use of the printing press. Within ten days of the king's execution, the pamphlet Eikon Basilike was published. This pamphlet was written by a Dr. Gauden, who later was to be Bishop of Exeter, but most readers believed that it contained the thought, if not the words, of their young King. ". . . it was admirably adapted for creating and maintaining the pious legend of the martyr-King, who in the hour of supreme trial prayed for the foregiveness of his persecutors."

Other pamphlets were to follow the Eikon. One of them contained the last will and testament of Oliver Cromwell:

> In the name of Pluto, Amen; I, Noll Cromwell, alias the Town Bull of Eli, Lord Chief Govenor of Ireland, Grand Plotter and Contriver of all Mischiefs in England, Lord

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[1] Jenks, Constitutional Experiments, p. 42.

> of Misrule, Knight of the Order of Regicides, Thieftenant-General of the Rebels at Westminster, Duke of Devilishness, Ensign of Evil, Scoutmaster-General to his Infernal Majesty, being wickedly disposed of mind, of abhorred memory, do make this my last Will and Testament in manner and form following. [1]

The Royalists were to find an ally, of sorts, in the second great opposition party--the Presbyterians. The strength of this party was largely based on the middle class. Thus its greatest centers of power were London, Lancashire, and the larger towns generally. Another stronghold of the Presbyterians was the beneficed clergy, whose ranks they infiltrated after the ejection of the Episcopalian clergy, who refused to take the Covenant in 1643. The English Presbyterians, unlike their Scottish brothers, did not come out wholeheartedly for a restoration of the Stuarts. In England, the monarchy meant Episcopalianism, and after all, the Presbyterians still hoped that their form of church government should prevail.

There were also political differences between the two. While the Royalists wanted the pre-War constitution restored, the Presbyterians favored a restoration along the lines of the later wartime negotiations. The Royalists too had good reasons to be cool toward the Presbyterians. As one Royalist said of the Presbyterians: "The Independents cut off the King's head, but it was the Presbyterians who brought him to the block." [2]

On the opposite end of the political scale were to be

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[1] Tanner, Constitutional Conflicts, pp. 158-9.

[2] Ibid., pp. 157-8.

found the Levellers and "the fanatics of army democracy." Among the "fanatics" were the Diggers led by Gerrard Winstanley,[1] who were in favor of a communistic state, and the Fifth Monarchy men who favored the creation of an assembly elected by the congregations, "in order that the reign of Christ and his saints upon earth might at once begin." The first four monarchies in their reckoning were the Assyrian, the Persian, the Macedonian, the Roman, and now the Saints.

The real danger to the Commonwealth did not come from these extremist factions, however, but from the Levellers under John Lilburne. They believed that the government should be based on the will of the people, as expressed through their representatives in Parliament. This notion was considered dangerous by Parliament because it certainly was no longer a representative body. Indeed, Parliament was closer to the notion of the Fifth Monarchists, that the "good and religious men had a right to rule the evil and irreligious. . . ." Lilburne's opinions were given expression in the pamphlet England's New Chains Discovered, which he presented to Parliament within a month of the king's execution. He attacked the Council of State as a body which tended to remove the seat of power away from the voters, and he also felt that the Parliament should be in continuous session so as to keep its eye on the Council and on the other Parliamentary committees.[2]

The program of the Levellers was supported by a very

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[1] Lewis H. Berens, The Digger Movement in the Days of the Commonwealth (London, 1906), p. 176.

[2] Tanner, Constitutional Conflicts, pp. 159-60.

large segment of the soldiers in the ranks, and their discontent was not solely with Parliament. The Levellers were attempting to revive the defunct Council of the Army by restoring the Agitators to their position of equality with the Council of Officers, which position was ended after the dispute over the Heads of the Proposals. The attacks of the Levellers were aimed in particular at Cromwell, who by this time was the real leader of the Army. They despised the high-handed manner in which he treated the opinions of men. "You shall scarce speak to Cromwell about anything but he will lay his hand on his breast, elevate his eyes, and call God to record. He will weep, howl, and repent, even while he doth smite you under the fifth rib."[1]

The various attacks on the government by Parliament made it necessary for that body to take steps to defend itself. Perhaps the most significant of these was the one which outlined the new meaning of treason. Since the reign of Edward III (1327-1377), treason had been defined as a crime against the King. This general definition was of course occasionally modified and defined more specifically during the succeeding centuries. For example in the reign of Henry VIII, after the Act of Supremacy had made the king the head of the Church, to declare the King a heretic, a schismatic, etc., was considered to be treason.[2] Where at first the crime was in the nature of a personal offense against the king, it thus grad-

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[1] Tanner, Constitutional Conflicts, pp. 161.

[2] J. R. Tanner, Tudor Constitutional Documents: A. D. 1485-1603, with an Historical Commentary (Cambridge, 1922), p. 379.

ually took on a more political aspect. But, the basis of the crime of treason was still that of a deed against the king, either in his person or in his institutions. The charge of treason which was levied against the king in 1649 was one which was not based on law. In no way could the king be guilty of a crime against himself, while his own courts could not proceed against him if he were guilty of such a crime.[1]

Obviously this definition was of no benefit to a government without a king; therefore, July 17, 1649, Parliament passed "An Act Declaring What Offences Shall Be Adjudged Treason." It said:

> . . . that if any person shall maliciously or advisedly publish, by writing, printing, or openly declaring, that the said Government is tyrannical, usurped, or unlawful; or that the Commons in Parliament assembled are not the supreme authority of this nation; or shall plot, connive, or endeavour to stir up, or raise force against the present Government, or for the subversion or alteration of the same, and shall declare the same by any open deed, that then every such offence shall be taken, deemed, and adjudged by authority of this Parliament to be high treason.

It was also treasonous to stir up revolt in the army, which crime was traditionally treasonous. By this act it was also declared to be treason for a non-military person to foment mutiny in the ranks.[2]

In addition to the new definition of treason, Parliament passed an act, September 20, 1649, which provided for the censorship of the press. "No 'book or pamphlet, treatise, sheet or sheets of news' was to be published without a licence."

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[1] Sir David Lindsay Keir, The Constitutional History of Modern Britain: 1485-1937 (3d ed.; London, 1948), pp. 104-06.

[2] Gardiner, Constitutional Documents, pp. 388-91.

It was easier however to pass the law than it was to enforce it, for the Royalist's and the other anti-Commonwealth papers were still being circulated. The era of the Commonwealth was really experiencing its own version of the Tractarian Movement. Both sides resorted to the pen, John Milton being one of the leading writers in the defence of the new regime.[1]

This measure was to be followed in January, 1650, by an act previously discussed, which required all men over eighteen to swear to their loyalty to the regime. The law courts were to refuse justice to all who refused to take this engagement. In March there was to be a revival of a "Court of Star Chamber", the High Court of Justice, which was to judge, without a jury, all charges of treason against the Commonwealth. This Court was to consist of sixty-four members, of which at first only three were lawyers.[2]

In the first days of the Commonwealth, the principal opposition came from the Presbyterians, the Royalists, the Levellers, and the sectaries. Within the space of a year, however, Parliament was to be confronted with a new and vastly more formidable foe--the army itself. It had been assumed by the leaders of the army that, shortly after the commencement of the Commonwealth, there would be an election. Now time was slipping by and no election was in the offing. Because of the press of the Irish and Scottish wars, the army was preoccupied elsewhere, but by the end of 1650 and the first part

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[1] Gardiner, Commonwealth and Protectorate, I, 193-95.

[2] Tanner, Constitutional Conflicts, p. 162.

of 1651, their interest was again focussed on the domestic scene. By this time Cromwell, who was interested in politics and reform, had become Captain-General and Commander-in-Chief of all of the armed forces in the Commonwealth (July 26, 1650). Regardless of the personal characteristics of the individual members of Parliament, they could not claim that they were necessarily the true representatives of the people, for they had been elected in 1640. As usually happens to a group long entrenched in power, they were accused of corruption, nepotism, and general incompetency. Cromwell was quoted as attacking the "pride and ambition and self-seeking" of the members, which mirrored the opinion not only of the officers, but of the army and the country as well.

This discontent with Parliament was compounded by the fact that it could continue to sit indefinitely, the act of 1641 forbidding its dissolution without its own consent still being in force. Ever since the establishment of the Commonwealth, the Parliament had been receiving petitions demanding that it dissolve and call for new elections. After much debate, on November 14, 1651, the House resolved that the Parliament should come to an end on November 3, 1654. This resolution did little to mollify the army or the Republicans.[1]

There were other concessions which the army wanted from the Parliament in addition to the latter's dissolution. August 2, 1652, the Council of Officers presented a petition

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[1] G. Barnett Smith, History of the English Parliament together with an Account of the Parliaments of Scotland and Ireland (2 vols.; 2d ed.; London, 1894), I, 447.

to the House in which some specific reforms were requested. Among them were, the abolition of the tithe, a reform of the financial administration, the finding of work for the poor, and the payment of back wages to the army. The first Dutch war had broken out in the spring and Parliament was finding it difficult to make ends meet. The only additional source of income to which they now resorted was the further confiscation of Royalist estates, but this was like living off capital--it could not go on forever.[1] The officer's petition found a cool reception from the Commons, and little or no action of a positive nature was taken on it. A crisis was fast approaching whereby either the army or Parliament would take drastic steps.

