Constitutional Law of UK & USA

MD. REZAUL KARIM



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Md. Rezaul Karim
LL.B. (Hons.) Second Class First
LL.M. (First Class Third) DU
enior Judicial Magistrate, Judge Court Dinajpur;
Former Senior Lecturer, Department of Law,
Northern University, Bangladesh, (NUB);
Former Lecturer, Department of Law,
Dhaka International University

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Karim, Rezaul.
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TO

My parents and wife

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PREFACE

This book on Constitutional Law of UK and USA is the outcome of my experience of teaching on the subject at Northern University, Bangladesh. I have written this book feeling the necessity of the students on this subject. I have tried my best to expose the subject in a concise and lucid manner. I think this is going to be a comprehensive book on this subject. I do not claim the book to be an authentic one. This has been written on the basis of the authoritative books on these topics. I pay my heartfelt gratitude to those writers for sharing with their ideas and thoughts.

I hope the book will greatly benefit the students and teachers of Law and Political Science.

I acknowledge my debt to my parents and my wife Mst.Raoshan Ara Rahman. They have been the constant source of inspiration in writing the book. I am thankful to my respected teacher Professor Dr. Borhan Uddin Khan and older brother Md. Nazmuzzaman Bhuian (both teacher of Law at the University of Dhaka) for their inspiration. I also thank my publishers for printing and publishing the book.

Md. Rezaul Karim

PREFACE TO THE SECOND EDITION

I am happy to see that the book has been taken by the students as a useful one. In the second edition of the book judicial system of both of UK and USA have been added. In addition to that some landmark cases of the apex court of both the countries have been added. I hope that the students will find the new edition of the book as a more useful one.

I admit I have a little knowledge on the subject. But I have a very strong desire to make the book a comprehensive one. I shall be grateful if the readers of the book be kind enough to send me their comments and views for that purpose.

I was inspired to write good books on law getting the phone call of present member of Bangladesh Election Commission, Muhammed Sohul Hussain praising and congratulating me on the publication of the book.

I am grateful to the publisher of the second edition for taking the responsibility of publishing the book.

Md. Rezaul Karim

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PART ONE

CHAPTER—1

INTRODUCTION TO THE NATURE OF THE CONSTITUTION OF THE UNITED KINGDOM

Description of a constitution

A constitution is the aggregate of rules concerning the government of a state. The laws concerning the composition, functions of the three organs of the state, fundamental rights of people etc. are the common components of a constitution. Thus, a constitution must make the following basic provisions: the establishment of institutions, and the allocation of power between them and between the institutions and the people; the limitation of power by providing for checks and balances to power, and the accountability of power; the confirmation of rights and obligations for both governor and the government. In a written constitution, the most of the basic provisions of the constitution are written down in a single document, the particular date of adoption and coming into force can be specifically mentioned. Examples of written constitutions of the world are Constitution of the United States of America, the Constitution of India and the Constitution of Bangladesh. Written constitutions can have unwritten element, e.g. constitutional conventions. A constitution most of the part of which are in unwritten form is called unwritten constitution. The Constitutions of the United Kingdom and Israel are the unwritten constitutions of the world. Unwritten constitutions can have written elements e.g. Human Rights Act and House of Lords Act in UK.

Why doesn't the United Kingdom have a written constitution?

The British constitution has evolved over many centuries. Unlike the constitutions of America, France and many Commonwealth countries, the British constitution has not been assembled at any time into a single, consolidated document. Instead it is made up of common law,

statute law and convention. Of all the democratic countries in the world, only Israel is comparable to Britain in having no single document codifying the way its political institutions function and setting out the basic rights and duties of its citizens. Britain does, however, have certain important constitutional documents, including the Magna Carta (1215) which protects the rights of the community against the Crown; the Bill of Rights (1689) which extended the powers of Parliament, making it impracticable for the Sovereign to ignore the wishes of the Government; and the Reform Act (1832), which reformed the system of parliamentary representation. Common law has never been precisely defined - it is deduced from custom or legal precedents and interpreted in court cases by judges. Conventions are rules and practices which are not legally enforceable, but which are regarded as indispensable to the working of government. Many conventions are derived from the historical events through which the British system of government has evolved. One convention is that Ministers are responsible and can be held to account for what happens in their Departments. The constitution can be altered by Act of Parliament, or by general agreement to alter a convention. The flexibility of the British constitution helps to explain why it has developed so fully over the years. However, since Britain joined the European Community in 1973, the rulings of the European Court of Human Justice have increasingly determined and codified sections of British law in those areas covered by the various treaties to which Britain is a party. In the process British constitutional and legal arrangements are beginning to resemble those of Europe.

Does the United Kingdom have a constitution?

In countries favoured with a written constitution it is easy to define the constitution. It is 'The Constitution', The Basic Law', a legal document to which everybody may refer, and which is interpreted and upheld by the courts and with which all other laws must comply. Britain has no such codified text. But the problem is also an opportunity –to escape from the confines of a single document and include in the notion of the constitution of a fuller and more realistic account of the fundamental structure of government.

Should the United Kingdom have a written, codified constitution?

The main arguments for a written and codified constitution :

Parliament is currently unrestrained. It can make or unmake any law. It cannot be checked by any other branch of the system. Its heavy workload can mean poor laws are passed. The independence of the Judiciary would be protected. Basic rights of citizens are identified and guaranteed. There will be less constitutional crises as there will not be confusion as to what is 'unconstitutional behaviour'. Without a Bill of Rights, it is Parliament's duty to preserve liberties. However these can be removed at any time by Parliament (e.g. Internment, the Prevention of Terrorism Act).

The main arguments against a written and codified constitution:

The British constitution has served them well over the centuries, so why change the system now. After all, if it needs to change in future then it can continue to evolve.

The current system provides strong and effective government. There is accountability and supreme authority.

A written constitution has to be relatively vague to allow it to evolve as society evolves. However this means it will be constantly open to judicial interpretation. This is a problem for a number of reasons. Judges are unaccountable and do not have to answer to Parliament or the public. Judges are unrepresentative of the public, as such they are unlikely to represent minority groups or activists, and will interpret the law in a biased way. What would go in a written and codified constitution? Politicians on the left and right would disagree massively over the contents of a constitution. A constitution only works if politicians are willing to act in a constitutional manner and abide by the documents of the constitution. Even the courts cannot force the government to conform.

CHAPTER—2

HISTORY OF THE BRITISH CONSTITUTION

The constitutional laws of the United Kingdom include documents of many hundreds years old and they are still being added to in the present day. The development of a constitution arose from conflicts of authority between kings, popes, barons and common people. The first events in this development were in England.[1]

Before the Norman Conquest

The Kingdom of England was formed in the mid 9th Century and what is now recognized as being England came about in 927 when the last of the Heptarchy kingdoms fell under the rule of the English King. Until 1066 England was ruled by monarchs that were elected by the witan[2]. There were various elements of democracy at a local level too. This ended with the Norman Conquest.

The Norman Conquest

King Harold was the last Anglo-Saxon king. From William I onwards the rulers of England have all descended from a variety of foreign nationalities. The Normans brought in absolutist monarchy. William ruled for 21 years and was succeeded by his son William II. There was friction and conflict between the three sons of William and the youngest, Henry, attempted a coup in 1091. He failed at that time but eventually succeeded to the throne in 1100.

Henry I

Henry I (c. 1068 – December 1, 1135) was king from 1100 to 1135. When he ascended to the throne he granted the Charter of Liberties This document is not a Bill of Rights but a series of decrees and assurances. Probably the most important statement in the charter is at the beginning, where the king admits "that by the mercy of God and

1. http;//www.absoluteastronomy.com.encyclopedia.
2. Which means wise.

the common counsel of the barons of the whole kingdom of England I have been crowned king of said kingdom". This represents a step away from absolutism and a step toward constitutionalism. The king had recognized that the right to rule came not only from God but also from the common counsel of the barons.[3]

From this point onward, and more especially between the reigns of King John and Charles II, the power structure in England evolved from an essentially absolutist model to an essentially constitutional one.

The Plantagenates

King John was King of England from 1199 to 1216. He was the youngest brother of Richard I. His reign was fraught with conflicts. There was conflict between England and France, between England and the Pope and between the King and the barons.

Eventually the barons forced John to sign the Magna Carta, often looked upon as the first truly significant document in a long succession of documents over the centuries up to the present day which collectively constitute the legal sovereignty of the land now known as the United Kingdom. The constitution of this sovereignty is thus distributed across many historical precedents rather than written in one piece.

Henry III succeeded his father John. Henry was only nine years of age when he became king and so the country was ruled by regents until Henry reached the age of 20. Under pressure from the barons, led by Simon de Montfort, 6th Earl of Leicester, Henry had to accept the existence of the first English Parliament. In the next century, in the reign of Richard II there was an uprising, the Peasants' Revolt (1381). The revolt came very, very close getting their demands granted by the king but at the end the protestors were tricked out of it all. The revolt remains as an important moment in history, but failed to contribute to the written body of the constitution.

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3. ibid

The Tudors

The first Act of Supremacy (1534) made King Henry VIII the "supreme head" of the Church of England. Henry VIII died in 1547, leaving three children as potential heirs. The first Act of Supremacy had made King Henry VIII the supreme head of the Church of England and the second Act of Supremacy (1559) restored these powers for Elizabeth I, reversing catholic legislation passed during the reign of Mary, though the title Elizabeth gained was " Supreme Governor of the Church of England" rather than "supreme head" so as not to imply that she had control over the church's doctrine. The act also required all officials and clergy to make an oath of allegiance acknowledging her as the "governor" of the Church of England.[4]

It was an age of expanding European empires at the same time as internal religious wars. In 1562 French protestants civil war against French catholics. In the same year England entered the slave trade. The first English slave expedition to Africa was led by John Hawkins.

The monarchy had to get the consent of Parliament in all issues, but with the threat of war looming from Spain, Parliament showed great loyalty toward Queen Elizabeth I since she was a strong leader. When the Spanish Armada was defeated (1588), the Parliament felt safe and thus it decreased its loyalty to the monarchy[5]. The Parliament consisted of two levels of administration: the House of Lords that was made up of the influential Nobles, and the "House of Commons" that was made up of influential and representative members of the middle-class. The "House of Commons" had grown sharply, doubling in size due to the prosperity of the middle-class during that time. The Puritans made up the majority of the "House of Commons," so they began asking for more rights for the Puritans, but Elizabeth I was strong enough not to succumb. John Aylmer, a Greek scholar, saw an immediate resemblance of the Tudor constitution with that of the classical republic of Sparta. Geoffrey

4. ibid
5. ibid

Elton, who wrote 'The Tudor Constitution', gave hearty approval to Aylmer's conclusions. It was the Greek scholars, such as Aylmer, that popularized the Greek classical political terminology and influenced British constitutionalist thought. They brought forward the idea of "mixed" government from classical antiquity and applied it to their form of government.

James I and VI

When Queen Elizabeth I died (1603) without issue, she was succeeded by her cousin James VI of Scotland, the son of Mary, Queen of Scots, and he became King James I of England. This was a major step towards creating a united kingdom. James I faced a fractious religious England since it contained , Puritans, Separatists, and Catholics. He began fighting with them. Puritans were English Calvinists/ Presbyterians/Huguenots. They believed in a simplified religion based on individual conscience, the direct authority of the Holy Scriptures, and a society of belief in which preaching played a prominent role.

James I was a believer in the Divine Right of Kings Theory, which stated that Kings were chosen by God and should therefore be absolute and answerable only to God. Though he was Presbyterian, he was against the Presbyterian idea of allowing the congregation to elect their presbyters since it undermined his absolutism. Thus he fought with the Puritans, who were English Presbyterians.

He did concede to the Puritans by allowing them to create the " King James Bible" that was an "English" translation and interpretation of the Bible.[6]

Then James I began fighting with the Catholics, but eventually gave them rights, exempting the Catholics from having to pay the title to the Anglican Church, but this caused a great decrease in Anglican Church revenue, so he quickly took those rights away.

A radical Catholic group planned to kill the Parliament and James I all in one attack, so that they could establish a Catholic administration.

---

6. ibid

They rented a building with a basement that ran underneath the Parliament building, and in it they placed barrels of gunpowder to explode and destroy the Parliament while it was in session (November 5, 1605) with James I present. It was thus called the Gunpowder Plot. The plot was revealed when some of the conspirators wrote notes of warning to their friends in Parliament. An investigation led to the discovery of the basement filled with Guy Fawkes. Fawkes was executed by being hung, drawn and quartered, a method of execution which was still legal then, in the days before the English Bill of Rights (1689). The actions of King James I were unpopular during his reign.

James ended a war with the Spanish (1604) under the condition that the English were to stop illegally trading with the Spanish colonies in the New World. This condition angered the Protestant traders. James I tried to marry his son Charles to Maria the daughter of Philip III of Spain in order to create a religious balance, but the Protestant English didn't like that, because Spain was very Catholic. James I's daughter Elizabeth married Frederick V, who was the Elector of the Palatinate. When James's son-in-law Frederick V was fighting the Catholics in the Thirty Years' War, James I wouldn't help him, so the English looked down upon James I for not fighting against the Catholics and for not helping his own son-in-law[7].

James had appointed the Duke of Buckingham (1592–1628) as his Civil Adviser, and he was much hated by the Parliament, because he exercised a great deal of power but was an inadequate, untrained statesman. He worked on getting an alliance for England with Spain by trying to arrange the marriage of James's son Charles to Maria the daughter of Philip III of Spain, but after 8 years of negotiations, the Spanish turned down the marriage. To get back at Spain, the Duke of Buckingham caused a war between the two countries. He did successfully arrange the marriage (1624) of Charles to Henrietta Maria the daughter of Louis XIII of France, but he caused a war between England and France by helping the Huguenots in the French

7. ibid

civil war. Thus he caused English to get into a war with Spain and with France. He was an adviser to King Charles I (James I's son), until he was killed by John Felton in 1628.

Charles I and the Civil War

James was succeeded by his son who became Charles I in 1625. Charles I believed in the Divine Right of Kings Theory, like his father, and thus continued to fight with parliament. The Parliament's main power at this time was its control of the taxes. The Parliament demanded more power over the taxes[8]. Traditionally, Parliament had voted at the beginning of a King's reign on the amount allowed for a King's Tonnage and Poundage, the customs duties that made up a large portion of a king's annual income. Now the Parliament wanted to re-evaluate these taxes annually, which would give them more control over the king. James I didn't allow this and dealt with the situation by dissolving the Parliament when he didn't want to bother with them. Charles I did the same at first and later just ignored its annual evaluations. Charles acquired much of his money with forced loans from the nobles. He also received a lot of money through taxes. One important tax that Charles collected was the Ship Money tax that required the counties bordering the sea to fund a navy to protect the English coastline, and the coastal counties were unhappy with it since Charles was collecting the Ship Money tax during a time of peace and since he wasn't using it really to fund the navy. To get even more money, Charles placed the Ship Money tax on the interior counties as well, which angered the English people, because now Charles was creating new taxes without the consent of the Parliament, which was against the (unwritten) law. A man in London named John Hampden, who was also a member of Parliament, refused to pay this "new," interior Ship Money tax, so he was tried for a crime by Charles I and lost with a vote of 7 to 5.