During the winter of 1653, while Cromwell was preoccupied with the peace negotiations with the Dutch, the Council of Officers had come to the decision that they would, forcibly if necessary, disband Parliament. Cromwell's native conservatism manifested itself again and he dissuaded the officers from any precipitate action. Parliament on its part was becoming resentful of Cromwell's attitude concerning peace with the Dutch. He was anxious for a treaty and personally carried on the negotiations, leaving Parliament with no recourse but to accept his work or openly repudiate him, which would have been extremely dangerous. Parliament, however, did go to the length of calling upon Generals Fairfax and

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[1] Montague, History of England, pp. 393, 395.

Lambert to solicit their opinions on the possibility of replacing Cromwell. Fairfax would have no part in the affair, but Lambert did attempt to approach Cromwell, who refused to see him, having heard of the nature of his mission.[1]

In January, 1653, the Council of Officers and the Council of State agreed that a new Parliament should be elected, but the problem was how to reconcile the desire for a representative Parliament with the desire to maintain the Commonwealth. It was clear to all that a free election would return a royalist House, a House which would restore the Stuarts and the Anglican Church. Cromwell himself, as late as December, 1651, favored a return to a monarchical form of government. It was believed by his friends that he meant with himself as king, because he said that any monarch should uphold the liberties of his people. It was assumed that no Stuart was capable of doing this. The longing for the old constitution was not alone to be found amongst the old Royalist party.

> The tendency thus revealed was by no means confined to Cromwell and his supporters. During the last half-century political thought--always in antagonism to existing forms of misgovernment--had been running in the direction of the establishment either of Parliamentary authority or of individual right. The effort to establish Parliamentary authority had bowed England under the power of the sword, and the effort to establish individual right had split the Church into a hundred sects. In most of those to whom such a state of affairs was shocking and who craved for the restitution of peaceful order, there was a revulsion of feeling in favor of the old monarchy. 2

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[1] Gardiner, Commonwealth and Protectorate, II, 190-91.

[2] Ibid., II, 3.

To insure the perpetuation of the Commonwealth and of themselves, Parliament devised an ingenious electoral scheme. On March 30, the House accepted the proposal that the county franchise be limited to those with two hundred pounds, in either real or personal property. Since the royalist estates had largely been confiscated, only a few wealthy pro-Commonwealth men in the counties would have the right to vote. On April 13, another safeguard was announced: no members could take their seats unless they were "such as are persons of known integrity, fearing God and not scandalous in their conversation." Next, the House decided that the new Parliament should consist of all the present members and that the new electoral laws should be used to fill the vacancies, so as to bring Parliament up to full strength--four hundred members.[1]

This Perpetuation Bill was too much for the officers, including Cromwell, who resumed his place in the House and spoke out in favor of a completely new Parliament. Sir Henry Vane and other members countered this by saying that it was time they got a new general. Major-General Harrison, who with Cromwell and Ireton was on the Council of State, suggested that a Parliament of "pious and virtuous men" replace the traditional elective Parliament for a time. Cromwell did not like to breach the old constitution any more than was necessary, but he found some favor with Harrison's scheme. It would provide an assembly of good men with no danger of their working to restore the Stuarts. It would not, however, meet the requirement

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[1] Gardiner, Commonwealth and Protectorate, II, 198-99.

of being a representative body.

When the House began to connive without the approval of its leaders to pass its Perpetuation Bill and to replace Cromwell by Fairfax, the former threw restraint to the winds, sending troops to eject Parliament by force on April 22, 1653. He attended the ejection himself and added a few words of reproof: "It's you that have forced me to this, for I have sought the Lord night and day, that he would rather slay me than put me on the doing of this work."[1]

The following day, the Council of State was dissolved, leaving no legal authority in the nation, only the de facto rule of the Council of Officers. The army considered its rule to be only a temporary expediency. The officers believed they were bound to establish a civil government to replace that which they had destroyed, which they did in June by calling the Little or Nominated or Barebone's Parliament. Within a week of the expulsion of the Long Parliament and the Council of State, a new Council of State was appointed. This body consisted of only thirteen persons, nine of whom were army officers; but the goal was to restore civil government. The new Parliament which was needed was to be composed of "Saints." But the selection of a Parliament of Saints can not be left to the whims of the electorate, so it was considered necessary to appoint the members of the new Parliament which would only be a temporary expediency at any rate. The principle underlying the calling of such an assembly was essentially based on the views of the Fifth Monarchists.

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[1] Gardiner, Commonwealth and Protectorate, II, 200-11.

To select the proper type of persons for the Parliament, each congregation was asked to recommend names to the Council of Officers, who in turn would make the final decisions. The new Parliament consisted of 140 representatives, of which number five were from Scotland and six from Ireland. This was the first Parliament to contain members from all three peoples of the British Isles. The military had brought about the union which the king had not been able to effect, and one which was not to be completed until the first year of the nineteenth century. This new Parliament which Cromwell called was, thus, a compromise between the desires for a representative body and a godly body. In a speech which he made to a Parliament of the Protectorate, he indicated his beliefs on this subject:

> Of the two greatest concernments that God hath in the world the one is that of religion and of the just preservation of the professors of it: to give them all due and just liberty, and to assert the truth of God . . . . The other thing cared for is the civil liberty and interest of the nation. Which though it is, and indeed I think ought to be, subordinate to a more peculiar interest of God, yet it is the next best God hath given men in this world; and if well cared for, it is better than any rock to fence men in their own interests. Then, if anyone whatsoever think the interest of Christians and the interest of the nation inconsistent or two different things, I wish my soul may never enter into their secrets. 1

This new Parliament met and for a time it did live up to its expectations, enacting several pieces of reform legislation. Among these one of the most significant was the abolition of the Court of Chancery, which Parliament charged with "dilatoriness, changeableness, and a faculty of bleeding the

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1 Tanner, Constitutional Conflicts, pp. 168-69.

people in the purse-vein." It seriously considered the abolition of the tithe; an attempt was made at the promulgation of a new law code; the judicial system was revised, non-lawyer commissioners were appointed to preside over the courts; civil marriage was authorized, a reform which was not to become permanent until the middle of the nineteenth century: and spiritual patronage was abolished.[1] There were also laws which anticipated the Blue Laws of the Protectorate--dueling was outlawed, and all oaths were abolished except the oath of loyalty to the Commonwealth.

It seemed impossible for Parliament not to make enemies, either for what it did or for what it did not do. The Little Parliament, by its legal and ecclesiastical reforms, had alienated the clergy and the legal profession. The end came when the full House rejected a report by one of its committees recommending that all preachers who received legal approval should continue to receive their income in the traditional manner--the tithe, which was to be guaranteed by the civil magistrates. The following day, December 12, 1653, the Speaker, and other Cromwell supporters in Parliament, decided on a dissolution. On the succeeding day, this was accomplished before all of the members were in attendance, the late comers being informed of the action taken by the House. Parliament presented Cromwell with its surrendered powers.[2]

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[1] Smith, History of Parliament, I, 452-53.

[2] Hallam, Constitutional History, p. 373.

With the dissolution of the Little Parliament, the last vestige of the old constitution was cast aside. To be sure, it had not been a Parliament elected in the traditional manner, but once called it tried to live within the traditions of a true Parliament as far as was possible under the novel circumstances of the times. This dissolution also marked the end of the transitional period between governments resting on a rather definite constitutional basis. From the beginning of the Civil War in 1642 until the implementation of the Instrument of Government of December, 1653, there had been no de jure government in terms of a definite constitution, only de facto governments. Indeed, the Instrument of Government and the Humble Petition and Advice which were to follow, were not de jure, either, in the long run. After all, time seems to be a leading factor in deciding on the legality of governmental institutions.

The four years since the execution of Charles Stuart had witnessed a constant duel between Parliament and the army, with the latter determined that the former should be a representative and a reforming body, which it was not. Parliament's first concern was always its own prerogative, and the army did its best to stay within its bounds of being merely an instrument of the civil authority. It also believed that, since it basically was the power behind the government, it should exercise that power against the enemies of the Commonwealth, even if that enemy were Parliament itself. The failure of the two elements to cooperate resulted in the promulgation of a written constitution, in which the exclusive rule of Parliament was to

be held in check. The ultimate doom of the Commonwealth was to be seen in the great conflict between its two basic principles: first of all it wanted to perpetuate itself, and secondly it wanted a representative government; yet the latter would have made the former impossible. A conservative, written, compromise, it was hoped, would provide the solution.

CHAPTER IV

THE PROTECTORATE, 1653-1659.