Yet, Charles I was in war with France and Spain, and this drained a lot of money from him, so he was forced to call upon Parliament (1629) to make new taxes for him. Parliament would not grant Charles new taxes until he had signed the Petition of Rights that

8. ibid

established conditions in which Charles had to submit to the law of theParliament.It stipulated that :

1. The king could not establish martial law in England during times of Peace.
2. The king could not levy taxes without the consent of the Parliament.
3. The king could not arbitrarily imprison people.
4. The king could not quarter soldiers in private homes. After Charles got the taxes from Parliament (1629), he dissolved Parliament and broke the tenets of the Petition of Rights. William Laud and Thomas Wentworth were appointed to fill the void that the Duke of Buckingham left.

Charles appointed William Laud (1573–1645) as the Archbishop of Canterbury. He was a conscientious and diligent man. He was an Anglican Christian and liked the rich Anglican robes. He also established a standard setup and location for the (A Christian sacrament commemorating the Last Supper by consecrating bread and wine) Eucharistic table complete with a communion rail, which was very Catholic. Thus, the Puritans were angry with him, because he appeared to be a secret Catholic . He further angered the Puritans with his Declaration of Sports, which called for sporting events to take place on Sundays, which the Puritans didn't like because they believed that Sunday was supposed to be a day of rest.

King Charles appointed as the Civil Adviser Tomas Wentworth (1593–1641) Earl of Strafford. He believed that the king should be the most powerful government institution. He was hated by older associates as a traitor, because he was more loyal to the king now and thought that the king should be able to do things that Charles I was doing. He governed Ireland. He was against the Parliament's religious intolerance.

On top of the wars England had with France and with Spain, Charles I and William Laud began a war with Scotland in an attempt to convert Scotland to the Church of England. This was called the Bishops' War (1639–1640) and it had two major parts:

The first Bishops' War (1639) ended in a truce. The second Bishops' War, the following year, began with the Scottish invasion of England in which the Scottish defeated the English and remained stationed in England until their issues were solved. To get the Scottish out, Charles I signed the Treaty of Rippon (1640), which required England to pay an indemnity of £850 for each day that the Scottish were stationed in England[9].

During the second part of the Bishops' War, Charles I had run very low on money, so he was forced to call a Parliament to make new taxes. He and the Parliament could not agree on anything, so after three weeks, Charles I dissolved the Parliament. Then he desperately needed new taxes, so Charles I called a Parliament again and it would only help him if he agreed to some terms, which ultimately made Charles I a constitutional monarch. It was called the Long Parliament (1640–1660), because it was not officially dissolved by its own vote until1660.

These terms were: that Charles I had to impeach Thomas Wentworth and William Laud. He reluctantly placed them under arrest and put them in The Tower, executing Wentworth in 1641 and William Laud in 1645.

Charles I had to agree to the Triennial Act (1641), which required the Parliament to meet every three years with or without the king's consent.

Charles I had to abolish the Court of the Star Chamber, a royal court controlled completely by Charles I in which the prosecutor was also the judge and it was intended to be used to implement the will of the king legally with a "judicial" façade. It was considered an "extralegal" court. It dealt with odd casesandpunishments[10].

Charles I had to abolish the High Court, which was the same as the Court of the Star Chamber, though it dealt with religious heresy. It was considered an "extralegal"court.

9. ibid
10. ibid

Charles I had to accept the Grand Remonstrance and allow the circulation of its copies, and it was a document that outlined the crimes that officials had accused Charles of committing since the beginning of his reign. Charles I was also never to do any of those crimes again. Charles I, most importantly, had to agree never to dissolve a Parliament without the consent of the Parliament.

Most of England believed that Parliament had done enough to curb the power of King Charles I, but the radicals in Parliament and the radicals around the country wanted to reform the Church of England by getting rid of the bishops and by establishing the Puritans' method of worship as the standard. This caused a political division in Parliament, so Charles I took advantage of it. He then sent 500 soldiers into the House of Commons to arrest five of the Puritans' ringleaders. The five ringleaders had been tipped off, so they had left Parliament and Charles I was left with only shame for storming Parliament. King Charles I left London and went to Oxford, and the (Civil war in England between the Parliamentarians and the Royalists under Charles I; 1644-1648) English Civil War began (1642). The North and West of England were on Charles I's side. They were known as the Cavaliers. Charles I created an army illegally.

The South and East of England were on Parliament's side and were known as Roundheads, for their haircuts. In response to Charles I raising an army, they did so as well. Yet, they didn't have the military might that King Charles I had, so they solicited the help of the Scottish with the Solemn League and Covenant that promised to impose the Presbyterian religion on the Church of England. They called their army the New Model Army and they made its commander Oliver Cromwell, who was also a member of Parliament. The New Model Army was comprised mostly of Presbyterians.

Oliver Cromwell and the Commonwealth[11]

Though Parliament won, it was clear to the Scots that it was not going to uphold the Solemn League and Covenant by imposing Presbyterianism on England, so the New Model Army, Parliament and the Scots began falling apart. The Scots were paid for their help and sent back to Scotland.

The Presbyterian Roundheads were interested in freedom to practice their religion and not in making the Presbyterian religion the state religion.

Cromwell proposed that Parliament reinstate the bishops of the Church of England and King Charles I as a constitutional monarch, but allow for the toleration of other religions. Though at the end of the war, the people of England could accept Charles I back in office but not religious toleration. They also wanted the New Model Army dissolved since it was a provocative factor. Thus Parliament disallowed religious toleration and voted to disband the New Model Army, but the New Model Army refused the order. Charles I then made the same deal that the Roundheads had made with the Scottish and Parliamentary Presbyterians. He solicited the help of Scotland and in return he promised to impose Presbyterianism on England. The New Model Army would not allow this deal to be made. Thus a "new" civil war broke out in 1648.

This time, Scotland, the Parliamentary Presbyterians and the royalists were on the side of Charles I. The New Model Army and the rest of Parliament were against him.

In the Battle of Preston (1648) Cromwell and his New Model Army defeated Charles I.

Then one of Cromwell's officers, Colonel Pride, destroyed the Presbyterian majority in Parliament by driving out of Parliament 143 Presbyterians of the 203. The new Parliament constituted a Rump Parliament, which was a Parliament in which the minority carried on in the name of the majority that was kicked out. The Rump

11. ibid

Parliament: Abolished the monarchy and the House of Lords in Parliament[12].

Created a republic called the " Commonwealth" that was really just dictatorship run by Cromwell. Scotland was against Cromwell's "Commonwealth" and declared Charles I's son king at Edinburgh as King Charles II, but Cromwell and the New Model Army defeated him (1650) and he fled to France where he stayed until 1660. Cromwell then went to Ireland to govern it, but was "disgusted" with the Catholics, so he massacred many of them and so the Irish rebelled against him as well.Cromwell then dissolved the Rump Parliament and declared himself to be the Lord Protector (dictator).

Richard Cromwell and Charles II

Cromwell died (1658) and was succeeded by his son Richard Cromwell, who tried to keep power militarily and absolutely, but he was also incapable of unifying all of the diverse groups . General George Monk came down from Scotland and overthrew Richard. He then invited the remnants of the Long Parliament to reconvene. The Long Parliament met and officially ended when it voted to dissolve itself and create a new Parliament. The new Parliament began the Restoration by choosing Charles I's son Charles II to be the King of England.

Popular political movements

In 1649 True Levellers, also known as The Diggers, a people's political reform movement, published The True Levellers Standard Advanced: or, The State of Community opened, and Presented to the Sons of Men. This is another important document in the history of British constitutionalism, though different from the others listed here because the True Levellers' declaration comes from the people instead of from the state. They were called the "True Levelers" to distinguish themselves from a larger political group called The Levellers which had supported

12. ibid

the republicans during the civil war. The "True Levellers" were not satisfied with what had been gained by the war against the king and wanted instead a dismantling of the state. They can be best understood through such philosophiesa s libertarianism anarchism, and religious communism.

Also at this time the Polish Brethren arrived in England and Holland. The sect of Polish Brethren had been driven out of Poland after The Deluge because they were commonly considered to be collaborators with the Swedish.

The radical ideas had influence in Poland, Holland and England, particularly upon the philosophy of John Locke; he, in turn, had a profound influence upon the development of political ideas of liberty. They have thus influenced the founders of the United States of America.[13]

Formation of the United Kingdom

The expansion of the electoral franchise between 1832 and 1989, numerous Acts of Parliament increased the number of people from 5% of the adult population to the system of universal suffrage for all people 18 or over that exists today.

New Labour's reforms

First Term

In Labour's first term (1997–2001), it introduced a large package of constitutional reforms, which it promised in its 1997 manifesto. The most major were:

The creation of the devolved assemblies in Scotland, Wales and (A division of the United Kingdom located on the northern part of the island of Ireland) Northern Ireland, with their own direct elections. The creation of a devolved assembly in London and the introduction of directly elected mayors[14].

13. ibid
14. ibid

The beginning of a process of reform of the House of Lords, including the removal of all hereditary peers except 92.The incorporation of the European Convention on Human Rights into UK law by the passing of the Human Rights Act 1998. The passing of the Freedom of Information Act 2000. The passing of the Political Parties, Elections and Referendums Act 2000, creating the Electoral Commission to regulate elections and referendums and party spending to an extent.

Second Term

The House of Commons voted on seven options in February 2003 on what proportion of elected and appointed members the House of Lords should have. None of the options received a majority[15].

In 2004, the Joint Committee tasked with overseeing the drafting of the proposed Civil Contingencies Bill, published its first report, in which, amongst other things, it suggested amending the bill's clauses that grant Cabinet Ministers the power "to disapply or modify any Act of Parliament" as overly wide, and that the bill should be modified to preclude changes to the following Acts, which, it suggested, formed "the fundamental parts of constitutional law" of the United Kingdom.

15. ibid

CHAPTER—3

CHARACTERISTICS OF THE CONSTITUTION OF THE UNITED KINGDOM

Unitary Constitution

The United Kingdom constitution was traditionally described as unitary as opposed to federal or confederal. Devolution and other constitutional reforms introduced since the election of 1997 have led, however, to the suggestion that the constitution should now be described as quasi-federal.[16] The United is a union of England, Wales, Scotland and Northern Ireland. The state for the purpose of international relation is the United Kingdom.

Unwritten Constitution

The British constitution to a large extent is of an unwritten nature. There is no single document which can be said to contain the general principles of political governance.

The laws of the British constitution comprise statute law, common law, custom and constitutional conventions. Some of the principles of the British Constitution are contained in formally unrelated Acts of Parliament, such as the Act of Settlement,1700 and the Parliament Acts 1911 and 1949..Many of the principles of British constitutional law are to be inferred from decisions of the courts in particular cases, such as the extent of the liberties of the citizen, determined in disputes between individual and the executive. A custom in private law is a rule of conduct which has not been adjudicated upon by the courts, but which would be recognized and enforced by the courts if the matter came before them.[17]

16. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.16
17. ibid, 20

The British constitution has grown like an organism and developed from age to age. It is the product of evolution and the result of slow and steady development.

A Flexible Constitution

The British Constitution is flexible because any principle of the constitution can be altered by the same body in the same manner as any other law. There is no codified and basic constitutional law having superior sanctity to statutory law. The procedure to alter the constitution or any other rules of law is the same. There is legislative supremacy of Parliament and the courts have no power to review parliamentary legislation and declare it unconstitutional.

Sovereignty of Parliament

The British Constitution establishes Supremacy of Parliament. It means that parliament is supreme. Positively this means Parliament can legally pass any kind of law whatsoever; negatively it means that there is no person or body which can challenge any act of parliament.

Limited Monarchy

The British Constitution provides for limited or constitutional monarchy as opposed to absolute monarchy. That is to say, the governmental powers which as a matter of legal form are vested in the Queen are in practice exercised in accordance with the laws customs and conventions of the constitution; and they are exercised either by the Queen on the advice of her Ministers or by the Ministers in her name.

Responsible Parliamentary Government

Parliament exercises supreme control over all branches of the government. Ministers are responsible to the parliament. They defend their conduct there, and continuance in office depends on retaining the confidence of the Commons, and they can appeal to the electorate to return an assembly that will support their policy.

Constitutional Conventions

Conventions refers to rules of political practice which are regarded as binding by those who operate the constitution whom they concern-especially the Sovereign and statesmen but which would not be enforced by the courts if the matter came before them. The lack of enforcement distinguishes conventions from laws in the strict sense. In case of British Constitution these conventions play extremely important part. It is constitutional conventions that describe and explain how the constitution works, how it lives and grows.

Judicial Independence

Before 1688 judges could be dismissed by the King at his will. The Bill of Rights, 1688 and the Act of Settlement,1700 provided provisions for independence of the judiciary. Some of the provisions are found in the Judicature Acts, Appellate Jurisdiction Act, 1876 and the Supreme Courts Act, 1981. Their effect is that judges of the superior British Courts may not be removed except for misbehavior in their office of conviction of some serious offence. There are now statutory retiring ages and adequate provisions for ascertainment and establishment of salaries.

Mixed Separation of Powers

There is not, and never has been a strict separation of powers in the English Constitution in the sense that legislative executive and judicial powers are assigned respectively to different organs, nor have checks and balances between them.[18] The Crown has always been an element in the exercise of all three powers. The Cabinet and other ministers are members of the legislature. Most notably, the Lord Chancellor presides over the Second Chamber, is the Head of the Judiciary and is a Cabinet Minister.

Rule of Law

One of the fundamental principles of the British Constitution is rule of law. Rule of law according to Dicey, implies three things, namely,

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18. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.26

the absence of arbitrary power, equality before law and guarantee of rights of people. It is based the Common Law of land and is the product of centuries of struggle of the people for the recognition of their inherent rights and privileges.

No distinct System of Administrative Law

Administrative law determines the powers, organization and duties of administrative authorities. In Civil Law countries like France and Germany there are distinct system of administrative law and courts. But Administrative Law is a part of Constitutional Law in the United Kingdom and there is no distinct system of administrative courts.

Human Rights

The Human Rights Act 1998 incorporates the rights enshrined in the European Convention on Human Rights and Fundamental Freedoms into domestic law represent a fundamental change in the protection of human rights.