The Council of Officers had determined, long before Cromwell, that a new system of government was necessary. Even though the Little Parliament showed more desire for reform than the Long Parliament, still it was not a representative body, and there were no legal limits to its authority. The officers considered it a tyranny. Again they turned to a written constitution as the answer to their problems. To be sure, in 1649 they had submitted the *Agreement of the People* to Parliament, but when Parliament failed to adopt it, it died. This time the army was not going to give Parliament a chance to oppose it. The army was going to impose a written constitution upon the nation, and this constitution was going to place definite limits on the power of Parliament. "It was high time that some power should pass a decree upon the wavering humours of the people, and say to this nation, as the Almighty Himself said once to the unruly sea: 'Here shall be thy bounds; hitherto shalt thou come and no farther'."[1]

Before the officers could proceed with their plans, they of course had to win over the General--Cromwell. He

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[1] Tanner, *Constitutional Conflicts*, p. 176.

still was reluctant to move against the old system, or what tattered remnants of it there were left. Oliver even considered this Parliament, which he himself had created, as still wearing some of the mantle of legitimacy. It had been the officers who were responsible for the voluntary dissolution of the Little Parliament. They had engineered it so as to win Cromwell to their side. Once the Little Parliament was out of the way, they could present him with their written constitution.[1]

Cromwell had been aware all along that the officers were working on a new scheme of government. They had even contemplated restoring the monarchy with Oliver as King, but on December 1, 1653, he told them they could proceed with their work, but that no mention of the monarchy should be made. He also reserved the right to question anything else they might insert. Cromwell's attitude now appeared to be that he considered the only real power in the nation to be his backed by the army. After the dissolution of the Little Parliament, he indicated that this was the nature of the situation. He then gave his consent to the Instrument of Government. ". . . the experiment he was about to try was one in which a military despotism in actual existence consented to impose limitations on itself."[2]

This new constitution was to establish a government more closely resembling the royal constitution than any of the

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[1] Gardiner, Commonwealth and Protectorate, II, 277.

[2] Ibid., II, 282.

other schemes proposed during the Commonwealth to date. Instead of the supremacy of Parliament, they recurred "to the practice of the Elizabethan monarchy amended in accordance with the needs of the time."[1]

Where the Little Parliament had included representatives from both Scotland and Ireland, as well as England, there had still not been any formal declaration that the British Isles were to be considered as one nation. This was to be one of the major contributions of the Instrument of Government of December 16, 1653. The one sentence preamble provides for: "The government of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging."[2]

This preamble is then followed by forty-two articles outlining in some detail the powers of the two branches of the new government--the "Lord Protector of the Commonwealth of England, Scotland, and Ireland," and his Council on the one hand and Parliament on the other. This constitution was based, among other things, on the principle of separation of powers, and checks and balances.

Article I declared that the supreme legislative power resided in "one person" and the people as represented in Parliament. The "one person" was to be called the Lord Protector of the Commonwealth. As will be seen later, this one person was to exercise many of the old royal powers, and also he was to have a position resembling that of a president of the United

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[1] Gardiner, Commonwealth and Protectorate, II, 277.

[2] Gardiner, Constitutional Documents, p. 405.

States. The second article granted all administrative power to the Lord Protector and a Council, the membership of which body could vary between thirteen and twenty-one.

By the third article it was proclaimed that all patents, writs, grants, commissions, et cetera, which had been lately issued in the name of Parliament were thereafter to run in the name of the Lord Protector. The Protector was also given the power of granting pardons, except in cases of murder or treason. The Protector's powers were limited though, for it was provided that he should govern the Commonwealth by the advice of the Council and according to the laws passed by Parliament. The administration was in many ways an executive in commission; the Protector was bound to accept the advice of his council, as in the case of the fourth article. It was here that the militia was to be directed by the Protector, with the consent of Parliament, when it was in session, and by the council when Parliament was not in session.

The Protector and the Council had the responsibility of conducting relations with foreign powers according to the fifth article, and they also had the power to declare war and peace. The sixth article provided a guarantee against the suspending, altering, or repealing of laws except by act of Parliament. The suspending powers of the crown were to be one of the causes of another revolution in the next generation.

Article VII provided for a Parliament. The first Parliament of the Protectorate was to meet on the third of September, 1654, nearly nine months after the promulgation of the Instrument. Succeeding Parliaments were to be summoned

every three years, dating from the dissolution of the "present" Parliament, which must have referred to the Little Parliament, which was dissolved December 12, 1655. Thus the biennial Parliaments proposed by the Heads and the Agreement had been replaced by triennial assemblies. By Article VIII, no Parliaments were to be adjourned, prorogued, or dissolved without their own consent until they had been in session at least five months, dating from the first day of their meeting.[1]

Articles IX and X provided for the distribution of the seats in the Parliament. England, Wales, and the Channel Islands were to be represented by no more than four hundred persons; Scotland and Ireland were limited to thirty each. The number of representatives each constituency in England, Wales, and the Channel Islands were to have were specified in the text. The Scottish and Irish constituencies were to be delimited by the Protector and the Council before the summoning of the first Parliament.[2]

The eleventh article set up the machinery by which a parliament was to be summoned. The procedure used was almost identical to the method used in the days of the monarchy. The sheriffs were to be issued writs under the Great Seal, upon the warrant of the Lord Protector. Each succeeding writ might be altered from the last ones by the Lord Protector and his Council, the Chancellor, and the Keeper or Commissioners of the Great Seal. These writs were to be issued to the sheriffs

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[1] Gardiner, Constitutional Documents, pp. 405-06.

[2] Ibid., pp. 407-09.

before the first of August of the year in which the Parliament was to convene. In the event that the Lord Protector did not issue the necessary warrant, the Chancellor, and the Keeper or Commissioners of the Great Seal were to proceed on their own. The sheriffs were to publish the writs in their counties and then select a central place where the election would be held, on a Wednesday, five weeks after the writ had been received. In the cities, towns, and boroughs the Mayor or other magistrate was to perform this duty on behalf of the sheriff. The succeeding article, XV, stated that the results of the elections were to be forwarded to the chancery within twenty days of the election, and this document was to specify that the newly elected representatives were not to be allowed to alter the constitution of the government, as regarded its settlement in a single person and a Parliament. If a sheriff knowingly made a false return, he was to be fined two thousand marks, of which half went to the Protector, the other to whomever brought the suit.

In Article XIV, the Commonwealth was seen to be protecting itself against its ancient enemies--the royalists. No one who in any way worked against the Parliamentary cause since January 1, 1641, could vote or be elected to the first Parliament of the Protectorate, or to any of the first three triennial Parliaments to follow. For the Irish there was an even more drastic provision. No one who aided the rebellion in Ireland could ever vote or be elected to Parliament, and, all Roman Catholics were excluded from these privileges forever.[1]

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[1] Gardiner, Constitutional Documents, p. 410.

It was declared in Article XVI that any elections conducted on any but the above conditions were to be null and void. If any person took part in an election who was barred from the privilege of electing he was to pay, a fine of "one full year's value of his real estate, and one full third part of his personal estate." Again, the Lord Protector was to receive one half and the suer the other.

The qualifications for electing and being elected were further defined by Articles XVII and XVIII. To be an elector one must be twenty-one years old and be "of known integrity, fearing God, and of good conversation." Sex was no barrier to the franchise. Anyone who was in possession of property, real or personal, worth two hundred pounds was eligible to sit in Parliament, provided no other restrictions were barring him. To insure that the Chancellor, the Keeper or the Commissioners of the Great Seal, would perform their task of issuing writs of election, even if the Protector did not issue the warrant, these men were to be guilty of treason, and would suffer the required penalty, for dereliction of this duty. By Articles XIX, XX, and XXI the automatic summoning of Parliaments each three years was practically guaranteed, at least as much as is possible to make the administration of a law automatic.

In the event that these men did not perform their duty, in spite of the charge of treason which could be hurled at them, the sheriffs and their deputies were to proceed with the elections, just as if they had received the writs from the Chancellor or the Keeper. Then, the results of these elections were to be communicated to the clerk of the chancery,

who would forward them to the council, which body would certify those whom they considered to be the lawful members of Parliament. And by Article XXII, it was provided that any sixty of these members meeting at the proper time and place were to be considered a Parliament. A quorum of sixty would seemingly be required, even if the election had been conducted according to the proper procedure.

The twenty-third article provided for the summoning of special sessions of Parliament by the Protector, with the advice of the Council. These special sessions of Parliament could not be terminated without its own consent, until it had been in session at least three months. In the event of war, a special session was to be called, in order that the will of the people might be expressed on such an important question.[1] It was not specified, but the writer feels justified in assuming that in case the Lord Protector did not issue the necessary warrants for the summoning of such a Parliament, the automatic procedures would be used.

The veto powers of the Lord Protector, as outlined in Article XXIV, were very limited indeed. If, after twenty days from the time a bill was presented to the Protector, he had neither signed it nor given Parliament sufficient "satisfaction" as to the reasons for not signing it, Parliament could declare the bill to be law without the Protector's signature. No bill which was contrary to the provisions of the Instrument, however, could become law by this procedure. The implication

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[1] Gardiner, Constitutional Documents, pp. 411-12.

could be that if the Protector signed it, it would become law, even though it were contrary to the Instrument. In any case, a bill which continued to receive support by a majority in Parliament would become law regardless of the Protector. Its execution would be another matter. Sixteen members of the first, or original Council, were listed in Article XXV. No definite term of office was specified, so it was assumed that, like the earlier Privy Council, membership was for life or good behavior. In the event of vacancies, Parliament was to nominate six persons, the Council was then to choose two of them and the Protector was to have the final decision in the case of each such vacancy. If Parliament did not respond within twenty days after receiving formal notification of such a vacancy, the Council was to elect three persons, of whom the Protector would choose one. If any of the Council members were suspected of corruption or miscarriage of justice, the necessary judicial procedure was provided for. The Council was to pick six of its members, and Parliament seven of its members. These would be combined with the Chancellor, the Keeper, or Commissioners of the Great Seal, who would act as a court to try such cases and would award the sentence; no such sentence was pardonable by the Protector. If Parliament was not in session when charges of this nature were levied, the accused could be barred from the Council, if the Protector agreed, until Parliament convened again, when the above procedure would be followed.[1]

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[1] Gardiner, Constitutional Documents, p. 413.