Hereditary Character

The British Constitution is the expression of hereditary principle. Monarchy rests on the hereditary principle and the House of Lords contains hereditary peers. It is true that neither the King nor the House of Lords play any effective role in the political set-up of the country yet they are continuing.

Bicameral Legislature

The United Kingdom legislature is composed of two Houses. The House of Lords is the upper House of Parliament, and the House of Commons is the lower House of Parliament

CHAPTER—4

SOURCES OF THE CONSTITUTION

Under the Constitution of UK, there has traditionally been no comprehensive single document which sets out the general principles of political governance. In order to give meaning to the constitution as a whole, it is necessary to study the many fundamental documents, statutes and cases together with the non-legal conventional rules. It is, however, convenient to classify the sources, broadly under two heads, namely, legal and non-legal sources. Legal sources imply those sources provisions coming from which are enforceable by an order of the court; non-legal sources imply those sources provisions coming from which are not enforceable by an order of the court.

LEGAL SOURCES

Statutes

This is law created by Parliament. Acts of Parliament are approved by the Commons, Lords and the Monarchs, gain the force of law, and are then implemented by the executive and enforced by the courts. Any law that involves constitutional relationships becomes part of the constitution. Statute Law is the most important source of the UK constitution as, under the doctrine of Parliamentary Sovereignty, the UK Parliament is the supreme law-making body.

The Magna Carta, 1215

The Magna Carta (Latin for 'Great Charter') is Britain's best-known constitutional document. In 1215 feudal barons forced the 'tyrannical' King John (1199-1216) to agree to a series of concessions embodied in a charter which became known as the Magna Carta. Sixty-one clauses set out a clear expression of the rights of the community against the Crown. The contents deal with

the 'free' Church; feudal law; towns, trade and merchants; the reform of the law and justice; the behaviour of royal officials; and royal forests. The King was forced to fix his seal to the Magna Carta in a meadow next to the River Thames at Runnymede between Windsor and Staines. It is said that he behaved pleasantly to the nobles at the time, but as soon as he returned to his own chamber he threw himself on the floor in a mad rage. Since that day the Magna Carta has become part of English Law and established the important principle that the King is not above the law.

Original copies of the charter exist in Salisbury Cathedral, Lincoln Castle and the British Museum in London.

The Magna Carta nowadays principally of historical interest, represents an early settlement between the Crown and the barons, limiting the power of the Crown and also providing for the right to trial by jury.

The Petition of Right, 1628

The Petition of Right arose as a result of Darnel's Case (1628), where the defendants had been convicted and imprisoned for refusing to pay a loan imposed by King Charles I. The Petition forbade such loans, taxes and other monetary demands without the consent of the parliament.

The Bill of Rights, 1689

The Bill of Rights was the culmination of long-running disputes between the Crown and Parliament and represents the foundation of the contemporary constitution, limiting the powers of the Crown and ensuring the supremacy of Parliament over the Crown. The Bill declared the power of suspending or executing laws by the Crown without parliamentary consent to be illegal. It also declared the levying of money for use of the Crown under the prerogative without parliamentary consent to be illegal.

The Act of Settlement, 1700

The Act of Settlement clarified the line of succession to the throne. The Act also provided for security of tenure for the judiciary, thus

ending the power of the Crown to dismiss judges at will. In relation to the succession to the throne, the Act tied the succession to Protestant heirs, thus prohibiting accession to the throne by persons who are Roman Catholics, or who marry Roman Catholics.

Acts of Union with Scotland 1706, Ireland 1700

These treaties brought about the union with Ireland and Scotland. While the Act of Union with Scotland remains in force, and its continuing importance stressed in the debate on devolution to the Scottish Parliament under the Scotland Act 1998, the Act of Union with Ireland met its demise. The Treaty of Union with Scotland, for example, provided that the two Kingdoms of England and Scotland shall be united in one Kingdom by the name of Great Britain.

The Parliament Acts 1911 and 1949

The Parliament Acts of 1911 and 1949 regulate the relationship between the House of Commons and the House of Lords and ensure that while the unelected House of Lords may delay legislation introduced in the Commons, ultimately it must give way to the elected House.

The European Communities Act 1972

The European Communities Act 1972, as amended, together with the Treaties on European Union 1992,1997 and 2000, regulate the United Kingdom's membership with the European Union and continue to have immense significance for the constitution of the United Kingdom. The law of the European Union and Community represents an increasingly significant source of constitutional Law.

The Human Rights Act 1998

The Human Rights Act of 1998 incorporates the rights enshrined in the European Convention on Human Rights and Freedoms into domestic law represents a fundamental change in the domestic

protection of rights. The Act provides citizens for the first time with a code of rights which are enforceable in the domestic courts rather than in the European Court of Human Rights.

The House of Lords Act 1999

The Act represents the first stage of the reform program of the House of Lords, and removes the majority of hereditary peers from that House.

Acts Establishing Devolution

The Government of Wales Act 1998, the Northern Ireland Act 1998 and the Scotland Act 1998 are the devolution Acts which granted to the nation of the United Kingdom extensive administrative powers and in the case of Northern Ireland and Scotland extensive law-making power.

Royal Prerogative

This refers to discretionary powers of the Crown that are employed by Government Ministers in the name of the Monarch. The Crown retains a number of powers that date back to before Britain became a constitutional monarchy in the Century 17th. These include the power to declare war, to dissolve parliament, to appoint government ministers and judges. Today these powers lie with the Prime Minister and Government Ministers, the Prime Minister will inform the Monarch of their decision but the Monarch has not real power to veto their chosen course. The prerogative powers of the Crown are those powers which are the residue of the arbitrary and discretionary powers legally left in the hands of the Crown which, being exercised by the government in the name of the Crown entails every act which the executive government can do without the authority of the Parliament.

Judicial Precedents

Many of the principles of the British constitutional law are to be inferred from decisions of the courts in particular cases, such as the

extent of the liberties of the citizen, determined in disputes between the individuals and the executive. Such cases arise incidentally, as it were, in the ordinary course of litigation.[19] Examples of judicial precedents laying down important principles are Ashby v. White (1703); Campbell v Hall (1774); Johnstone v. Pedler(1921); Stockdale v. Hansard (1839) and Ridge v. Baldwin (1964).[20]

Custom

Custom has been a source of important parts of constitutional law of UK, for example, the royal prerogative and parliamentary privilege. The royal prerogative is now regarded as part of common law. The law and custom of parliament, including parliamentary privilege, is a special kind of customary law. There may still be some customary constitutional laws which have not had occasion to be recognized by the courts but which would be so recognized if the question came before them.[21]

Common Law

This is law that has been developed and applied by UK courts. Where there is no clear statute law, the courts have to interpret and clarify the law. As no law is so precise that it needs no interpretation, judges are constantly contributing to the constitution. One power that British Judges do have is that to make 'Common Law' in unprecedented situations. Other Judges faced with similar circumstances should follow the previous decision.

NON-LEGAL SOURCES

Conventions

These are habits, norms and rules that through long usage have come to be considered binding on those who should abide by the constitution. They are neither codified nor enforced by courts of law, and as such there is no punishment if there are breached.

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19. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.19
20. ibid,20.
21. Ibid, pp.20-21

Conventions include individual and collective ministerial responsibility. Conventions may not have the force of law, but breaking them can have political repercussions. For example, if a minister refuses to resign in the light of mistakes made in their department, then the minister's position is weakened, they are open to parliamentary and media criticism, and this can even reflect on the authority of the Prime Minister.

Authoritative Works

Some famous commentators have, through political and legal texts, become such influential observers and commentators on the UK constitution that their works have become accepted as works of authority on the UK constitution.

The most famous examples (all C19th) are: Walter Bagehot's "The English Constitution" , Erskine May's "Treatise on the Law, Privileges, Proceedings and Usage of Parliament", AV Dicey's "An introduction to the Study of the Law of the Constitution"

CHAPTER—5

CONSTITUTIONAL CONVENTIONS

Constitutional Conventions Defined

A 'convention' is an uncodified rule of a constitution considered binding on political actors but not enforceable by the courts. The constitution of a country is comprised of both written or codified rules enforced by courts, and 'unwritten' rules or principles necessary for constitutional government. While conventions are more binding upon political actors than mere usages, it is not true that they are less binding than constitutional law. There is no particular hierarchy of types of constitutional rules. In many cases, constitutional conventions are more important than written constitutional provisions. What separates a convention from constitutional law is that the former is not judicially enforceable. Courts may recognize the existence of a 'convention', and even help define its nature and scope, but they do not provide remedies for the breach of conventions.

Constitutional conventions differ from formal constitutional amendments in that they are created over time, and it may be difficult or impossible to identify when a constitutional convention has come into effect or sometimes even what the constitutional conventions are.

According to Jennings :

The short explanation of constitutional conventions is that they provide the flesh which clothes the dry bones of law; they make the legal constitution work; they keep in touch with the growth of ideas.

A.V. Dicey has defined conventions as :

conventions, understandings, habits or practices which, though the may regulate the... conduct of several members of the sovereign power...are in reality laws at all since they are not enforced by the courts.

Marshall and Moodie have defined conventions as :

rules of constitutional behaviour which are considered to be binding by and upon those who operate the constitution but which are not enforced by the courts... nor by the presiding officers in the Houses of Parliament.

A constitutional convention is a non-legal rule which imposes an obligation on those bound by the convention, breach or violation of which will give rise to legitimate criticism; and that criticism will generally take the form of accusation of unconstitutional conduct.[22]

The Queen will appoint as Prime Minister the leader of the political party with the majority of seats in the House of Commons and ministers must be members of either House of the Parliament are the examples of constitutional conventions.

Unenforceablity of the conventions

Constitutional conventions are not obligatory, but are in effect procedural agreements which all sides adhere to. Some conventions evolve or change over time; for example, before 1918 the British cabinet requested a parliamentary dissolution from the monarch, with the Prime Minister conveying the request. Since 1918, prime ministers on their own initiative request dissolutions, and need not consult members of the cabinet. However conventions are rarely ever broken. Unless there is general agreement on the breach, the person who breaches a convention is often heavily criticised, on occasions leading to a loss of respect or popular support. It is often said that "conventions are not worth the paper they are not written on", i.e, they are unenforceable in law because they are not written down. Whatever enforceability they have comes from history, tradition, symbolism and their cross-party support.

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22. Hilarie Barnett, Constitutional and Administrative Law, Cavendish Publishing Limited, Fourth Edition, P. 31

The reasons for obeying constitutional conventions

Conventions are obeyed because of the potential political difficulties, which would arise if a firmly established convention were departed from without constitutional justifications.[23] For example, if the Queen appointed as Prime Minister someone who did not enjoy confidence of the majority of the House of Commons, he and his colleagues would be defeated in the lower House.[24] As a matter of fact, statesmen probably observe the conventions because they wish the machinery of the government to go on[25] and because they hope to retain the favour of the electorate.

The source of conventions

A conventional rule may be said to exist when a firmly established practice has been consciously adopted and recognised by those who operate the constitution. A practice will be seen to have become at the point at which failure to act in accordance with it gives rise to legitimate criticism.[26] According to Jennings ...if the authority itself and those connected with it believe that they ought to behave in a certain way, then the constitution does exist ...Practice alone is not enough. He also adds that there must be a reason for the rule...the creation of a convention must be due to a reason of the thing because it is consistent with the prevailing political philosophy.

Constitutional conventions generally arise from precedent. For example, the constitutional convention that the Pime Minister of the United Kingdom must govern with a majority in Parliament derived from the very unsuccessful attempt of Robert Peel to govern without one in the mid-nineteenth century.

The effects of breaching constitutional conventions

Being non-legal rule, there is no question of a breach of convention being enforced by the courts: the courts do not have

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23. Hilarie Barnett, ibid, at page 34
24. O. Hood Philips and Jackson, Constitutional and Administrative Law, Eighth Edition(2001), London, Sweet and Maxwell, page.143
25. Marshall and Moodie.
26. Ibid, P.31

the jurisdiction to enforce the conventional rules, although they may give recognition to them.[27] However, it is also the case as Dicey argued, that breach of a convention may lead to breach of law. The most often cited example offered is that if parliament, in breach of a convention, did not meet annually, the consequence would be that money granted on an annual basis by parliament for the maintenance of the armed forces would not be forthcoming. Accordingly, maintenance of the army would become unlawful by virtue of Article VI of the Bill of Rights 1689, which provides that raising or keeping an army in peacetime without parliament's consent, is unlawful. Such Consequences are the exception. For most of the part, the consequence of violating a convention is political rather than legal.[28]

Classification and illustrations of Constitutional Conventions

Constitutional Convention may be classified into four main categories :

Conventions relating to the exercise of the Royal Prerogative and Conventions relating to the working of the Cabinet system. Conventions regulating the relations between the Lords and the Commons and the proceedings in the Parliament.Conventions relating the relations between the U.K and the Dominions

(a) Conventions relating to the exercise of the Royal Prerogative

The legal powers of the King are still vast. According to Dicey, conventions are rules for determining the mode in which the discretionary powers of the Crown ought to be exercised. Constitutional monarchy and Cabinet Government depend entirely on these conventions. The following are some of the most important conventions, which regulate the exercise of these prerogative powers :

1. The King must invite the most influential leader of the party or group commanding a majority in the House of Commons to form a ministry.

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27. Attorney General v Jonathon Cape Ltd.(1976)
28. Hilarie Barnett, ibid,at page 36

2. The King must appoint as his Ministers such persons as the Prime Minister may advice him in the matter.
3. The Body of Ministers so appointed becomes the Government, and the inner ring is called the Cabinet.
4. The King is bound to exercise his legal powers in accordance with the advice tendered to him by his Ministers through the Prime Minister.
5. The King must assent to every bill passed by both the Houses of Parliament or passed by the House of Commons in accordance with the provisions of Parliament Acts of 1911 and 1949.
6. Parliament be summoned to meet at least once a year.

(b) Conventions relating to the Cabinet system

Prima facie the Ministry is entitled to continue in the office as long as it enjoys the confidence of the majority party in the Commons. But if it is out- voted on a major issue or if a vote of con confidence is passed, then it is bound to resign.

1. The Ministry is collectively responsible to Parliament for the general conduct of the affair of the country.
2. The Cabinet should not advice, the Crown to declare war or to make peace or conclude a treaty unless there is sufficient ground for them to believe that Commons approve of such a measure.

(c) Conventions regulating the relations between the House of Lords and the House of Commons and the proceedings in Parliament

According to Dicey, the following conventions have grown up regulating the relations between the two Houses:

1. In case of a conflict between the two Houses, the will of the House of Commons must prevail.
2. Peers, who do not hold or have not held high judicial offices, do not attend when the House of Lords is sitting as the highest Court of Appeal.