The succeeding Article, XXVI, provided that additional members of the Council could be chosen by the Protector and the Council, provided that the number did not exceed the limit of twenty-one. If these additional members were added, the Protector and the Council were to decide what number should constitute a quorum. If no members were added, the quorum was to be seven, as stated in Article XXV.

The financial provisions of Article XXVII were based on the ancient dictum: "The King shall live of his own." By means of the customs, and any other means which the Protector and the Council might provide, a revenue sufficient to maintain a cavalry of ten thousand horse and an infantry of twenty thousand men was to be raised. In addition a sum of 200,000 pounds, to defray the ordinary expenses of administration of the government, was to be collected. Once these revenues had been provided for, they could not be changed, except by the Protector and Parliament. The next two articles provided that the money was to be paid into the public treasury and was to be spent by that office only for the above specified items. In the event that there was in the future no need for a military establishment as large as that provided for, the excess money was to go into a reserve fund and could be spent only with the consent of Parliament, or when it was not in session, by the Protector and his Council.

Since the armed forces at the time the Instrument was drawn up exceeded the limits specified in the document, the extra revenues needed to maintain these forces could be raised only by act of Parliament. If an emergency should arise while

Parliament was not in session, the Lord Protector and the Council could raise additional sums, but they would be in effect only until a new session of Parliament. In ordinary situations then, the revenue was to be raised by the Protector, and he was expected to make ends meet. Any further moneys must be raised by act of Parliament. This was undoubtedly designed to prevent the Protector from resorting to devices such as Ship Money, as Charles I had done.

By Article XXXI, the Lord Protector was invested with some of the attributes of royalty. All property which was not owned by private persons, and all confiscated property, were to be put into the hands of the Protector and his successors forever. On the other hand, he could not alienate such property, except by act of Parliament. In addition, all debts, fines, and penalties owed to the state were to go to the Protector, under the same conditions. Such funds could only be spent in his name.[1] These grants, however, could not be construed as the private property of the Protector, but rather as public holdings over which he alone was the executor.

The office of the Lord Protector was declared in Article XXXIII to be an elective, not an hereditary one. The Protector was to be elected by the Council, at which meeting the quorum must be thirteen, no matter how large the total membership. The only qualifications for the position were that he should be "a fit person," and that he should not be a member of the House of Stuart. During the interval between the death of

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[1] Gardiner, Constitutional Documents, pp. 414-15.

one Protector and the election of the successor, the Council would be the executive.[1]

By Article XXXIII, it was proclaimed: "That Oliver Cromwell, Captain-General of the forces of England, Scotland and Ireland, shall be, and is hereby declared to be, Lord Protector of the Commonwealth of England, Scotland and Ireland, and the dominions hereto belonging, for his life." The succeeding Article provided for the appointments of the other chief officers of state: "the Chancellor, Keeper or Commissioners of the Great Seal, the Treasurer, Admiral, Chief Governors of Ireland and Scotland, and the Chief Justices of both the Benches . . . ".[2] These officials were to be appointed by Parliament; if it was not in session, the Council might make temporary appointments, good until the next session of Parliament. No term of office was specified, so it is assumed that their tenure depended upon the will of Parliament.

The religious settlement was contained in Articles XXXV through XXXVIII. The Christian religion, as found in the Scriptures, was recommended as the public religion, but no one was to be penalized for practicing, or for not practicing, any particular religion, with the exception of those who believe in "Popery and Prelacy", which beliefs were not to be tolerated. The state was to make further pronouncements on religion in the future, leading toward uniformity,

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[1] Gardiner, Constitutional Documents, p. 415.

[2] Mark A. Thomson, A Constitutional History of England: 1642-1801 (London, 1938), p. 37. The term Benches probably refers to the Court of Common Pleas and the Upper Bench, as the Court of King's Bench was called during the Interregnum.

but education and peaceful persuasion were the methods to be followed, not coercion. Any laws not in conformity with these provisions were declared to be null and void.[1]

To insure that no one would be injured financially by the adoption of a new government, Article XXXIX declared that the disposition of any church or royal lands or property, which had been confiscated by the Commonwealth, must be recognized by the government of the Protectorate. In addition, any securities as to payment of moneys which Parliament might have given could not be revoked. Therefore, the new government bound itself to accept the obligations of its predecessors, as all new governments are expected to do.

The fortieth Article said that any commitments agreed to between Parliament and "the enemy", the Royalists, were to be honored. Also, any appeals concerning the sale of estates for delinquent tax payments which were before the Little Parliament were still to be heard by the new Parliaments. By these last two articles, then, the framers of the Instrument were trying to make the transfer of authority as smooth and painless as possible.

The last two articles in the Instrument of Government contained the oaths to which the Lord Protector and the members of the Council were to subscribe. The Councilors promised to discharge faithfully their duties and to be completely impartial when they should be choosing a new Protector. The Protector promised "that he will seek the peace, quiet and welfare of these nations, cause law and justice to be equally

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[1] Gardiner, Constitutional Documents, p. 416.

administered; and that he will not violate or infringe the matters and things contained in this writing, and in all other things will, to his power and to the best of his understanding, govern these nations according to the laws, statutes and customs thereof."[1]

In generalizing on the character of this constitution, it is safe to say that a government based on a system of checks and balances had indeed been achieved by this scheme. In fact, it was to fail in operation because authority was too well distributed, and a stalemate resulted. The Protector was entrusted with some of the attributes of royalty, and yet he was not a strong executive. In some respects, the relationship between the Protector and the Council was similar to that between the king and his cabinet. It was a body whose primary function was to tender advice to the head of the government, but the Protector was not bound to accept the advice. In fact, the initiative lay with the Protector. He could not act without the consent of his Council in many matters of state, but the constitution was so worded that he had to get their consent, not they his. In most respects the Council of the Protectorate was unlike any other Council in English history, with the exception of some revolutionary bodies, such as that of 1258, established by the Provisions of Oxford. The members of the Protectorate Council had life appointments; thus, they were not responsible for their actions as a group to any other branch of government. The modern cabinet is absolute while

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[1] Gardiner, Constitutional Documents, p. 417.

in office, but at least it is always subject to removal, for it is responsible for its actions to the House of Commons. Any power which the Protector might exercise over the Council would stem from personal influence, not constitutional authority. In actual practice, Cromwell found the Council rather difficult to get along with at times. It was not the rubber stamp that many historians have claimed that it was.[1]

The composition of the new Parliament was to be quite different from that of the Long Parliament. Just as the Heads of the Proposals and the Agreement of the People had provided for the redistribution of seats, so did this plan. As was said earlier, this was the first English Parliament in which seats were specifically assigned to the Scots and the Irish, although the Little Parliament of 1653 included representatives of both, and once, during the reign of Edward I, the Scots were represented. The redistribution of the English constituencies anticipated the Great Reform Bill of 1832, in that the newly arisen large towns received more representation, while the rotten boroughs and the pocket boroughs were reduced in theirs. Durham, Manchester, Leeds, and Halifax were now enfranchised while Old Sarum lost her franchise. Of course, this redistribution was not to outlast the Protectorate; at the Restoration the old system was restored.[2]

The financial clauses of the Instrument resembled the pre-Commonwealth constitution more than they do the modern

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[1] Tanner, Constitutional Conflicts, p. 177.

[2] Ibid., p. 176.

constitution. The fixed income which the Protector was granted, and the fixed sources of the revenue are reminicent of the old principle that the king was to "live of his own," only extraordinary revenue coming from Parliament. The modern principle is to make Parliament responsible for all income and expenditures. The Civil List today is largely composed of grants for the maintenance of the royal family only.

Control of the militia was not definitely established. The Protector was to be the head of the armed forces, and Cromwell did retain his military title of commander-in-chief, but the Protector could not act without the approbation of Parliament when it was in session, or of the Council when Parliament was not in session.[1] The Protector was not automatically commander-in-chief of the militia, and when Oliver was succeeded by his son Richard, the military title was contested. At that time, many felt it was a good principle to keep the two offices separated.

The religious settlement of the Instrument was largely patterned after that of the Agreement of the People, except that the latter had provided that the ministers were to be paid by the state, whereas the former said that Parliament should work out a financial settlement later. Where the Agreement had said that the provisions on religious toleration should not be construed so as to apply to believers in Popery and Prelacy, the Instrument specifically stated that the liberties were to be denied these groups. This religious

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[1] Gardiner, Commonwealth and Protectorate, pp. 288-90.

settlement was largely the work of the Independents. Its provisions on toleration were to be adopted after the Bloodless Revolution in the Toleration Act of 1689.

The new constitution was adopted on December 16, 1653, and the first Parliament was not to assemble until September 3, 1654, thus giving Cromwell and his Council nearly nine months in which to prepare the ground work for the new regime. A series of reforms were undertaken, which can be divided into three rather distinct classes: (1), legal reforms, (2), religious reforms, and (3), reforms in the manners or customs of the people. One legal reform concerned treason. A new law of treason had to be declared to cover a government vested in a "Single Person and a Parliament." The engagement, or oath, of loyalty to the Commonwealth which the Long Parliament had issued after the death of the king was repealed. To handle cases of treason against the Protectorate, a High Court of Justice was established, consisting of thirty-two commissioners, only three of whom were judges. This smacked of the old Court of Star Chamber.

Perhaps one of the principal reasons for the growing unpopularity of the Commonwealth lay in its attempts to reform the morals of the people, along the Puritan lines. During this nine month period of grace, Cromwell issued a series of Ordinances,[1] by which cock-fighting was prohibited, dueling was abolished, horse racing was stopped for a period of six

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[1] The term Ordinance thus reverted back to its earlier meaning of a law by the decree of the executive, without the concurrence of the legislature. During the 1640's Parliament itself had legislated by Ordinance, which was a law enacted without the assent of the executive.

months, steps were taken to reduce drunkenness, and profanity was to be suppressed.

The problem of the maintenance of the clergy was one which plagued the Commonwealth from its inception. The tithe was generally disliked by laymen and by the officers of the army, as well as by the members of Parliament. But the abolition of it was not so easy as it might appear. The Little Parliament had attempted to do it but was not successful. The problem was to find a suitable substitute before abolishing the old system. In an Ordinance issued March 20, 1654, Cromwell struck a compromise. The tithe was to remain, but a Commission of Triers was to be established which would screen all clergy who were in receipt of this revenue. All undesirable ministers would be weeded out. This solved two problems: that of maintenance and that of purifying the clergy.[1]

The Instrument of Government was unworkable for two very important reasons. It made no provisions for its own amendment, and it did not provide for an "umpire" to mediate between the two coordinate branches of the government, each supreme in its own sphere. As a result stalemates occurred. For example, the constitution stated that if the Protector did not give his assent to bills which were considered unconstitutional, Parliament could not declare them to be law, but no court or judge was provided which had the ultimate power to decide what was and what was not constitutional. It was perhaps possible for the Speaker of the House to be the judge,

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[1] Tanner, Constitutional Conflicts, pp. 178-80.

just as today he is the judge as to whether or not a bill is a money bill. But Lenthall, the Speaker of the first Parliament of the Protectorate, said that he was merely a servant of the House, "with neither eyes to see, nor tongue to speak" except as the House directed him. The courts were not sufficiently sure of their position to assume this function, for the Commonwealth had shown signs of not being too friendly to the lawyers, and the Commonwealth was no friend of the Common Law. The Council could not serve as this "third force" because it was part of the executive branch. The only recourse the Protector had if Parliament persisted in enacting "unconstitutional" legislation was to dissolve it, and then he would have to wait until it had been in session for five months. In practice, it seemed to be up to the Protector to be the judge of the constitutionality of bills, by his discretionary power of execution.[1]

In September, 1654, the first Parliament of the Protectorate met. Immediately, this body showed that, in pedantry, it was a just rival of the Long and Little Parliaments, for it fell to debating the right of the officers, or anyone else, to draw up a constitution and to impose it upon the country. It considered itself to be true Parliament, and, therefore, only it could decide on the constitutional settlement, instead of merely being called and expected to abide by a constitution already framed. The members also disputed the first article of the Instrument, by which the supreme authority was vested

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[1] Charles Harding Firth, The House of Lords during the Civil War (London, 1910), p. 244.

in a Single Person and a Parliament. They felt Parliament alone could and should be supreme. Cromwell was forced to present, in a speech to the legislature, his position on the power of Parliament to modify the Instrument. He said that there were two types of provisions: "circumstantials", which could be modified, and "fundamentals" which could not. Among the latter he included: "(1) Government by a Single Person and a Parliament; (2) that Parliaments should not make themselves perpetual; (3) that there should be liberty of conscience; and (4) that neither the Protector nor Parliament should have exclusive control over the power of the sword."[1]

Parliament did take some positive action in addition to its pedantic squabbling over the nature of the constitution. It proposed that the members of the Council should be deprived of life tenure granted by the Instrument for a tenure of only forty days beyond that of the opening of a new Parliament, unless the said new Parliament approved of the Councillors individually. In other words, each Parliament could pick its own Council, which would hold office until forty days after the convening of the succeeding Parliament. The House also attempted to reduce the extent of the religious toleration guaranteed by the Instrument, by denying freedom to some of the sectaries, whom Cromwell was willing to tolerate.

Parliament raised the wrath of the army by proposing immediately to cut back the size of the militia from 57,000 to the authorized strength of 30,000 specified in the Instrument.

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[1] Tanner, Constitutional Conflicts, pp. 181-82.

In addition, there was to be a cut in salary for the men in the ranks. The Instrument had granted the control of the militia to the Protector and his Council, but now Parliament considered changing the provision so that after Cromwell was no longer Protector, the control of the militia would return to Parliament. These and other deeds in a similar vein did not endear Parliament to the Protector. Oliver waited for the necessary five months and dissolved the First Protectorate Parliament. In fact, he was so anxious to end this body that he only waited five lunar months before calling for the dissolution.[1]

In addition to the internal dissention within the government, there were enemies on the outside attacking the very nature of the constitution itself. Naturally, the Royalists opposed the Instrument, but in England they were rather quiescent during this period, waiting for the hour when they could move with some assurance of success. The most vocal opponents of the new regime were the Levellers and the Fifth Monarchy men. The former were very much opposed to the separation of powers principle, believing in the omnipotent representative legislature. They felt that Parliament had been relegated to third place in the state, coming after the Protector and the Council, neither of whom could be held publicly responsible for their actions, although the Councillors could be impeached for a crime.

The Fifth Monarchists opposed the rule of Cromwell,

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[1] Tanner, Constitutional Conflicts, pp. 181-184.

whom they felt was usurping the Kingdom of Christ. One minister spoke thus in public: "Lord, thou hast suffered us to cut off the head which reigned over us, and thou hast suffered the tail to set itself up and rule over us in the head's place."[1]

To insure that a future Parliament would be more amenable to his wishes, the clause of the Instrument which said that only "persons of known integrity, fearing God and of good conversation . . ." could sit in Parliament was used to bar opposition forces in the election of the new Parliament. The heavy hand of the Protector was already being felt over the country by this time, for after the dissolution in 1655, the system of the Major-Generals was inaugurated. The country was divided into ten districts each under a Major-General who supplanted the local governmental units. The nation was living practically under martial law.[2] Thus, the second Triennial Parliament, which was called to meet in September of 1656, was almost solidly behind the Protector. This body was to propose the final attempt at a constitutional settlement for the Commonwealth--the Humble Petition and Advice.

The major feature of the Petition which differentiated it from the Instrument was the creation of a second chamber in the parliament. The need for this new house was seen by Cromwell almost from the beginning of the Protectorate, as has been indicated earlier. The event which determined him to take

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[1] Tanner, Constitutional Conflicts, pp. 181-84.

[2] Hallam, Constitutional History, p. 377.

action was the assumption by Parliament of the judicial powers of the former House of Lords. The notion was held by many members that, after the abolition of the Lords, its powers naturally devolved upon the remaining house. A madman by the name of James Naylor, who believed that he was Christ, had been preaching doctrines which Parliament considered to be blasphemous Parliament was determined to stop him and debated whether it should do it by a bill of attainder, or by use of its "judicial power." Relying upon the latter, Naylor was judged to be guilty of blasphemy and of trying to seduce the people, a savage punishment being meted out.[1]

Cromwell began to speculate on a definite solution to his problem and to consider seriously two innovations in the constitution: the re-creation of the House of Lords and the restoration of the monarchy with himself as king. The officers became aware of his line of thought and in February, 1657, a deputation went to visit the Protector to dissuade him from such a course of action. In reply, Cromwell said:

> Unless you have some such thing as a balance, we cannot be safe. . . . By the proceedings of this Parliament, you see they stand in need of a check, or balancing power, for the case of James Naylor might happen to be your case. . . . By their judicial power they fall upon life and member, and doth the Instrument enable me to control it? [2]

The thought of creating a new second house of Parliament did not meet with great favor in Parliament, because it would tend to weaken the power and prestige of the existing

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[1] Firth, House of Lords, p. 245.

[2] Ibid., pp. 246-47.

House. On the other hand, the idea of restoring the monarchy under Cromwell was quite popular. The only form of settlement which had a ring of permanency to it was a restoration of the old constitution, with the modifications of the Long Parliament, under the House of Cromwell. The nation was used to a king and the powers of a king were rather certain, whereas those of a Lord Protector were always subject to new interpretations because it was a new and untried system. The nation felt that the Common Law had been a better protector of the "rights of Englishmen" than any laws passed under the Commonwealth. The Commonwealth always had to rely on armed force as its ultimate justification, while monarchy could rely on the Common Law and the custom of the centuries past.

In addition to these rather tenuous reasons for a restoration there was the practical reason that a change in the law of succession to the Protectorship was needed. An attempted **murdering** of Oliver brought home the thought that there was no other leader, with a sufficient backing, to replace him as Protector. Upon his death, the struggle for power could lead to another civil war, for the Protectorship, after all, was a position worth holding. Therefore, even among some of those who did not talk of monarchy, there was the thought of making the Protectorship hereditary, or at least of allowing the Protector to name his own successor.[1]

The need for a revision of the constitution was quite evident to all interested in the government, and for the first

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[1] Tanner, Constitutional Conflicts, pp. 190-93.

time since the Civil War began, a Parliament took the first step in proposing a workable plan, and, one which did not place all power in its own hands. Parliament proceeded to draw up the Humble Petition and Advice, which was presented to the Protector for his approval the first of April, 1657. It was generally felt that Cromwell would accept it in its essential points, which were the creation of the other house and the restoration of the monarchy. After three days' deliberation, however, he declined to accept the crown. Undoubtedly, Cromwell personally wanted the crown because it was considered by the nation to be more than just another title, such as that of Protector. It implied legitimacy, and the security that at long last a permanent settlement had been attained. But Oliver declined it because the army, both officers and men, balked at it. Republicanism was still strong in the ranks, and as for the officers, they had a great deal of respect and even admiration for Cromwell; but there was a tinge of jealousy also. They believed that basically Oliver was an army officer, as the rest were. Why should he who was once one of them now be raised to the exalted heights of kingship? The title of "Protector" did not make the same impression on them as the title "King" did. As a Protector, they still regarded Oliver as first among equals, not as something apart from and mightier than the remainder. Even Oliver's brother-in-law, General Desborough, was against him; so were his long-time friends Lambert and Fleetwood.