3. Proposals involving the expenditure of public money may only be introduced on behalf of the Crown by a Minister in the House of Commons.
4. The businesses of the House of Commons is rearranged informally " behind the Speaker's Chair", between the leader of the House and the leader of the Opposition.
5. Political parties are represented on Parliamentary Committees in proportion to the number of their supporters in the House.

(d) Conventions regulating the relations between the United Kingdom and the Independent Members of the Commonwealth

These conventions provided for the methods of cooperation between the members of the British Commonwealth inter se and regulated negotiations between them and foreign countries. Among the more important of these conventions are :

1. The Parliament of the U.K. may not legislate for a Dominion except at its request and with its consent.
2. Any alteration in the law touching the succession to the throne of the royal style or titles requires the assent of the Parliament of the UK as well as the Parliaments of Canada, Australia and New Zealand.
3. In appointing the Governor- General of a Dominion, the King acts on the advice of the Prime Minister of that country.
4. The Governor-General is the representative of the King, and not of the British Government and acts on the advice of the Dominion Government as its constitutional head.

These conventions are merely matters of practice. No legal proceedings can be taken for the breach of a convention. No court can take direct cognizance of these constitutional understandings. Yet they are as rigidly observed as though they were embodied in a statute.

CHAPTER—6

SEPARATION OF POWERS

The concept is of great antiquity and can be attributed to Aristotle (384-322 BC); however, the clearest exposition of the doctrine can be found in Montesquieu's De L' Espirit des Lois 1748.The essence of the doctrine of separation of powers is that there should be, a clear demarcation in function between the legislature, executive and judiciary in order that none should have excessive power and there should be in place a system of checks and balances between the institutions.[29]The doctrine does not insist that there should be three institutions of the government each operating in isolation from each other. Indeed such an arrangement would be unworkable.[30]

If constitutional arrangements within a state are considered, a range of possibilities exists:

absolute power residing in one person or body exercising executive, legislative and judicial powers: no separation of powers.

power being diffused between three separate bodies exercising separate functions with no overlaps in function or personnel: pure separation of powers; and

powers and personnel being largely- but not totally- separated with checks and balances in the system to prevent abuse: mixed government and weak separation of powers.

It is the third category that the constitution of the United Kingdom subscribes.[31]

29. Barnett, Hilarie, Constitutional and Administrative Law, (Cavendish Publishing Limited), Fourth Edition, P. 105
30. ibid, 107.
31. Ibid.

THE INSTITUTIONS OF THE STATE

The executive

The executive may be defined as that branch of the state, which formulates policy and is responsible for its execution. In formal terms, the sovereign is the Head of the executive. The Prime Minister, Cabinet and other ministers, for the most part, are elected Members of Parliament. In addition, the Civil Service local authorities, police and armed forces, constitute the executive in practical sense.[32]

The legislature

The Queen in Parliament is the sovereign law making body within the United Kingdom. Formally expressed, parliament comprises the Queen, the House of Commons and the House of Lords. All Bills must pass by each House and receive the royal assent.

The judiciary

The judiciary is that branch of the state which adjudicates upon conflicts between state institutions, between state and individual, and between individuals. The judiciary is independent of both parliament and the executive. It is the feature of judicial independence.[33]

There is partial separation: whilst the legislature and the executive are fused and have overlapping functions and personnel, the courts are more or less separate. Yet there are some anomalies, the most significant of which concern the role of Lord Chancellor and the Attorney General and the position of the Law Lords.

The Lord Chancellor's office

It is the office of the Lord Chancellor which is most frequently cited as being violation of the doctrine of separation of powers. The reasons behind such claim are the various types of functions of the Lord Chancellor.

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32. Ibid,107-108.
33. Ibid, 108.

Functions relating to courts

The Lord Chancellor is the head of the judiciary and is formally recognized as President of the Supreme Court under the Supreme Court Act 1981. Magistrates are appointed by the Lord Chancellor. High Court judges, circuit judges and recorders are appointed by the Crown on his advice.

Member of the executive

The Lord Chancellor is a member of the executive arm of the government. He is a senior member of the Cabinet. It is perhaps this feature of the Lord Chancellor's office which gives rise to the greatest concern when evaluated against the doctrine of separation of powers.

Speaker of the House of Lords

The Lord Chancellor is a member of the House of Lords and presides over its proceedings as ex officio Speaker. He is the principal spokesman for the government in the Lords. As a member of the Cabinet, the Lord Chancellor cannot be a politically impartial.

Law reform

The Lord Chancellor works closely with the Law Commission of England Wales established by the Law Commissions Act1965. The Lord Chancellor may refer matters to the Law Commission for investigation.

The Lord Chancellor and judicial proceedings

The Lord Chancellor is a member of the House of Lords Appellate Committee and judicial Committee of the Privy Council. In relation to judicial functions as member of the House of Lords, it is that the Chancellor will not preside over, or be judicially involved in, cases which involve the government or are overtly political in nature.

Attorney-General

The role of the Attorney General may be even more demanding. He is a member of the Parliament and thus represents a constituency and

takes the party whip. He is also a government minister bound by the convention of collective responsibility and therefore required to support government policy. He and other legal officers give confidential legal advice to the government. He may instigate or move to stop criminal proceedings, and may bring civil actions in the public interest[34].

The Law Lords

The Lords also pose a problem in the consideration of separateness. They are not members of the government but they do sit in the House of Lords in its legislative capacity[35]. To overcome this problem convention requires that they do not offer opinions on matters of a political nature, at least until they have retired from the bench. They do speak on matters directly concerning the legal process and administration of justice, and this may occasionally bring them into the government.

Relationship between Legislature and Executive

The Sovereign is head of the Executive and also an integral part of the Legislative. Her powers are, however, theoretical rather than real. More importantly, by convention ministers must be members of one or other House of Parliament.

Parliament controls the Executive in that Parliament ousts a Government by withdrawing support. Some parliamentary control of the Executive exists in the form of question time, select committees, adjournment debates and opposition days.

There are a vast number of statutory instruments issued by ministers every year. Thus, the Executive exercises a considerable legislative function.

Relationship between the Executive and the Judiciary

The Lord High Chancellor is a member of the Executive, head of the Lord Chancellor's department and a member of the Cabinet. He is

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6. Peter Madgwick and Diana Woodhouse, The Law and Politics of the Constitution of the United Kingdom, Oxford Brookes Library, (1995) 101

35. Ibid. p.104

also the head of the judiciary, entitled to preside over the House of Lords when it sits as a court. A member of the House of Lords, he is also a member of the Legislature.

The Judiciary is appointed by the Executive. Magistrates and circuit judges are appointed by the Lord Chancellor. High Court judges are appointed by the Queen on the advice of the Lord Chancellor. Lords Justice of Appeal and Lords of Appeal in Ordinary are appointed by the Queen on the advice of the Prime Minister after consulting the Lord Chancellor.

Magistrates are dismissible by the Lord Chancellor without cause shown. Circuit judges are dismissible by the Lord Chancellor for incapacity or misbehavior.

Relationship between Judiciary and Legislature

Under the House of Commons Disqualification Act 1975 all full-time judicial appointments disqualify the holder from membership of the House of Commons. But, the House of Lords is both the second chamber of the Legislature and the highest Court of Appeal in the United Kingdom. Also the Lord High Chancellor presides over the House when it is sitting in its legislative capacity, and is entitled to preside over the Appellate Committee when hearing appeals.

Parliament can control the courts, in a sense, by legislation.

CHAPTER—7

PARLIAMENTARY SUPREMACY

Parliamentary sovereignty or the Sovereignty of Parliament, also Parliamentary supremacy, is the concept in the constitutional law of Westminister system that the Parliament has absolute sovereignty. This means it is supreme to all other governmental instiutions including the monarch acting alone. This contrasts for example, with the situation in the United States, where the supreme court can rule legislation unconstitutional. The principle of parliamentary sovereignty originated in the United Kingdom in the 17th and 18th centuries during which time parliament asserted the right to name and depose a monarch. In 1648, Henry Herbert, the 2nd Earl of Pembroke, famously commented while a member of the House of Lords said that "Parliament can do anything but make a man a woman and a woman a man." Parliamentary supremacy essentially originates with the Bill of Rights 1689.

The phrase 'parliamentary supremacy' is generally used to mean the absence of any legal restraint on the legislative power of the United Kingdom. The expression positively means that the Queen, the House of Lords and the House of Commons can pass, amend, or repeal laws to any extent and there are no fundamental laws with which Parliament cannot interfere. Negatively, it means that there does not exist in any part of the British Empire any person or body of persons, executive, legislative or judicial which can pronounce void any enactment, passed by the British Parliament on the ground of such enactment being opposed to the constitution on any ground whatever, except, of course, it being repealed by the parliament itself.

Parliamentary Sovereignty is regarded as the main principle of the British Constitution. In other words, Parliament holds the supreme authority in the UK.

AV Dicey wrote that Parliament "has under the British Constitution, the right to make or unmake any law whatever; and further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament".

A. V. Dicey, in an Introduction to the Study of the Law of the Constitution, offers a three part definition of the Sovereignty:

Parliament can legislate on any subject matter. Nobody including a court of law can question the validity of an Act of Parliament.No Parliament can be bound by its predecessor nor bind by its successor.

Parliament can legislate on any subject matter

In studying sovereignty it is important to appreciate that there is a significant difference between what Parliament can do legally and what it can do in practice. For example, if Parliament confers independence upon a former colony, in strict legal theory, Parliament can also remove that independence. However a unilaterally unwanted attempt to regain sovereign power would be ineffective within the newly independent and the sovereign state. As another example, in legal theory Parliament could pass a law stating that the right to own private property is abolished. According to Dicey's theory, such an Act- once passed by the Commons, Lords and given the royal assent – would be legally valid and not susceptible to invalidation by the courts. However as a matter of political practice, Parliament would never pass such a law. And, if it were so unwise to do so, the law would be ineffective. The limits under which Parliament operates are those imposed by the democratic process: they are non-legal or extra-legal limits.

Nobody including a court of law can question the validity of an Act of Parliament

The manner in which sovereignty reveals itself is through judicial decisions. In relations to domestic legislation, two rules are dominant. The first is the 'enrolled bill' rule which states that, once a bill has passed through requisite parliamentary stages and received the Royal Assent, the courts will not enquire into the manner in

which it was passed, even if allegations are made that it was improperly passed. The second rule is that of 'implied repeal'. In essence the rule provides that, not only may parliament expressly repeal a previous Act but it may also by necessary implication 'impliedly repeal' a previous Act.

No Parliament can be bound by its predecessor nor bind by its successor

Particular attention should be paid to arguments against Parliamentary Sovereignty based on the Treaty of Union with Scotland 1706 and Act of Union 1707. The Treaty of Union created a new Parliament of Great Britain and, in so doing, in effect abolished the formerly sovereign Parliaments of England and Scotland. Many of the provisions of the Act where phrased in terms which suggested the intention that they should be enduring and hence not subject to amendment or repeal. However, many amendments have been made. It has been argued that Act of Parliament which go against the provisions of the Act of Union are invalid, on the basis that the Act of Union was a constituent Act – one prior to and setting the conditions under which the newly- created Parliament would legitimately act. The argument then centres on whether or not Parliament can be bound by a predecessor.

Sophisticated academic arguments have been put forward to the effect that Parliament can bind its successors, either by redefining itself or setting out 'manner and form' provisions which must be followed. This 'new view' of sovereignty has in its various respects attracted the support of Sir Ivor Jennings.

Parliamentary Sovereignty in the United Kingdom

After the Act of Union of 1707there was some ambiguity about whether the principle applied in Scotland. Prior to the union this had been a principle only of English, not of Scots law, and the Act of Union guaranteed continuity in the Scottish legal system. While the Parliament took the view that the principle of sovereignty applied throughout the United Kingdom, the Scottish judiciary maintain the

right in theory to rule an act of parliament inadmissable. One clear statement of this from the year 1953 was in the judge's findings in the case MacCormick v. Lord Advocate. However, the issue has never been tested, as no Scottish court since 1707has actually attempted to make such a ruling.[36]

Parliamentary sovereignty prevents judicial review of local domestic law. However in the late 20th and early 21st centuries, the idea of parliamentary supremacy underwent erosion in practice from three main directions:

The first is the devolution of power to regional assemblies in Scotland (Scottish Parliament), Wales (Welsh Assembly)and Northern Ireland(Northern Ireland Assembly) full disclaimer.

The second erosion has been in connection with institutions of the European Union, in particular the European Court of Justice which asserts the power to exercise judicial review over UK law. In this situation, an adverse finding by the Court that a UK law is inconsistent with the Treaties automatically annuls the law, since the European Communities Act 1972provides that European Community law is supreme in the United Kingdom. The first example of this was the Factortame case. The ECA 1972 has been thought of as a 'constitutional statute'. In the case of Thoburn v. Sunderland City Council the Weights and Measures Act 1985 was held not to impliedly repeal the ECA 1972. This has also compromised the effect of parliamentary sovereignty, as the ECA 1972 must be expressly repealed in order to be negated by subsequent incompatible legislation.

The third erosion has been in connection with the European Convention on Human Rights and the incorporation by the Human Rights Act 1998 of the European Convention on Human Rights into UK law. The European Court of Human Rights can find acts of the UK government to be in violation of the Convention. However, decisions by the ECHR does not automatically annul the law; the Government must introduce a bill into Parliament to

36 http://en.wikipedia.org./wiki/wikipedia

implement the ECHR's decisions. Acting under the Human Rights Act, British courts can declare Acts of Parliament to be in violation of the Convention; this power, like that of the European Court of Human Rights, does not automatically annul the law. However, unlike the ECHR, the British Courts have a formal procedure for the review of Acts, resulting in a Declaration of Incompatibility. The Declaration of Incompatibility does not annul the law, but enables the Government to use an accelerated procedure to enact a bill to repeal it.

Another more minor area is the increasing use of referendums which take away power from Parliament, as in reality, the decision whether to pass law is made by the electorate, not Parliament. However, Parliament could still reverse decisions made by referendums, but this seems unlikely to ever happen.

However, in each case, the laws have been structured so that there is no theoretical erosion of Parliamentary supremacy. Parliament has the power to abolish or overrule any of the devolved legislatures at its pleasure, although it would be unlikely to do so. The European and British Courts have the authority to declare incompatibility or to annul a law only because of an Act of Parliament, the European Communities Act 1972 which can be repealed by Parliament. Thus, theoretically, Parliament remains almost entirely sovereign. The qualifier "almost" is provided because in the 1921, after a century of dispute, Parliament passed the Church of Scotland Act 1921which finally agreed that it does not have sovereignty over the Church of Scotland, the established church in Scotland.

There is a concept in political science of 'legal' and 'political' sovereignty. It can be argued that legal sovereignty has not been lost, because Parliament still retains all its theoretical powers. There are no legal limits on Parliament's sovereignty. However, as it is highly unlikely that the UK would repeal the European Communities Act and leave the EU, and it is equally unlikely the devolved legislature would be abolished, there are significant political limits on the sovereignty of Parliament. Nevertheless, it remains the case that the

UK Parliament could do so, and that if it did, these repeals would be legally binding.

This stands in contrast to the Acts of Parliament which have been used to devolve independence from the UK to colonies in the British Empire. For example the UK Parliament passed the Canada Act 1982 which stated that the UK Parliament would no longer be able to amend the Canadian constitution. Even if the UK Parliament were to repeal or amend the Canada Act 1982, it would be unenforceable as Canada is no longer subject to UK sovereignty.

In what ways is Parliament sovereign?

Parliament has the ultimate political authority. Most key decisions must be approved by Parliament. All powers exercised by ministers, devolved governments, local governments and other public bodies are granted by parliament and can be removed by Parliament.

All new primary legislation must be passed by parliament and secondary legislation made by ministers can be overruled by Parliament. Parliament is not bound by its predecessors. Parliament cannot bind its successors.

Is Parliament really Sovereign?

Parliamentary sovereignty has been undermined in a number of areas :

Political Parties:Since the reductions in the power of the House of Lords in 1911 and 1949, the balance of power has shifted to the House of Commons. Combined with the dominance of political parties in elections since the start of the C20, this has led to tight party control over MP's and disciplined parliamentary groups that make the business of the House of Commons very predictable.

Executive

Practical reality dictates that the British Government is the majority party in the House of Commons. Strong party discipline makes this majority reliable and almost guarantees the Government victory in Commons votes – an 'Elective Dictatorship'. Also backed by the Civil Service 'machine' it is easy to argue that sovereignty actually

lies with the executive not Parliament. However, Prime Ministers who systematically repress the powers of party and parliament tend to meet their fate – Margaret Thatcher is a classic example of this.

Public

At least once every five years the House of Commons is re-elected, and so at that point sovereignty really lies with the people. However, after the general election sovereignty returns to Parliament for the next five years.

Devolution of power

The first is the devolution of power to local assemblies in Scotland and Wales. In this situation the legal theory has been maintained that the parliament in London maintains supremacy but chooses not to use it in certain legislation involving Scotland and Wales.

Human Rights Act 1998

Another erosion has been due to the incorporation by the Human Rights Act 1998of the European Convention on Human Rights into UK law. Acting under the Human Rights Act, British courts can declare Acts of Parliament to be in violation of the Convention. This power, like that of the European Court of Human Rights, does not automatically annul the law. However, unlike the ECHR, the British Courts have a formal procedure for the review of Acts, resulting in a Declaration of Incompatibility. The Declaration of Incompatibility does not annul the law, but enables the Government to use an accelerated procedure to enact a bill to repeal it.

European Union

When Britain signed the Treaty of Rome in 1973 it accepted that the status of European law is superior to British law. This has given British courts the power of judicial review over Acts of Parliament. Therefore courts can scrutinise Acts of Parliament, refer them to the European Court of Justice and even suspend those Acts. However, Parliament is free to withdraw Britain from the EU at any time, so technically sovereignty still lies with Parliament.

The doctrine of implied repeal

The doctrine of implied repeal provides the mechanism by which the judge gives effect to contemporary sovereignty[37]. Parliament may, of course, repeal any previous law by expressly declaring that law to be repealed. The position of the judiciary is then clear: they must give effect to the latest law and judges are not free to apply the earlier statute. The position, however, may not always be so clear-cut. Parliament may pass a statute, which while not expressly repealing an earlier Act is inconsistent with it. When the judges are faced with two apparently conflicting statutes, the doctrine of implied repeal would come into play. The judges in such situations apply the latest statute assuming the earlier statute to be impliedly repealed.

Two cases illustrate this point. In Vauxhall Estates Ltd v Liverpool Corporation (1932) the Corporation of Liverpool proposed a scheme for the improvement of certain area of the city. The Minister of health confirmed the scheme in an order that incorporated the provisions of the Acquisition of Land Act 1919 and the Housing Act 1925. These two Acts each provided a different scheme of compensation for compulsorily acquired land. The question as to whether the compensation due to the appellants in accordance with the 1919 Act or in accordance with the1925 Act. It was held the compensation should be counted in accordance with the later Act.

In Ellen Street Estates Ltd v Minister of Health (1934) the plaintiffs sought to have compensation for compulsorily acquired land paid on an earlier more favourable basis rather than that laid down in a later statute. Held, the later statute must prevail.

37. Hilarie Barnett, Constitutional and Administrative Law, Cavendish Publishing Limited, Fourth Edition, P.

CHAPTER—8

THE RULE OF LAW

The 'rule of law' is an ambiguous expression, and may mean different things for different writers[38]. The rule of law is a concept which underpins the constitution of UK and is itself supported by the separation of powers. Although the concept dates from Aristotle-'the rule of law is preferable to that of any individual'- for the purpose of analysis Dicey's three-part description of the requirements of the rule of law is useful.

For Dicey the expression 'rule of law' includes three distinct conceptions :

The absence of arbitrary power : No man is above the law. No man is punishable except for a distinct breach of law, established in the ordinary legal manner before the ordinary courts. It requires that that there be no arbitrariness in the justice system, in particular that laws should be certain and accessible.

Equality before the law : Every man whatever his rank or condition, is subject to the ordinary law and the jurisdiction of ordinary tribunals. In terms of the equality before the law, the requirement has a number of implications regarding accessibility to the courts of law, the cost of legal proceedings and the availability of legal aid and representation and the requirements of fairness in the admission of evidence into the court.

The guarantee of citizen's rights : The rights of individuals are best protected by the common law rather than by a code or bill of rights.

Application of Dicey's concept of rule of law in the United Kingdom

Writing in the Victorian era Professor A V Dicey, in his work 'The law of the Constitution' (1885) stated that the rule of law was one of the main features of the constitution of the United Kingdom.

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38. The Rule of Law, Ideal or Ideology (1987)

Dicey's first concept

Notwithstanding Dicey's strongly expressed views there is nothing, in theory, to stop Parliament enacting legislation providing ministers, police officers, or other executive officers with wide powers to interfere with the rights and liberties of citizens[39]. Some powers granted to the executive during wartime e.g. Riversidge v. Anderson (1942) perhaps reflect this. Social and political developments in the twentieth century have also led to public authorities being given wide discretionary powers to interfere with the property and commercial interests of citizens, or to determine eligibility to publicly funded assistance. For example, minister will often be given the power to determine an issue or grant a privilege, the to be exercised 'if the minister sees fit'. Prima facie it is difficult to see how any challenge could be mounted to the exercise of such a power, raising the prospect of it being exercised in an arbitrary fashion without any legal redress for those affected.

In reality the courts have developed a complex and sophisticated body of law, generically referred to as administrative law, whereby they will review the exercise of executive discretion to ensure that it has been used lawfully (i.e. intra vires). If a minister, or any other public authority, is found to have abused a statutory discretion or other power affecting the public, the courts can, through the mechanism of judicial review, quash the decision on the grounds that it is outwith the discretion vested in the decision-maker (ie it is ultra vires). Hence, ostensibly wide powers are subject to control on the basis that they have to be exercised reasonably, proportionately and fairly.

Dicey's first concept of the rule of law is also reflected in the way in which police powers have been confined in statutes such as the Police and Criminal Evidence Act 1984(PACE). Some police officers might feel that their task would be much easier if they had an

39. Michael T Molan, Constitutional Law: The Machinary of the Government,4th edition(2003) . Old Baily Press. P. 59

untrammelled power to stop search, arrest and detain anyone they felt like investigating. If such were the case the citizen would have very little protection from the arbitrary abuse of power. Instead PACE specifies the preconditions that have to be satisfied before police powers of arrest etc can be exercised. Typically an officer must behave reasonable grounds for suspecting certain facts before exercising powers such as the power to arrest. PACE also contains strict rules on the length of time for which a suspect may be detained before being charged. A person who suspects that he is unlawfully detained to the Divisional Court of the Queen's Bench Division of the High Court for a writ of habeas corpus ordering his release. The rule will be issued if the Court is not satisfied that the detention is justified by law.

Dicey's second concept

It is not difficult to find examples that seem to contradict Dicey's notion that the United Kingdom constitution reflects the rule of law because the law applies equally to all. For example the monarch, in her personal capacity, is not subject to the jurisdiction of the ordinary courts of the land[40]. Although the Crown Proceedings Act 1947 has reduced the legal immunities and privileges of the Crown in its public capacity, there are still many situations where the Crown, and to some extent other public bodies, enjoy a privileged position in litigation.

The public interest in the proper administration of justice has led to the rule that no civil legal action may be brought in respect of any thing or done by a judge in the exercise of his judicial functions in respect of a jury verdict; or in respect of words spoken by the parties, counsel or witnesses in the course of judicial proceedings.

Government officials have a vast range of legal rights and powers not available to ordinary members of the public. For example, to take money as income tax, to exercise a power of compulsory purchase, to deport a person. In addition, the subject who wishes to contest

40. ibid,p60 -61

whether the official has exercised these powers in accordance with law is often required by law to take the matter, not to the ordinary courts of the land, but to a special tribunal.

It is submitted, however, that none of the above examples actually undermines Dicey's second concept. It is true that they all involve situations where the operation of the law is suspended in respect of certain individuals, or where individuals are prevented from securing redress before the ordinary course, but the crucial point is that law regulates all these exceptions. They are not instances of an individual, or a public body, simply determining that a given law no longer applies to them. Arguably, even the immunity of the monarch subsists at common law only fof as long as the courts are willing to permit it.

Dicey;s Third concept

Prior to the enactment of the Human Rights Act 1998 the evidence to support Dicey's third concept was, at best mixed. in cases such as Malone v Metropolitan Police Commissioner (1979) the court refuse to recognize any right to privacy at common law that would render telephone-tapping unlawful.

On the other hand judges from time to time asserted, in cases where a party sought to pray in aid an article of the European Convention on Human Rights, that reliance on the Convention was unnecessary, because it largely reflected the values expressed in the English common law. The incorporation of the Convention effected by the Human Rights Act 1998 means that, for the first time, statute law can now becited as the basis for a number of fundamental human rights in English law.

CHAPTER—9

THE EUROPEAN COMMUNITY AND THE UNION AND THE BRITISH CONSTITUTION

The European Union came into being with the Treaty on European Union 1992. The Union is the result of years of evolution of the three original European Communities, now known as the European Community. The Union has far wider objectives than the original Communities, not least, of which are the introduction of the single European currency, the Euro, the development of common defence and security policies. The European Community is now deeply embedded in domestic law.

To understand the origins of the European Community, we must look back to 1945 and a Europe devastated by war: economically, politically and socially. In the desire to attain some form of harmony as a guarantor of peace and to rebuild Europe, the movement towards integration was started.

In 1950, under the Leadership of the French Foreign Minister, Robert Schuman, a plan was devised whereby the raw materials of war, coal and steel, would be placed under the control of a supra-national organization, and thus the European Coal and Steel Community was established under the Treaty of Paris signed in 195

Initiatives were introduced to provide supranational regulation of the non-military use of atomic energy. At the same time, the move towards greater economic co-operation and the creation of a European trading area was under way. The results of these developments took the form of the Treaties of Rome signed in 1957, establishing :

the European Economic Community (EEC)

the European Atomic Energy Community (EURATOM).

Maastricht : the Treaty on European Union 1992

The Treaty on European Union-the Maastricht Treaty- signed in February 1992 was to come into force once ratified by individual

member states according to their own constitutional arrangements. Because of difficulties with ratification, it was to be November 1993 before the treaty came into force.

The Treaty on European Union has expanded the areas of Community activity, adding to EC Article 3 education, culture and consumer protection. Common foreign and security policy and policy co-operation in criminal matters fall outside the activity of EC and within the European Union and its own procedural mechanisms.

The Treaty on European Union involved the creation of the European Union- a union which is larger of the European Community. The European Community is now part of the European Union but not the whole. The second part of the Treaty on European Union governs new areas of activity, namely, common foreign and security policy, and police and judicial co-operation in criminal matters.

The Treaty of Amsterdam 1997

In 1997, following a series of summit meetings the Treaty of Amsterdam, which extends the principle of free movement of goods and persons by abolishing border controls within continental Europe was concluded. Britain retained her border controls. The Treaty of Amsterdam was reached principally to adjust the EU structure with a view to enlargement of the membership of the Union.

Nice : the Treaty on European Union

In December 2000 a new summit was held and a number of agreements regarding the future of the Union was reached. The end product of the summit is the Treaty of Nice. Most of the agreements reached were aimed at adjusting mechanisms to cope with an expanded Union membership.

Institutions of the Union and Community

The European Council

The European Council is not an institution of the Community, and thus is neither limited nor obligated by Community law, nor can it be

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challenged in the European Court. It comprises the heads of the states or governments and the foreign secretaries together with the President of the Commission. Unusually there is no official President at the formal meetings of the twice-yearly Councils. The European Council is the driving force of the Community. It makes the broad policy decisions setting out direction and development of the Community and puts these into legislative form through the signing of treaties.

The Commission

The Commission consists of seventeen members, who 'shall be chosen on the grounds of their general competence and whose competence is beyond doubt'. The Commission must contain at least one national of each Member State and not more than two. The term of office of Commissioners and the President is five years. It requires that the European Parliament be consulted on nominations for the President and then give its vote of approval on the proposed composition of the Commission before all members were appointed by the Member States.

The Council of Minister

The Council of Ministers is the Community institution in which the political authority resides. The Council consists of one ministerial representative from each Member State. This is the foreign Secretary when matters of external policy or general Community concern are under discussion. Otherwise, the responsible ministers attends; thus if fishing or agriculture policy is on the agenda, then the represents will be the agriculture ministers. The Presidency of the Council rotates, with a Member State holding it for six months. The Council is the least supra-national institution of the Community, its individual members inevitably being concerned to protect and foster their country's interests within Community.

Committee of the Permanent Representative

The Council of Ministers is not a permanent fixture but assembles and reassembles when required in the form that is

appropriate. There is therefore a need for a permanent organization to carry out administrative tasks and prepare the groundwork for meetings of the Council. This group is the Committee of Permanent Representatives, whose members are of ambassadorial status. The Committee does a great deal of work. It has forged a unique role for itself, working to smooth and foster the relationship of the Member States, both with each other and with the institutions of the Community, and to negotiate solutions that will satisfy all the participants.

The European Parliament

The European Parliament has been least influential of the Community institutions; indeed until recently the role of the democratically elected assembly has been minimal. It consists 'of representatives of the people of the States brought together in the Community. The allocation of seats in the Parliament broadly reflects the population of the Member States, although it favours the smaller states whose influence in terms of represents is larger than their size warrants.