At first, Parliament was reluctant to back down from its position, but after being convinced of the Protector's

sincerity, it modified the document by substituting "Protector" for "King" in the text, along with a few other concomitant changes. By the end of May, 1657, the Petition was in a form acceptable to Cromwell and he approved it. Even though the title of King was dropped, the functions of the executive had been changed enough from those of the Instrument, that the new Protectorship did resemble the Kingship even more than the Protector of the Instrument did.[1]

The Humble Petition and Advice was not simply a piece of legislation, nor was it an amendment to the existing constitution. It was a new constitution in its own right, but it was adopted under the forms of the then operative constitution. In length it was approximately the equal of the Instrument, although it contained only eighteen articles. Its principal features can be summarized under six headings.[2]

By the first paragraph the Protectorship was declared to be an office held for life, as under the Instrument, but the Protector could choose his own successor. Thus the likelihood of a struggle for power after Cromwell's death was lessoned. A step which could have led to an hereditary monarchy was taken, for Oliver did choose his son Richard, as his successor.

The fifth paragraph provided for the summoning of a two house Parliament consisting of "Commons" and "the other House." The name House of Lords, as such, was not yet to be

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[1] Tanner, Constitutional Conflicts, pp. 194-95.

[2] Ibid., p. 196.

called back into service. The "other House" was to consist of not more than seventy nor less than forty members nominated by the Protector with the consent of the elected House. The members were to hold their position for life or "good behavior." There was a provision for "legal" removal of members, but the process of so doing was not specified. On the other hand, any later additions to or replacements in the "other House" were to be subject to the approval of the sitting members. The principle of each House being the judge of the qualifications of its own members was granted to both Houses.[1]

The powers of the new House were rather strictly limited. The old judicial powers were denied, with the exceptions in civil law of writs of error, transference of difficult suits from lower courts to Parliament, petitions against proceedings in Courts of Equity, and in cases concerning the privilege of their own House. They were denied jurisdiction in all criminal cases, with the exception of impeachment cases initiated by the Commons. Any criminal proceedings had to be within the "known" laws of the land, evidently excluding the right of the "other House" from initiating a bill of attainder. In all circumstances where the "other House" acted as a judicial body, the final judgment had to come from the House as a whole, not from a committee, nor from Commissioners or Delegates appointed to handle particular cases. This would seem expressly to prohibit such a practice as that now followed--the appointment of "law Lords" who carry on the judicial functions of the modern House of Lords.

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[1] Gardiner, Constitutional Documents, pp. 449-52.

The Instrument had left the amount and the sources of revenue largely up to the Protector and the Council, only specifying the size of the armed forces and the amount to be alloted for the civil administration of the state. The Petition modified this so as to provide a fixed revenue of one million pounds for the armed forces and 300,000 pounds for the civil administration. Once again no alteration in the amounts or in the sources could be made except by Parliament.[1]

The Council of State was also to feel the effects of this new scheme of government. From being an integral part of the executive under the Instrument, it was now relegated to the position of the old Privy Council--a purely advisory body, whose members would hold office during the pleasure of the Protector. The number of Councilors under the Instrument varied from twenty-one as a maximum to thirteen as a minimum, but in the Petition the number was set at a constant figure of twenty-one with a quorum of seven. Paragraph eight also retained the principle that "your Highness and successors will be pleased to exercise your Government over these nations by the advice of your Council."

The Petition contained elaborate provisions concerning the religious settlement, but they were very similar to those of the Instrument. The group in power in both the army and the new Parliament were in accord on the issue of religious toleration. The differences there were were in the direction of more restrictions on religious freedom. Under

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[1] Gardiner, Constitutional Documents, pp. 452-53.

the Instrument, licentiousness was used as an excuse for not allowing freedom, and the Petition added "blasphemy and profaneness." Of course, these terms were always subject to various interpretations at different times, and could be used for political purposes, as they were by the Protector under the Instrument.

When Cromwell was thinking of calling the second triennial Parliament of the Protectorate, he had decided to make use of the provision in the Instrument, which provided that only persons of "known integrity" could sit in the House. By the Petition, the Protector was stripped of his power of deciding upon the qualifications of the members of the House of Commons. Each House was to be the judge of its own members. This is an historic principle, present in all legislative bodies based on the English example.

The eighteenth paragraph stated that if the Protector did not want to accept the Petition in its entirety, he could not accept any of it. The principle was that of all or none. Oliver took all on May 25, 1657, with the announcement in Parliament: "The Lord Protector doth consent."[1]

The efficacy of the Petition was not to be given a real chance to prove itself. Parliament had recessed after the adoption of the Petition and didn't reconvene until January 20, 1658. Once the body met as a two house legislature, the only topic of debate at first was that of how the Commons should address the "other House", and what exactly was to be its place in the Parliamentary procedure. Pedantry once again

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[1] Gardiner, Constitutional Documents, pp. 453-59.

was the order of the day. And then, before the year was out, the Protector, about whom all government revolved, died.

The composition of the "other House" was given careful consideration by Cromwell, and in the original body many judges and members of the Council were to be found. There were also included seventeen army officers and about a dozen representatives from the wealthy gentry. In the original summons, Oliver called upon seven members of the old peerage, but only two of them accepted the summons and attended sessions. The peers felt that, if they accepted the seats in the parliament of the Protectorate, they would necessarily be demonstrating their acquiescence in the establishment of the Commonwealth, together with its abolition of the monarchy and of the House of Lords. Almost to a man the nobility was still royalist at heart. By their refusal to attend, the "other House" was deprived of a very important element of "respectability," an element which it could get nowhere else. The army officers were willing to take their seats, because it would give them another base from which to exert their influence upon the government, in order to keep it moderate.[1]

When the second session of the Second Parliament of the Protectorate met, after the adoption of the Petition, the members of Commons whom Cromwell had previously excluded were readmitted, because now the House and not the Protector was to judge the qualifications of members. The restored members gave a new republican hue to the Commons. It was largely these men who carried on the endless debate over the position of the

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[1] Firth, House of Lords, p. 252.

"other House." The Republicans prepared a huge petition, in concert with dissident members of the army and with Cromwell's opponents in London. This petition called for the abolition of the "other House." If the "other House" had been composed of more landed persons and fewer officers, it would have had a better chance, but the Republicans feared that the officers would undermine the representative nature of Parliament and substitute military rule for popular government. It was even rumored that General Fairfax was going to lead a group of irate soldiers to plead before the Protector to undo the work of the previous year.

Two elements opposed the government of the Petition. These were the Republicans in Parliament and the soldiers in the ranks who were still interested in the programs of John Lillburne and the Levellers. On the other hand, even the army officers seemed to be turning against Oliver; Fairfax has already been mentioned. When Cromwell was considering a dissolution as a means of bringing an end to the debate, even his brother-in-law Fleetwood tried to dissuade him from any hasty action.[1]

Having exhausted his patience, Cromwell called a joint session of Parliament and went before it to vent his wrath, on February 11, 1658. After excoriating the Republicans for attempting to undermine the army, he closed his speech with a memorable paragraph: "And if this be the end of your sitting and this be your carriage, I think it high time that an end

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[1] Montague, History of England, pp. 452-54.

be put to your sitting. And I do dissolve this Parliament. And let God be Judge between you and me."[1] Thus the bicameral legislature was in session only twenty-two days.

The settlement of the Petition may be summed up as follows:

> On the other hand, the new Protectorate was obviously just as much a stop-gap as the old. It was a half-way house to monarchy, and the nation could not tarry there. Already there were rumours that the proposal to revive kingship would be taken up again in this or the next Parliament. The feeling in favour of the old form of government was so strong that it might safely be predicted one of two things would happen: either monarchy would be revived in favour of Cromwell and his family, or the nation would recall the exiled House of Stuart. The Petition and Advice is, from one point of view, the first step towards the Restoration of Charles II. 2

On September 3 Oliver Cromwell died. With his death the heterogeneous elements making up his corps of followers fell apart. The only solution which was acceptable to all was the restoration of Charles Stuart.

Henry Hallam's views on the period of the Commonwealth are very outspoken, but are considered to be based on very sound scholarship. For a Whig to write such an appraisal, there must have been a good deal of truth underlying his biting words.

> In the year 1659, it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in English ears, was grown infinitely odious: it was associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, the iniquitous decimations of military prefects, the sale of British citizens for slavery in the

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1 Tanner, Constitutional Conflicts, p. 200.