Members are directly elected for five years, at present according to the electoral system, although the European Parliament has been instructed to 'draw up proposals for elections ...in accordance with a uniform procedure in all Member States'. These are likely to provide for some form of proportional representation. A major difference between European Parliament and National Parliaments is that the European Parliament does not support or oppose a government.

The European Court of Justice

The European Court of Justice (ECJ), assisted by the Court of First instance, is, like all institutions of the Community, a creation of the treaties and can only act within the powers provided by the constitution. It is based on the French Council

d' E`tat, and its French basis is indicated by the fact that the working language the Court is French and its procedure and its procedure follows that of a Civil, rather than common law system. Its procedures are inquisitorial rather than adversarial, and involve the extensive use of written evidence, the oral hearing playing a much smaller part than in Britain. There is a difference in the composition of the court.

The Court is composed of thirteen judges, appointed for a renewable period of six years. In practice each Member State provides one Judge and the additional judge come from one of the 'big five'.

The United Kingdom's constitutional consequences for membership of the European Community and Union

Membership of the European Community and Union has profound consequences for Britain's constitutional and political arrangements. They are as follows :

Membership of the European Community incorporates Britain into the constitution of the Community a largely unwritten constitution of a quasi -federal character, interpreted and enforced by a constitutional court. In the perspective of the British constitutional development and tradition this is a radical departure. [41]

The sovereignty of parliament is diminished in practice. Parliament cannot enact, or will be unable to secure implementation of, legislation which conflicts with the Community law.

Britain, lacking a written constitution itself, is now enmeshed in a parallel European constitution, written down in the Treaties and promulgated as such. It is interpreted positively and enforced by the European Court of Justice, a kind of Supreme Court.

The existence of Community encourages devolutionary tendencies in Britain.

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41. Peter Madgwick and Diana Woodhouse, The Law and Politics of the Constitution of the United Kingdom, Oxford Brookes Library, (1995) P62

The political influence of Parliament is also reduced by the transfer of decision-making in an increasing number of policy areas to the Community and Union. The power of Parliament to hold ministers to account is also reduced.

The autonomous power of the national government is decreased by the competing powers of the Community, the growing integration of the economic structure and policy making of European Central Bank and the concentration of a European foreign policy.

Although the political parties appear to be outside formal constitution, they are essential to its working, and influence the shape and functioning of institutions and institutional relationships. Membership of the Community has divided the parties along new lines. [42]

2. Peter Madgwick and Diana Woodhouse, ibid. 64

CHAPTER—10

THE UK PARLIAMENT

Parliament, the law-making body of the British people, consists of three elements: the Monarchy, the House of Commons and the House of Lords. They meet together only on occasions of ceremonial significance, such as the state opening of Parliament, although the agreement of all three is normally required for legislation. The House of Commons consists of 659 elected members called Members of Parliament or MPs. Election to the House of Commons is an important part of Britain's democratic system. The main purpose of the House of Commons is to make laws by passing Acts of Parliament, as well as to discuss current political issues. Some of the liveliest sessions in the Commons debating chamber take place at Prime Minister's Question Time when MPs have the opportunity to quiz the Prime Minister on burning issues of the day. The House of Lords currently consists of around 688 non-elected members i.e.hereditary peers and peeresses, life peers and peeresses and two archbishops and 24 senior bishops of the Church of England. Its main legislative function is to examine and revise bills from the Commons, but the Lords cannot normally prevent proposed legislation from becoming law if the Commons insists on it. It also acts in a legal capacity as the final court of appeal.

The relationship between the two Houses is governed largely by convention but is in part defined by the Parliament Acts. The legislative process involves both Houses of Parliament and the Monarch[43]. Under section 7 of the Parliament Act 1911 the life of a parliament is restricted to five years from the day on which first appointed to meet, unless previously dissolved.

43. www.parliament.uk

The main functions of Parliament are to : Make all UK law, provide, by voting for taxation, the means of carrying on the work of government protect the public and safeguard the rights of individuals scrutinise government policy and administration, including proposals for expenditure examine European proposals before they become law hear appeals in the House of Lords, the highest Court of Appeal in Britain debate the major issues of the day.

At the end of the 20th Century, legislation was passed by the UK Parliament to create devolved Parliaments in Scotland, Wales and Northern Ireland.

Origin and development of UK Parliament

Simon de Montfort and the origins of Parliament

By the 1250s King Henry III (1216-72) was running into difficulties with his nobility[44]. They were angry at the cost of some of his schemes, such as the rebuilding of Westminster Abbey and a proposed campaign to make one of his younger sons King of Sicily.

The Provisions of Oxford (1258), imposed on Henry by his barons, established a permanent baronial council which took control of certain key appointments. The leader of the baronial movement was Simon de Montfort, the Earl of Leicester. In 1259 the Provisions of Westminster reformed the common law.

Henry eventually renounced both sets of provisions and challenged the barons. Civil war broke out in 1264, initially going well for Simon de Montfort. During the conflict he sought to boost his baronial support by summoning knights of the shires and burgesses to attend his parliament. This was the first time that commoners had been represented.

De Montfort was killed at the Battle of Evesham in 1265, but his innovation of summoning the commons to attend parliaments was repeated in later years and soon became standard. Thus it is from him that the modern idea of a representative parliament derives.

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44. www.parliament.uk

Parliamentary Developments : 14th-20th Centuries

In the 14th Century, under King Edward III (1327-77) it was accepted that there should be no taxation without parliamentary consent, still a fundamental principle today[45]. Two distinct Houses of Parliament were emerging for the first time, with the 'Commons' sitting apart from the 'Upper House' from 1341. The 'Good Parliament' of 1376 saw the election of the first Speaker, Thomas Hungerford, to represent the Commons. It also saw the use of 'impeachment', whereby the House of Commons as a body could accuse officials who had abused their authority and put them on trial before the Lords.

In the 15th Century, the Commons gained equal law-making powers with the Lords, under King Henry V.

The 16th Century saw the legal union of Wales - which had long been subject to the English crown - with England under King Henry VIII (1536). Henry's reign also saw the Church of England break away from the Roman Catholic church. The 'Gunpowder Plot' of 1605 may have been hatched when it became clear that the new King, James 1, intended to do nothing to ease the plight of Catholics in the country. The Queen today remains the Supreme Governor of the Church of England and, as the sovereign, must by law be a member of that Church.

In the 17th Century, tensions increased between parliament and monarch, such that in 1641 the King and Parliament could not agree on the control of troops for reppression of the Irish Rebellion. Civil War broke out the following year, leading to the execution of King Charles 1 in January 1649. Following the restoration of the Monarchy in 1660, the role of parliament was enhanced by the events of 1688-89 (the 'Glorious Revolution') and the passage of the Bill of Rights which established the authority of Parliament over the King, and enshrined in law the principle of freedom of speech in parliamentary debates[46].

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45. ibid
46. www.parliament.uk

1707 brought the Union with Scotland and the first Parliament of Great Britain. Union with Ireland, which followed in 1801, lasted until its independence and the separation of Northern Ireland in the 1920s. Growing pressure for reform of parliament in the 18th and 19th Centuries led to a series of Reform Acts which extended the electoral franchise to most men (over 21) in 1867 and, finally, to women over 21 in 1928.

The legislative primacy of the House of Commons over the Lords was confirmed in the 20th Century by the passing of the Parliament Acts of 1911 and 1949.

The Parliament Acts 1911 and 1949

Until the early years of the 20th century, the House of Lords had the power to prevent legislation, as bills had to be passed by both Houses of Parliament.

David Lloyd-George's so-called 'people's budget' of 1909 brought this arrangement under strain, when the House of Lords originally refused to pass it. Eventually, the budget was passed after a general election in 1910; a second election was then fought on the issue of reform of the House of Lords. The result was the Parliament Act of 1911, which removed from the House of Lords the power to veto a bill, except one to prolong the lifetime of a parliament. Instead, the Lords could delay a bill by up to two years. The Act also reduced the maximum lifespan of a Parliament from seven years to its present five years. The Parliament Act 1949 further reduced the Lords' delaying powers to one year.

Since 1949 four acts have been passed into law without the consent of the House of Lords :

The War Crimes Act 1991

The European Parliamentary Elections Act 1999

The Sexual Offences (Amendment) Act 2000

The Hunting Act 2004

Composition of the House of Commons

The House of Commons is the lower house of the Parliament of the United Kingdom, and is now the dominant branch of Parliament. The House of Commons is a democratically elected body, consisting of 659 members, who are known as "Members of Parliament" or "MPs.".

The Speaker

The Speaker regulates the proceedings of the House. The Speaker is a senior Member appointed by common agreement of all Members and is generally a Member of the Opposition Party. The election of the speaker is the first task undertaken by parliament following a general election. The Speaker acts with politically impartiality and controls the business of the House.[47]

The Speaker is the presiding officer of the House and ensures that the rules of conduct and order are observed. The Speaker is the representative of the Commons in relation the Crown. When the House of Lords amends Common's Bills, the Speaker checks the amendments to ensure that they do not violate the financial privileges of the lower House[48].

Contrary to what the title would imply, the Speaker of the House of Commons does not speak - that is, he or she does not make speeches or take part in debates. The office has been held continuously since 1377 and originally the Speaker spoke on behalf of the Commons to the Monarch. That role is now largely ceremonial and today the Speaker's central function is to maintain order in a debate, and he or she may not vote other than in an official capacity - that is when the result of a vote is a tie. Even then, he or she is not allowed to express an opinion on the merits of the question under debate and must vote in such a way as to give the House another chance to decide. The Speaker has three deputies - the Chairman of Ways and Means and his or her two Deputy Chairmen. Like the Speaker, they can neither

47. Hilarie Barnett, Constitutional and Administrative Law, Cavendish Publishing Limited, Fourth Edition, P. 461
48. Ibid.

speak nor vote other than in their official capacity. The Speaker is neither a Minister nor a member of any political party but he or she is still a Member of Parliament, representing a constituency. The choice of Speaker is by election, with Members of Parliament each having one vote.

The Leader of the House

The Leader of the House is responsible to the Prime Minister for the organization of the business in the Commons. It is the function of the Leader of the House to announce the parliamentary business of the following week. The Leader of the House is a Minister of the Crown. When the Prime Minister is unavailable, it is the Leader of the House who represents the House of Commons.[49]

The party whips

The term 'whip' is said to owe its origin to the 'whippers-in' - people who keep the hounds in order at fox-hunting meets. Parliamentary whips are supposed to be similar disciplinarians, controlling the pack of MPs in their party.

Government whips are all Ministers of the Crown. The principal task of the Chief Whip is the management of government business in the House. He or she must try to ensure that, in spite of the activities of the opposition, Parliament has passed all the legislation and done all the tasks which it had planned during that session. Whips in the two main parties are organised by subject and by region. They monitor opinions inside their party and report back to the leadership, maintaining valuable day-to-day contact between ministers and their backbench supporters.

'The Whip' also refers to a document sent out weekly to MPs detailing the forthcoming business of the House. Items are underlined once, twice or three times to indicate their importance to the party leadership. When a 'three-line' whip is issued, the leadership is letting MPs know that it expects them to turn up and vote on the matter under discussion.

49. Ibid.

The party political control of Members is in the hands of party whips. On the government side, all whips receive salaries and are Ministers of the Crown. The Chief Whip is assisted by up to 12 other members. The Chief whip organizes the details of business of the House. The Opposition has Chief Whip, two salaried assistants and eight to ten non-salaried assistants.

Members of Parliament

The number of seats in Parliament is 659. Each member representing approximately 89,000 citizens. Members are elected by the first past the post system of election for limited terms, holding office until Parliament is dissolved (a maximum of five years). Each member is elected by, and represents, an electoral district known as a constituency. The House of Commons is the source of the vast majority of government ministers and, since 1963, every Prime Minister.

The Legislative Process

The procedure for passing the Bill differs according to the classification of a Bill. Most attention is here devoted to Public Bills.

The preparation of a Bill

Once the government has decided to implement a particular measure, the aims of the government must be translated effectively into language which will achieve those objectives. Drafting involves five stages: understanding, analysis, design, composition and revision. The draft Bill is examined by the Cabinet Home affairs Committee before being formally submitted to parliament for scrutiny and enactment. [50]

The structure of a Bill

Each Bill has a short title which indicates the general area of the policy involved together with a long title which summarises the main

50. Hilaire Barnett, ibid .475.

objectives of the Bill. The Bill is made up of Chapters or Parts and Schedules which contain detail supplementary to the primary clauses. The Bill may grant powers to make delegated legislation to ministers or other specified bodies.[51]

The legislative stages: Public Bills

First reading

A bill which is to be introduced will appear on the Order Paper of the relevant day. The Bill will be presented in dummy form and is deemed to be read a first time. Alternatively, a Bill may be introduced after having been sent to the Commons following its passage by the House of Lords. Following the purely formal introduction into Parliament, a date will be set for the second reading and the Bill will be printed and published.[52]

Second reading

It is at the second reading that a Bill will receive the first in depth scrutiny. The scrutiny occurs in the form of a debate, generally on the floor of the House, and is confined to matters of principle rather than detail.

Committee stage

Standing committees are designated to scrutinise Bills in detail. The committee will be established for the purpose of examining and will then stand down.

Report stage

Once the Bill has been considered, the Bill is reported back to the House of Commons as a whole. If amendments have been made in committee, the Bill will be reprinted. Further amendments may be introduced at this stage, but the Speaker will be careful to avoid repetition of the debate in the standing committee, so any proposed amendment previously considered will be rejected.[53]

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51. Hilaire Barnett, ibid .475.
52. Hilaire Barnett, ibid .475-476
53. Hilaire Barnett, ibid .479-480.

Third reading

Third reading represents the last chance for the House of Commons to examine a Bill before it is passed by the House of Lords. At this stage, the Bill cannot be amended other than to correct small mistakes such as grammatical or printing errors. A Bill may pass through the report and third reading stage at the same time.[54]

Scrutiny of Legislation by the House of Lords

Some Bills will start their life in the House of Lords and, once successfully passed in the Lords, will pass to the Commons for debate and scrutiny. Law Reform Bills, in particular, are regularly introduced in the House Lords. The majority of Bills, however, start their parliamentary life in the House of Commons[55]. Bills, which have completed their passage in the Commons, are passed to the House of Lords, which employs with some notable differences the same procedure as the House of Commons.

The Royal Assent

Receiving the royal assent represents the final stage in passing legislation. The Queen has the legal right to refuse to give royal assent to Bills passed by the House of Commons and Lords. By convention, the Queen must assent to such Bills unless advised contrary by her government. No monarch since 1854 has given royal assent.

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54. Hilaire Barnett, ibid .480
55. Hilaire Barnett, ibid .494

THE HOUSE OF LORDS

In the United Kingdom, the second chamber, the Upper House-or House of Lords- is currently an unelected chamber which has judicial executive and legislative, scrutinising and debating functions.[56] The House of Lords plays a vital role in statute revision.[57] In 1999, a major reform to the composition of the House of Lords was effected. The right of most hereditary peers to sit and vote was abolished, leaving the Lords with a majority of nominated and no democratically elected personalities.

The Composition of the House of Lords

The House of Lords is unelected. There are some advantages of it. It enjoys independence in its functioning, as it is not accountable to the government or to the electorate.

Hereditary peers

Hereditary peers are created under the prerogative of the Crown on the advice of the Prime Minister. A peerage is created under Letter Patent from the Sovereign which will define the line of succession which invariably falls to the male heirs. A peerage created by a Writ of Summons will devolve to all heirs, thus enabling female successors to the throne.[58]

In January1998 there were 759 hereditary peers out of a total membership of 1,272. Under the House of Lords Act 1999, the rights of most hereditary peers were removed and the new number became 92.

Life peers

In 1998, there were 461 peers appointed under the Life Peerages Act 1958: 81 female life peers and 380 male life peers. The award of

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56. See Bromhead,1958; Morgan, 1975;Shell 1992, cited by Hilaire Barnett, Ibid,517
57. The origins of the House of Lords lie in the councils summoned by English Kings in the eleventh twelfth and thirteenth centuries, in order to give advice, decide on appeal cases and, under certain circumstances to make financial grants to the King: Hilaire Barnett.
58. Hilaire Barnett, ibid .520-521.

peerages is one of the highest honours conferred in the United Kingdom. Approximately one-third of the former government ministers will receive life peerages. Peerages are conferred by the Crown on the advice of the Prime Minister. Twice a year-at new year and on the queens birthday-honours are awarded. There are, occasionally, honours lists announced to mark special occasions. At the time of the change of the government, the outgoing Prime Minister usually draws up a list. There is much evidence to suggest that that the system of appointment is used politically by government, a factor which undermines the legitimacy of the House of Lords.[59]

Judicial peers

They are also Law Lords. They are 12 in number. The Lords Appeal in Ordinary were originally appointed to add legal expertise to the House. In their judicial capacity, the House of Lords represents the highest domestic court for civil appeals in the United Kingdom and for criminal appeals from England, Wales and Northern Ireland. The Law Lords also sit as Members of the judicial Privy Council which has jurisdiction to hear appeals from a number of Commonwealth countries.[60] The Law Lords play a role in the legislative and other functions but, by convention, do not participate in purely political debate.

Lords Spiritual

There are 26 Archbishops and Bishops of the Church of England sit in the Lords. The explanation of the presence of these Bishops is historical. Today, their presence is explained both on the basis of tradition and on the basis of the close links between the established Church of England and the state.

Restrictions on the Lords

The Lords' powers of delay, amendment and veto are severely restricted by the Parliament Act 1949. Money Bills that have passed

59. ibid .480
60. ibid522

the Commons may receive the Royal Assent without the Lords' approval unless the Bill has been passed by the Lords within a month of it being sent there providing it was sent to the Lords at least a month before the end of the session. The Lords may reject any Bill that extends the duration of Parliament beyond five years. In case of Non-Money Bills the House of Lords can make a delay of one year.

Qualifications

There are numerous qualifications that apply to Members of Parliament. Most importantly, one must be aged at least twenty-one years, and must be a citizen of the United Kingdom, of a British overseas territory, of the Republic of Ireland, or of a member of the Commonwealth of Nations, in order to be eligible. These restrictions were introduced by the British Nationality Act 1981, but were previously far more stringent: under the Act of Settlement 1701,only natural-born subjects were qualified. Members of the House of Lords may not serve in the House of Commons.

A person may not sit in the House of Commons if he or she is the subject of a Bankruptcy Restrictions Order, or if he or she is adjudged bankrupt, or if his or her estate is sequestered.Also, lunatics are ineligible to sit in the House of Commons. Under the Mental Health Act 1959, two specialists must report to the Speaker that a Member is suffering from mental illness before a seat can be declared vacant. There also exists a precedent from the eighteenth century that the "deaf and dumb" are ineligible to sit in the Lower House. This precedent, however, has not been tested in recent years, and is highly unlikely to be upheld by the courts.

Anyone found guilty of high treason may not sit in Parliament until he or she has either completed the term of imprisonment, or received a full pardon from the Crown. Moreover, anyone serving a prison sentence of one year or more is ineligible. Finally, theRepresentation of the People Act 1983 disqualifies those found guilty of certain election-related offences for ten years. Several other disqualifications are established by the House of Commons Disqualification Act 1975.Holders of high judicial offices, civil servants, members of the

regular armed forces members of foreign legislatures, and holders of several Crown offices listed in the Act are all disqualified. The provisions of the House of Commons Disqualification Act 1975 largely consolidate the clauses of several previous enactments; in particular, several Crown officers had already been disqualified since the passage of the Act of Settlement 1707. Ministers, even though they are paid officers of the Crown, are not disqualified.

The rule that precludes certain Crown officers from serving in the House of Commons is used to circumvent a resolution adopted by the House of Commons in 1623, under which Members are not permitted to resign their seats. Should a Member seek to leave, he or she may request appointment to one of two ceremonial Crown offices: that of Crown Steward and Bailiff of the Chiltern Hundreds, or that of Crown Steward and Bailiff of the Manor of Northstead. These offices are sinecures ; they exist solely in order to permit the "resignation" of Members of the House of Commons. The Chancellor of the Exchequer is responsible for making the appointment, and, by convention, never refuses to do so when asked by a Member who desires to leave the House of Commons.

Committees

The Parliament of the United Kingdom uses committees for a variety of purposes; one common use is for the review of bills. Committees consider bills in detail, and may make amendments. Bills of great constitutional importance, as well as some important financial measures, are usually sent to the Committee of the Whole House, a body that, as its name suggests, includes all members of the House of Commons. Instead of the Speaker, the Chairman or a Deputy Chairman of Ways and Means presides. The Committee meets in the House of Commons Chamber.

Most bills are considered by Standing Committees, which consist of between sixteen and fifty members each. The membership of each Standing Committee roughly reflects the standing of the parties in the whole House. Though "standing" may imply permanence, the membership of Standing Committees changes constantly; new

Members are assigned each time the Committee considers a new bill. There is no formal limit on the number of Standing Committees, but there are usually only ten. Rarely, a bill may be committed to a Special Standing Committee, which operates much like a Standing Committee, but also investigates and holds hearings on the issues raised by the bill.

The House of Commons also has several Departmental Select Committees. The membership of these bodies, like that of the Standing Committees, reflects the strength of the parties in the House of Commons. Each committee elects its own Chairman. The primary function of a Departmental Select Committee is to scrutinise and investigate the activities of a particular Government Department; to fulfil these aims, it is permitted to hold hearings and collect evidence. Bills may be referred to Departmental Select Committees, but such a procedure is very seldom used.

A separate type of Select Committee is the Domestic Committee. Domestic Committees oversee the administration of the House and the services provided to Members. Other committees of the House of Commons include Joint Committees, the Committee on Standards and Privileges,and the Committee of Selection.

Relationship with the Government

Though it does not elect the Prime Minister, the House of Commons indirectly controls the premiership. By convention, the Prime Minister is answerable to, and must maintain the support of, the House of Commons. Thus, whenever the office of Prime Minister falls vacant, the Sovereign appoints the person most likely to command the support of the House—normally, the leader of the largest party in the Lower House.In modern times, and practically by convention, the Prime Minister is always a member of the House of Commons, rather than the House of Lords.

The Prime Minister may only stay in office as long as he or she retains the confidence of the House of Commons. The Lower House may indicate its lack of support for the Government by rejecting a Motion of Confidence or by passing a Motion of No Confidence. Confidence

and No Confidence Motions are sometimes phrased explicitly, for instance: "That this House has no confidence in Her Majesty's Government." Many other motions are considered confidence issues, even though not explicitly phrased as such. In particular, important bills that form a part of the Government's agenda are generally considered matters of confidence, as is the annual Budget. When a Government has lost the confidence of the House of Commons, the Prime Minister is obliged to either resign, or request the monarch to dissolve Parliament, thereby precipitating a general election.

Except when compelled to do so by an adverse vote on a confidence issue, the Prime Minister is allowed to choose the timing of dissolutions, and consequently the timing of general elections. The timing reflects political considerations, and is generally most opportune for the Prime Minister's party. However, no parliamentary term can last for more than five years; a dissolution is automatic upon the expiry of this period. Parliament is almost never permitted to sit for the maximum possible term, with dissolutions customarily being requested earlier.

Whatever the reason—the expiry of Parliament's five year term, the choice of the Prime Minister, or a Government defeat in the House of Commons—a dissolution is followed by general elections. If the Prime Minister's party retains its majority in the House of Commons, then the Prime Minister may remain in power. On the other hand, if his or her party has lost its majority, the Prime Minister is compelled to resign, allowing the Sovereign to appoint a new Prime Minister. One may note that a Prime Minister may resign even if he or she is not defeated at the polls; in such a case, the premiership goes to the new leader of the outgoing Prime Minister's party.

In modern times, the House of Commons rather than the Lords is the source of most government ministers. By constitutional convention, all ministers must be members of the House of Commons or House of Lords. A handful have been appointed who are outside Parliament but in most cases they subsequently entered Parliament either by means of a by-election or receiving a peerage. Since 1902, all Prime Ministers have been members of the Commons.

No major cabinet positions has been filled by a Lord since 1982 when Lord Carringtonresigned as Foreign Secretary, though some of the middle rank Cabinet posts such as Defence Secretary and International Development Secretary have been filled by peers. The elected status of members of the Commons, as opposed to the unelected nature of members of the Lords, is seen to lend more legitimacy to ministers from the Commons. The Prime Minister chooses the Ministers, and may decide to remove them at any time; the formal appointment or dismissal, however, is made by the Sovereign.

The House of Commons scrutinises the Government through "Question Time," a period during which Members have the opportunity to ask questions of the Prime Minister and of other Cabinet Ministers. Prime Minister's Question Time occurs once each week, normally for a half-hour each Wednesday. Questions must relate to the responding Minister's official Government activities, not to his or her activities as a party leader or as a private Member of Parliament. Customarily, members of the Government party and members of the Opposition alternate when asking questions. In addition to questions asked orally during Question Time, Members of Parliament may also make inquiries in writing.

In practice, the House of Commons' scrutiny of the Government is very weak. Since the First-Past-the-Post electoral system is employed in elections, the governing party tends to enjoy a large majority in the Commons; there is often limited need to compromise with other parties. Modern British political parties are so tightly organised that they leave relatively little room for free action by their MPs. Thus, during the twentieth century, the Government has lost confidence issues only thrice—twice in 1924, and once in 1979

The House of Commons technically retains the power to impeach Ministers of the Crown for their crimes. Impeachments are tried by the House of Lords, where a simple majority is necessary to convict. The power of impeachment, however, has fallen into disuse; the House of Commons exercises its checks on the Government through other means such as No Confidence Motions. The last impeachment was that of Henry Dundas, 1st Viscount Melville in 1806

CHAPTER—11

PARLIAMENTARY PRIVILEGES

Erskine May defines Parliamentary privileges as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Parliamentary privileges had their origin in the claim of monarchs that they would not be deprived of the services of their advisers and officials. Many of those advisers and officials sat in Parliament. If they could be harassed on their journey to the Parliament chamber or arrested by creditors, Crown and Parliament would have lost their services. To prevent this, a privilege of freedom from molestation and arrest was granted and enforced[61]. Enforcement was initially by the Crown, but during the reign of Henry VIII, the Houses of Parliament began to assume jurisdiction themselves and took the opportunity that offered to lay claim to further rights, powers and immunities as customary.

The nature of parliamentary privilege

Each House exercises some certain powers and privileges which are regarded as essential to the dignity and proper functioning of Parliament. The Members also have certain privileges, although these exist for the benefit of the House and not for personal benefit of the Members[62]. Parliamentary privileges are the part of law and custom of parliament- to be collected out of the rolls of the Parliament and other records, and by precedent and continued experience. Some of it has the authority of statute, notably the

61. Colin R Munro, Studies in Constitutional Law, Butterworths London, Edinburgh, Dublin, (1999),P. 215
62. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.270

provisions of the Bill of Rights of 1688 relating to freedom of speech and debates or proceedings of Parliament[63].

Parliamentary privileges consists of the rights and immunities which Parliament and its Members and officers possess to enable them to carry out their Parliamentary functions. Over the years some privileges have modified to reflect wider political and social changes.

The Privileges of the Commons

Freedom of Speech

This may be considered the most important privilege. Parliament is a deliberative and legislative assembly, and it may be regarded as an essential characteristic of a free legislature that its members are able to perform their duties without fear of penalty. But was not always respected. In R v. Eliot, Hollis and Valentine[64] three members were imprisoned and fined by the Court of King's Bench for "seditious words" spoken in the House. The Houses in 1641 and 1667 passed resolutions against this judgment, and it was reversed by the Lords on a writ of error in 1668. The Bill of Rights of 1688 declares that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in the Court or place out of Parliament".

Freedom from Arrest

The Houses claim the supreme to the unhampered attendance and continuous services of their members, and this is the justification for the freedom from molestation and arrest which members individually enjoy. Physical molestation of members is a breach of privilege. So, in certain circumstances, is their arrest, as part of legal process. The immunity was more important in the times when imprisonment was commonly remedy for debt. Immunity was claimed for members, their goods, and their servants, but abuse of the privilege in the seventeenth century, laid to the curtailment, in the Parliamentary Privilege Acts. By the Act of 1770 members' immunity from being impleaded was taken away.

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63. Ibid
64. (1629). The Members were also charged with an assault on the Speaker

Right of the House to regulate its own composition

This privilege implies: (I) the filling of casual vacancies,(II) the determination of disputed elections returns, (III) the determination of legal disqualifications of persons returned to Parliament, and (IV) the expulsion of members who are unfit to sit. These powers are exercised within the limits set by statute.

Exclusive right to regulate its own proceedings

Free speech in Parliament is one aspect of a wider principle that what happens within Parliament is controlled by Parliament and is not reviewable by the courts. The courts will not challenged or assault, by any order of their own, an assertion of authority issued by Parliament pursuant to Parliament's own procedures. This includes the right of the Parliament to determine its own procedures and to be sole judge of the lawfulness of those procedures[65]. In Prebble v. Television New Zealand Lord Browne –Wilkinson states that "So far as the courts are concerned, they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of legislative functions and protection of its established privileges.