2 Charles Harding Firth, The Last Years of the Protectorate: 1656-1658 (2 vols; London, 1909), I, 199-200.

West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with denial of the habeus corpus, the exclusion of the ancient gentry, the persecution of the Anglican Church, the bacchanalian rant of sectaries, the morose preciseness of Puritans, the extinction of the frank and cordial joyousness of the national character. Were the people again to endure the mockery of the good old cause, as the Commonwealth's men affected to style the interests of their little faction, and be subject to Lambert's notorious want of principle, or to Vane's contempt of ordinances (a godly mode of expressing the same thing), or to Hazlerig's fury, or to Harrison's fanaticism, or to the fancies of those lesser schemers, who in this utter confusion and abject state of their party were amusing themselves with plans of perfect commonwealths, and debating whether there should be a senate as well as a representation; whether a fixed number should go out or not by rotation; and all those details of political mechanism so important in the eyes of theorists? Every project of this description must have wanted what alone could give it either the pretext of legitimate existence, or the chance of permanency, popular consent; the Republican party, if we exclude those who would have had a protector, and those fanatics who expected the appearance of Jesus Christ, was incalculably small; not, perhaps, amounting in the whole nation to more than a few hundred persons. [1]

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[1] Hallam, Constitutional History, p. 390.

CHAPTER V

THE RESTORATION

In accordance with the provisions of the Humble Petition, Cromwell, from his death bed, named his son Richard as his successor. The personality of Oliver Cromwell had been one of the leading factors in holding together the various elements of the pro-Commonwealth party. The army, upon whose power the regime ultimately depended, was loyal to him because of his great military accomplishments; many lawyers and other public officials were loyal because he believed in a civilian government. The post of commander-in-chief of the army did not necessarily coincide with that of Protector, although Oliver held both offices. His son Richard was not a military man; therefore, the army balked at accepting him as their chief, suggesting Fleetwood instead. No definite decision was reached while Richard was Protector. The new Protector believed, as his father had, in civilian government, with the subordination of the military. The majority of the officers deserted Richard, leaving only the civilian leaders in his camp. Without the support of the army the Protectorate had little chance of survival.[1]

Richard was a very weak figure in comparison with

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[1] Montague, History of England, pp. 463-64.

his father, and when the army dissolved Parliament, and abolished the Protectorate, April 22, 1659, he meekly consented and retired into oblivion. In spite of its dislike of civil rule over the military, the army did not attempt to rule the nation alone. The gap was filled by the recall of the Rump Parliament, which had not met since 1653. This assemblage, however, was just as jealous of its prerogatives as any other Parliament, and immediately upon convening it told the army "that the Parliament expected faithfulness and obedience to the Parliament and Commonwealth." The members then proceeded to declare null and void all acts passed under the Protector.[1]

Throughout the period of the Commonwealth, it had been the army which had sought a responsible, representative, civil government; therefore, it was not surprising that the restored unrepresentative Rump would not long be endured by the army. Its dissolution was effected on October 17, 1659. During the reign of the restored Rump there had developed a great deal of unrest throughout the island. The Royalists were beginning to stir, and even the army was experiencing a defection. The commander of the Commonwealth's forces in Scotland was General George Monk, a friend and admirer of Oliver and a supporter of the Cromwell dynasty. After the abolition of the Protectorate and the retirement of Richard, Monk began to take charge of events. As Richard Cromwell supported the power of the civil over the military, so had Monk. The same night that he received

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[1] Gardiner, First Stuarts, pp. 192-93.

word of the dissolution of the Rump the general announced his intention of marching into England to interfere in politics. The Committee of Safety in London despatched troops to prevent his arrival, but to no avail. Monk entered the capital February 3, 1660.

It is doubtful that as yet he had planned to restore the monarchy, but all of his acts tended to lead inevitably to that end. He once again summoned Parliament, but this time the members of the Long Parliament who had been purged in 1648 were also summoned. Before Parliament was officially convened, Monk exacted from its members the promise that they would create a Council of State, settle the government of the army, and dissolve itself within a month. These conditions were adhered to, Monk himself being chosen as Commander-in-Chief of the army. The dissolution came on March 16.

Writs for the election of a new Parliament were issued while Monk was consolidating his hold over the army. The writs expressly forbade the election of those who had supported Charles I during the rebellion, but this provision was not enforced. The new Parliament was decidedly Royalist in composition, and even the peers took their seats at Westminster when Parliament convened April 22.[1]

Within a week this Parliament, commonly called the Convention Parliament, was treating with the exiled King Charles II, who had submitted the terms which he would accept upon his return. The Declaration of Breda promised: a general

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[1] Tanner, Constitutional Conflicts, pp. 205-08.

amnesty, unless Parliament should make specific exceptions; liberty of conscience for all those whose beliefs did not prejudice the safety of the realm; the settlement by Parliament of disputes over land titles; and the payment of back pay to the army.[1]

After considering these terms, Parliament voted that "according to the ancient and fundamental laws of this kingdom, the government is and ought to be by King, Lords, and Commons."[2]

May 25, 1660, Charles II entered London and the Interregnum came to an end. The Convention Parliament did not make Charles king; it recognized that he had been king since the moment his father died on the chopping block. Charles II was endowed with the exercise of all of the royal prerogatives which his father had had. Parliament declared null and void all Acts and Ordinances which had been passed without the assent of the king; some of the Commonwealth legislation was then immediately reenacted in almost precisely the same words. The only restrictions which could be said to inhibit Charles' prerogative were those found in his Declaration of Breda, and these were not to be carefully adhered to. The Restoration resulted in the reestablishment of the status quo ante bellum, in all of its facets, except that in ecclesiastical affairs the king was forbidden by statute to reestablish the Court of High Commission.[3]

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1 Gardiner, Constitutional Documents, pp. 465-67.

2 Tanner, Constitutional Conflicts, p. 209.

3 Thomson, Constitutional History, p. 72.

While the statement by Thomson is true, that there were no constitutional changes made from the Restoration until the Bloodless Revolution, there was an abortive move in 1679 to reform the constitution of the Privy Council. This scheme was supposedly the work of Sir William Temple. Because of its similarity in intent to some features of the Commonwealth, and also because it anticipated in form the modern cabinet, it merits a few remarks.

Charles II was a High Church Anglican, who was reputed to have joined the Roman Catholic Church before his death. His brother James, the Duke of York and future King James II, was already a Catholic by 1679, and as such, he was very unpopular in the kingdom. Even though the nation had willingly restored the House of Stuart, it was not so subservient to that house as to allow a Catholic to ascend the throne without a fight. In 1679, the move in Parliament to exclude James from the succession gained momentum.

In March, the first Whig Parliament convened. While there were differences as to the form, the members generally agreed that James should be either excluded completely from the succession, or that he should be a "nominal" king only. The former group, lead by the Earl of Shaftesbury, commanded a majority among the Whigs, and in May they introduced a bill which would implement their program. Charles, who was loyal to his brother and the dynasty, prevented the passage of this bill by first proroguing and then dissolving Parliament. After the dissolution, Shaftesbury's opponents within the Whig

party began to organize. Intra-party warfare was the result.[1]

Charles was not without his supporters too. It was at this time that the division of the members of Parliament into two distinct camps or parties began. Those who favored exclusion rallied around Shaftesbury and were to be known as Whigs, while those who stood solidly behind the throne and the dynasty were to be called Tories. The presence of political parties was a new phenomenon on the English scene.[2]

The King did not relish the appearance of party government and naturally sought means to avoid it. Party government would first of all mean that the country was disunited, with various factions struggling for power; secondly, it meant that the king would be weakened in his personal power, because he would be dependent upon a particular group to see that his program was carried out in Parliament.

It was at this juncture, in 1679, that the king adopted, momentarily, a scheme for the reconstitution of the Privy Council. The Privy Council had been abandoned during the Interregnum, although, as was indicated, the Council of State under the Humble Petition resembled the Privy Council. In 1660, the Privy Council was restored along with the king. The work of the Council after 1660 was reduced from what it had been under Charles I, and even then it was less than what it was under Elizabeth I. The judicial authority of the Council was frowned upon by the Long Parliament before the Civil War started, and

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[1] Keith Feiling, A History of the Tory Party, 1640-1714 (Oxford, 1924), pp. 187-88.

[2] Thomson, Constitutional History, p. 117.

this function began to wither away, although never completely. The decline in the power of the Council was coincident with the increase in the power of Parliament. One feature of the Civil War had been to strengthen the position of Parliament, a change which was to be seen even after the Restoration. More and more, the financial powers of the Council were being assumed by Parliament. The latter was now directing the expenditure as well as the granting of money.[1]

The reduction in the power of the Privy Council stemmed from another source as well--the King. In seeking advice on the every day administration of the government, the King did not consult the full Council, but rather a small group of trusted advisers. This group of Councillors at first took charge of foreign affairs, but because of their proximity to the throne they took on other matters of state as well. Turner believes that it was this committee of foreign affairs that was first called "cabinet." Before reconstituting the Council, Charles formerly abolished the "cabinet."[2]

The scheme for the reform of the Privy Council was reputed to be the work of Sir William Temple. He claimed credit for it, and generally historians have accepted his word. Temple had been a career diplomat of some ability and was a student of government. His proposal, in essence, called for the establishment of a small Council composed of the leading

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[1] Edward Raymond Turner, The Cabinet Council of England in the Seventeenth and Eighteenth Centuries: 1622-1784 (2 vols.; Baltimore, 1930), I, 12, 13.

[2] Turner, Cabinet Council, I, 113.

figures in the kingdom, from both parties. These men would be strong enough to control Parliament, or perhaps even to rule without Parliament, to a greater extent than earlier in the reign. Instead of committees of the Council, such as the committee for foreign affairs, or a single great minister, such as Sir Thomas Osborne Danby, the full Council was to be restored as the king's adviser. No important decisions were to be made by the king without the concurrence of the Council. Especially in the field of foreign affairs was the Council to have a strong influence, even foreign ambassadors would have to secure the consent before they could have an audience with the king.[1]

The new Council was to be composed of thirty members, of whom fifteen were to be great officers of state, and the other fifteen were to be taken from the two houses of Parliament. In addition to choosing the leading figures in public life, the king was to pick men of such wealth that the total worth of the councillors would be £ 300,000 per year, thus rivaling the total wealth of the House of Commons, which was about £ 400,000 per year. In his memoirs Temple explained his reason for having councillors of such great wealth.

> . . . one chief regard, necessary to this constitution, was that of the personal riches of this new council: which, in revenues of land or offices, was found to amount to about three hundred thousand pounds a year, whereas those of a House of Commons are seldom found to have exceeded four hundred thousand pounds. And authority is observed much to follow land: and at the worst, such a council might, out of their own stock, and upon a pinch,

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[1] Osmund Airy, Charles II (London, 1901), p. 239

furnish the King so far as to relieve some great necessity of the Crown. [1]

Three benefits, seemingly, were to be derived from the formation of the Council. (1) The opposition of the Whigs would be mitigated by including their leaders in the government. (2) In a struggle between the Commons and the crown the latter would have on its side a body almost equal to the Commons itself in wealth, and therefore influence. (3) The king could always exert a powerful influence over the Council, since the fifteen officers of state in its membership were always subject to removal from office by the king. [2]

The scheme met with great favor with the king, and the officers of state. The country, too, was well pleased with it, bonfires being lighted in the streets of London. The Irish, and the foreign powers also, were delighted to see a reform in the London administration. The Dutch states responded by sending one of their most able men as ambassador to London; France was not moved by the event, however. The House of Commons heard the plan outlined and, in general, the members thought of it as just another "court juggle." [3]

The efficacy of this plan depended entirely upon the King. It was an agreement into which he had voluntarily entered; therefore, there was no element of coercion which could

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[1] Sir William Temple, Memoirs (London, 1754), pp. 508-09.

[2] John Lingard, A History of England, from the First Invasion by the Romans to the Accession of William and Mary in 1688 (New ed., 13 vols.; Boston, 1855), XII, 185.

[3] Edward Raymond Turner, The Privy Council of England in the Seventeenth and Eighteenth Centuries: 1603-1784 (2 vols.: Baltimore, 1927), I, 441.

compel his compliance. Charles showed that he was a consummate politician, for by inaugurating this plan, he restored the prestige of the crown and put the political factions off balance. Once his objective had been achieved, the Temple reform faded away. In choosing the membership of the new Council, the King picked men with whom he did not agree politically. He decided to use the Council as the political grave yard. In a private conversation, he is quoted as saying: "God's fish, they have put a set of men about me, but they shall know nothing, and this keep to yourself."[1]

The Council was, therefore, largely sidestepped from the beginning, and within a matter of weeks, it passed into oblivion. The King resorted to his old practice of dividing the Council into committees composed of trusted advisers. The new Committee of Intelligence was the old Committee of Foreign Affairs under a new name. For the remainder of his reign, the membership of the Council was set at thirty, but even this restriction was removed in the succeeding reign. Turner's comment is appropriate:

> Interesting as are the constitutional aspects of the alteration of 1679, the change must be regarded as a political expedient more than a constitutional measure. As such it now appears to have been almost foredoomed to failure. In a moment of necessity Charles defeated his opponents by seeming to surrender to them; but (sic) associating them with himself, he contrived to make them less dangerous for the moment at the same time that they were made to be objects of suspicion. 2

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1 Airy, Charles II, p. 240.

2 Turner, Privy Council, II, 2.

The reformed Council, in many ways, did resemble the modern cabinet, in that the King was bound, supposedly, to accept the advice of his great officers of state; and at least half of the members were from Parliament where they could be questioned on their actions.

As to being removable, only the king, ostensibly, could ask for their resignations, but those who were members of the Commons could always be expelled from membership in that body, if the House so desired. Actual responsibility was to be located in a group closer to the people than the monarch. It was not to be this reformed Council, however, which would develop into the cabinet, but rather the use of small specialized committees composed of the king's closest advisers, who were completely under his domination and were not subject to any Parliamentary control.

CHAPTER VI

CONCLUSION

In attempting to evaluate the constitutional significance of the "paper constitutions", it would be easy to say that the Restoration settlement had completely repealed all that had been done, and that, they had no direct effect on the future development of the constitution.

It is true that upon the Restoration the monarch was reinstated with an untarnished prerogative, the House of Lords was restored to its original position, the Anglican Church was reestablished, and the Privy Council was revived. If there were any differences in the power or authority of any of these institutions, they were not caused by any new acts or statutes of the Interregnum. Therefore, it can quite truthfully be said that there was no direct carry over from the Interregnum to the post-Restoration era.

Continuing in this negative vein, it is evident that the idea of a republican form of government quite thoroughly discredited itself during its period of ascendancy. Republicanism in England today is almost non-existent. Even in the era of the Regency and of Victoria's seclusion, times when the occupants of the throne were rather unpopular, little progress was made by the republicans. It can, then, be said that the Commonwealth helped determine that the monarchical form of govern-

ment would be maintained for a period seemingly without end. The republican form of government was based on the written constitution, while the monarchical was based on custom and the Common Law, together with occasional acts of Parliament, ordinances, and charters.[1]

With the demise of the written constitution and the republican form of government, there was also the end of the unicameral legislature. In fact, as was seen, this institution did not survive as long as the Commonwealth. The modern Labor Party for years had as one of its planks the abolition of the upper House, but it has never been carried out, and the likelihood of its being done is rather remote. The appearance of a system of separation of powers, as was found under the Commonwealth, was not to be revived either. The modern cabinet, which is the real executive, is an integral part of the legislative branch, being directly responsible to it for its deeds--not to the king. As has been indicated earlier, the redistribution of seats in the House of Commons was undone before the Commonwealth ended, and it was not until the nineteenth century that an effort in this field was again made.

The development of the cabinet system of government was based on forces and institutions quite different from those of the revolutionary era. From 1649 to 1653, Parliament was the only legally established governing body. To carry on the administration of government, a series of "executive" committees was formed within the House, but these committees had no real initiative. They followed the lead of the House, while under

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[1] Keir, Constitutional History, p. 229.

the cabinet system the House is to be led by its creature--the cabinet. The government of the Protectorate was established with two coordinate branches--the Protector and Parliament. Rather than approximating the cabinet system, it paralleled the later American presidential system. The cabinet, as was pointed out in chapter six, evolved from the king's personal advisers, who formed a select committee of the Privy Council. The principle that the cabinet members should also be members of Parliament did not come until later, although from the beginning most were to be found in the House of Lords.

The positive achievements of the Commonwealth epoch were not to be found in the realm of positive law; they were to be found in the field of political theory and custom. Jenks has said that the most important result of the revolutionary era was that "Parliament learnt the mysteries of government."[1] While, in the legal sense, the position of Parliament after 1660 was the same as it had been before the Puritan Revolution, in practice it was evident that certain profound changes had occured. Parliament seems to be more than just a group of men; in many respects institutions have a life of their own. The practical experience of administering the government of the Commonwealth, especially from 1649-53, was such that Parliament never again would be willing to revert to a position as a mere branch of government subordinate to the monarch. The crown was never again, except for very rare and short periods, to

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[1] Constitutional Experiments, p. 2.

violate grossly the will of the representative body. At first, this change was more evident in the political thought of the time then in the actual practice, but a new trend had commenced.[1]

It is in the realm of political theory that perhaps the most significant contribution was made. The many innovations, such as the disestablishment of the church, the unicameral legislature, equal electoral districts, the abolition of the rotten boroughs, law reform, and even the limited freedom of the press, were to have a deep affect on the minds, if not the institutions, of the people. While the Commonwealth, as such, had discredited itself, these programs were to live in the minds of the people so as to be effected at a later date.

> Of course, in seeming, Cromwell's work died with him; his dynasty was rejected, his republic cast aside; but the spirit which culminated in him never sank again, never ceased to be potent, though often a latent and volcanic, force in the country. Charles II said that he would never go again on his travels for anything or anybody; and he well knew that though the men whom he met at Worcester might be dead, still the spirit which warmed them was alive and young in others. [2]

Both monarch and people were to remember that revolution had once been used in an emergency, and that it could and would be used again. The validity of this conclusion was witnessed by the Bloodless Revolution of 1688-89, when once again an intransigent monarch was forced to step down from his throne. From the Commonwealth on, in fact if not in form, the collective will of the people was ultimately supreme.

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[1] McIlwain, High Court, p. 93.

[2] Bagehot, English Constitution, p. 250.

ACKNOWLEDGEMENT

The writer wishes to express his deep appreciation to Dr. Donald Tilton of the Department of History and Political Science for his ever-present willingness, over the past two years, to assist the writer both with his prudent advice and his fine library. It has been a privilege to work under him.

The writer also wishes to express his indebtedness to Mr. Francis P. Allen, the University Librarian, and to his staff for their kind cooperation in the obtaining of materials.

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