Parliament's disciplinary and penal powers

Each House has power to enforce its privileges and to punish those-whether members or strangers-who infringe them. Each House has power to punish members or strangers for contempt. In 1978 the House of Commons resolved that it would exercise its penal jurisdiction as cautiously as possible.

The Privileges of the Lords

Privileges of the House

The House of Lords has seldom come into conflict either with the Sovereign or with the courts in respect of privileges. The juridical nature of the privileges of the House of Lords is similar to that of the

65. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.281

House of Commons, and strictly both are parts of the privileges of Parliament [66]. The Lords passed a resolution in 1704 declaring that neither House has power to create for itself new privileges not warranted by the known laws and customs of the Parliament, and the Commons assented. The following are the privileges of the House:

The power to declare the law with regard to its own composition, to determine the validity of the creation of new peerages, and the succession to existing peerages. This power has now limited application by the passing of the House of Lords Act 1999

The exclusive right to regulate its own internal proceedings though this power probably does not include a power to suspend a peer within the life of a single Parliament.

The power to commit for breach of privilege or contempt for a definite period and to fine. The power to summon the judges for advice on points of law.The power to issue a warrant for the release of a peer who is improperly arrested.

Personal Privileges of Peers

Freedom from civil arrest, that is , except in cases of treason, felony or refusal to give security to keep the peace.Freedom of speech in parliament. This privilege is similar to that of the Commons[67].

66. Ibid,p 286
67. ibid

CHAPTER—12

THE CABINET AND THE PRIME MINISTER

The consultative and advisory functions formerly belonged to the Privy Council. Now they are exercised by a small group of Ministers known as the Cabinet. The Cabinet grew as an inner Council within the Privy Council, and members possess the exclusive right to advise the King, and are known to the law as the Privy Councilors. But as body, the Cabinet is not recognized either by the common law or statute law and the rules which regulate its working as well its relation with the Crown or the Parliament are entirely based on conventions.

Growth of the Cabinet

In its origin the Cabinet was an informal committee selected at his pleasure by the King from the larger body of the Privy Council to advise him in the work of the Government. At first their members were not necessarily members of the legislature, and they were responsible to the King alone. The Cabinet system was definitely adopted by Charles II. Parliament originally did not favour it as it thought that the practice of seeking advice from a group of Ministers was an encroachment on the constitutional function of the Privy Council.

Until the accession of George I, the King always attended the Cabinet Council; George I did not do so because he did not know English. Hence arose the practice of the King not attending the Cabinet meetings. This abstention of the monarchs from attendance in the Cabinet meetings was a step of prime importance in the development of responsible ministry. It left the group leaderless, and made possible the growth of the office of the Prime Minister upon which the whole modern cabinet system depends. In the absence of the monarch, some one had to take the lead, this was unusually assumed by the minister who possessed the greatest influence in the parliament.

So modern cabinet grew up, first as a committee of the Privy Council and later of the Houses of the Parliament composed of the Heads of the great administrative or other departments of State under the leadership of the Prime Minister, tendering collective advice to the Crown, upon which it must act, and collectively responsible to the House of Commons. It has now been the most important development of the government of the modern times.

Meetings of the Cabinet

The Cabinet meets on a regular basis, usually weekly on a Thursday morning, notionally to discuss the most important issues of government policy, and to make decisions. The length of meetings vary according to the style of the Prime Minister and political conditions, but today meetings can be as little as 30 minutes in length.

The Cabinet has numerous sub-committees which focus particular policy areas, particularly ones which cut across several ministerial responsibilities, and therefore need coordination. These may be permanent committees or set up for a short duration to look at particular issues. Junior Ministers are also often members of these committees, in addition to Secretaries of State. The transaction of government business through meetings of the Cabinet and its many committees is administered by a small secretariat within the Cabinet Office.

In practice, and increasingly in recent years, weekly meetings of the full Cabinet have tended to be more concerned with the exchange of information and general discussion of day to day political issues; with major decisions being taken by Cabinet Committees or in informal groups, often bi-laterals between the Prime Minister and an individual minister. Many Prime Ministers have in effect a so-called "kitchen cabinet" consisting of their own trusted advisers who may be Cabinet members but are often trusted personal advisers on their own staff. In recent governments (generally from Margaret Thatcher), and especially in that of Tony Blair, it has been reported

that many, or even all major decisions have been said to be made before cabinet meetings. This suggestion has been made by former ministers such as Clare Short and Chris Smith in the media, and was made clear in the Butler Review where Blair's style of "sofa government" was censured

Composition of the Cabinet

The Cabinet consists of a group of Ministers, normally something over 20 in number. They are invited by the Prime Minister to attend Cabinet meetings. Most of them are heads of the chief government departments, the foreign secretary and home secretary. But a number of heads of departments will be outside the Cabinet.[68] The Cabinet can be described as the nucleus of the Ministry. In choosing the Cabinet the Prime Minister has a number of factors to consider, such as the importance of the various offices, the influence of members in the country, the authority of members in the Commons and their value in debate. Convention requires that all ministers must sit in one or other of the Houses of the Parliament, in order their activities may be subject to parliamentary supervision.[69] Prime Ministers in recent years are said to in the habit of summoning 'Inner Cabinet'. An Inner Cabinet is supposed to be efficient part that directs the Cabinet's activities. It has no organic or set place in the Cabinet. It is an informal, small group of friends of the Prime Minister drawn from the members in the Cabinet.

Its nature

The Cabinet is a body unrecognized by law. Its existence is only customary, i.e., based on custom or convention. No Act of Parliament authorizes its formation nor even refers to it by that name and no official document constitutes it.

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68 . O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, London, 2001, Eighth Edition, P.344

69. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.345

Functions of the Cabinet

The Cabinet is the supreme executive body in the United Kingdom. It is responsible for the final determination of policy to be submitted to parliament, which has the supreme control of the national executive in accordance with policy prescribed by parliament. The main functions of the Cabinet are the following: (1) the final determination of the policy to be submitted to Parliament; (2) the continuous co-ordination in the interests of several Departments of State; (3) the supreme control over the national executive in accordance with the policy prescribed by Parliament[70]. The functions of the executive can be explained as follows:

Policy determining functions

The Cabinet is a deliberative and policy formulating body. It discusses and decides all sorts of national and international problems and attempts to reach unanimous agreements among members regarding the Government's policy concerning each. However, much the members may disagree among themselves, they must present to Parliament and to the world a united front. If an individual member finds it impossible to agree with the conclusions of the Cabinet, the only course left for him is to resign.[71]

Supreme Control of the Executive

The Cabinet is not an executive instrument in the sense that it possesses all legal powers. Legally, the Executive power still vests in the King. The real authority that acts for the Crown and its names are Ministers. These Ministers preside over major Departments of government and carry out the policy determined by the Cabinet and approved by Parliament.[72]

Cabinet as Co-ordinator

The essential function of the Cabinet is to co-ordinate and to guide the functions of the several Departments of the Government.

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70. ibid.343
71. Kapur, Anup Chand, Select Constitutions, S. Chand & Company Ltd., Ramnagar, New Delhi. (Fuorteenth Edition, 1999) p.45
72. Kapur, Anup Chand, Select Constitutions, ibid. p 46

Administration cannot be divided into twenty or more Departments. The action of one Department may affect the function of another Department. The Cabinet does the vital task of co-ordinating policy and implementation.

The Cabinet gives advice to the Sovereign through the Prime Minister. Most important matters of policy are discussed at the Cabinet meetings. There is no quorum for a Cabinet.

Relationship with Parliament

Two key constitutional conventions regarding the accountability of the cabinet to Parliament exist, collective cabinet responsibility and individual ministerial responsibility. These are derived from the fact the members of the cabinet are members of Parliament, and therefore accountable to it, because Parliament is sovereign. Cabinet collective responsibility means that members of the cabinet make decisions collectively, and are therefore responsible for the consquences of these decisions collectively. Therefore, when a vote of no confidence is passed in Parliament, every minister and government official drawn from Parliament automatically resign in their role as the executive, the entire executive is dismissed. So logically, cabinet ministers that disagree with major decisions are expected to resign, as to take a recent example, Robin Cook did over the decision to attack Iraq in 2003.

Individual ministerial responsibility is the convention that in their capacity as head of department, a minister is responsible for the actions, and therefore the failings too of their department. Since the civil service is permanent and anoymous, under circumstances of gross incompetance in their department, a minister 'must' resign. Perhaps surprisingly, this is relatively rare in practice, perhaps because, whilst many would consider incompetence more harmful than personal scandal, it is of less interest to more populist elements of the media, and less susceptible to unequivocal proof. The closest example in recent years is perhaps Estelle Morris who resigned as Secretary of State for Education and Skills in 2002 of her own volition. The circumstances under which this convention is followed

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are of course not possible to strictly define, and depend on many other factors. If a minister's reputation is seen to be tarnished by a personal scandal they very often resign, often as the result of a short period of intense media and opposition pressure for them to do so. In general, despite numerous scandals, cases of serious corruption are relatively rare in Britain in comparison with many other democracies. One reason is because of the strength of the whip system and political parties in comparison to individual politicans means MPs and ministers have little capacity to be influenced by external groups offering money.

Questions can be tabled for Cabinet ministers in either houses of Parliament, which can either be for written or oral reply. Cabinet ministers must answer them, either themselves or through a deputy. Written answers, which are usually more specific and detailed than oral questions are usually written by a civil servant. Answers to written and oral questions are published in Hansard. Parliament cannot dismiss individual ministers but the House of Commons is able to determine the fate of the entire Government. If a vote of no confidence in the Government passes, then confidence must be restored either by a dissolution of Parliament and the election of a new one, or by the resignation of the Government collectively.

In the United Kingdom's parliamentary system, the executive is not separate from the legislature, since Cabinet members are drawn from Parliament. Moreover the executive tends to dominate the legislature for several reasons:

the first-past-the-post voting system, the power of the Government Whips the "payroll vote"

The combined effect of the Prime Minister's ability to control cabinet by circumventing effective discussion in Cabinet and the executive's ability to dominate parliamentary proceedings places the British Prime Minister in a position of great power that has been likened to an elective dictatorship The relative impotence of Parliament to hold the Government of the day to account is often cited by the UK media as a justification for the vigour with which they question and challenge the Government.

A 'presidential' Prime Minister?

In contemporary times, the nature of the cabinet has been criticised by some, largely because several Prime Ministers are perceived as acting in a 'presidential' manner. Such an accusation has been made at Tony Blair as he is believed to refrain from using the Cabinet as a collective decision making body. These actions have caused concern as it contravenes the convention of the PM being 'first among equals'. In this sense, he is acting like a US President, who is not constitutionally bound to collectively make decisions with his cabinet. Margaret Thatcher was also noted as being 'presidential', in the capacity that she 'forced' her own viewpoints onto her cabinet.

A solution cited to combat the emergence of presidential Prime Ministers is the use of select committees to question the PM's actions. However, in comparison to the constitutional separation of powers and checks and balances that exist in countries such as the United States, this is insignificant, and select committee is drawn from the same legislature as the executive, and has only limited scrutiny of the executive. It also should be noted that British Prime Ministers can be "presidential" since the powers, responsibilites and duties of the British Prime Minister are largely convention. They are not codified or written into one single document, as is often the case with heads of government in other countries.

The Prime Minister

The presence and appointment of a Prime Minister is the first characteristic of the modern Cabinet. The Prime Minister is the creature of conventions. No express directions have been given as to his rights and no definite limits are set to his power. The office of the Prime Minister is what its holder chooses to make it.

Choice of Prime Minister

The Sovereign is expected to send for the leader of the party or group of parties that has or can control, a majority in the House of Commons. By the growth of conventions the choice has become formal. The leading parties appoint their party leaders by their

respective methods. The Prime Minister is normally is the leader of his party, having either been chosen as Prime Minister because he is the leader of the largest party or is the elected leader because he is a Prime Minister.

"Thus the Prime Minister is more powerful than any other Minister, and than most combinations of Ministers but less powerful than the Cabinet collectively".

Functions of Prime Minister

Formation of Government

The primary functions of the Prime Minister are to form a government, and to choose and preside over the Cabinet. He gives advice to his ministerial colleagues on matters before they come to the Cabinet, and he is the main channel communication between the Cabinet and the Sovereign, with whom he has a weekly audience. [73] The Prime Minister decides which government departments should be represented in the Cabinet although, by convention, certain departments are always represented. He advises the sovereign on dissolution. It is also for the Prime Minister to decide whether the Cabinet Members should remain in office[74].

Cabinet meetings

The Prime Minister has almost total control over conduct of Cabinet. The holding and conduct of Cabinet meetings is a matter for the Prime Minister to decide. Traditionally, full meetings of Cabinet are held twice a week[75].

Control of parliament

The Prime Minister is primarily responsible for the organization of the business of the House, even if this work is to the leader of the

73. O' Hood Philips, ibid, p.359
74. Barnett, Hilarie, Constitutional and Administrative Law, (Cavendish Publishing Limited), Fourth Edition, P. 317
75. Barnett, Hilarie, ibid, p319

House. The timing of the Dissolution of Parliament is within the Prime Minister's discretion and there is no requirement, either in law or convention, that the Prime Minister submit his choice of date to the Cabinet.

Securities and Intelligence

The Prime Minister has special responsibilities in the areas of Securities and Intelligence. The Prime Minister alone can authorize the launching of a nuclear attack by United Kingdom forces. The Prime Minister sees that Cabinet decisions are carried out by the departments. The Cabinet secretariat is under his control.

Appointments

The Prime Minister has significant powers and influence over the appointment of persons to senior position. Many Crown appointments, in addition to ministerial offices, are on his advice.[76]

Cabinet committees

In order to facilitate efficiency, the Cabinet is supported by a system of committees, which again, is largely determined by the Prime Minister. In addition, a whole range of committees staffed by civil servants by civil servants exist to complement the work of Ministers.

The Prime Minister's Private Office

There has never been a Prime Minister's department to the task of organizing co-ordinating on behalf of the Prime Minister. Instead British Prime Minister's team comprises civil service support and non-civil service political support in the form of a specially appointed of team advisers.[77]

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CHAPTER—13

MINISTERIAL RESPONSIBILITY

For the doctrine of government under the law to be observed, it is essential that government be both accountable to parliament and to the electorate, and that government be conducted in a manner sufficiently open, subject to the requirements of the national interest, to inspire public confidence[78]Marshall and Moodie describe ministerial responsibility in the following words,' Ministers are responsible for the general conduct of government, including the exercise of many powers legally vested in the Monarch; and ultimately, through parliament and parties, to the electorate'.

Ministers inform and explain, apologise, take remedial action, or resign in support of the convention of ministerial responsibility. This is not an area regulated by statute, rather practice has developed according to precedent and guidance. Most recently, that guidance has become formalised in the Ministerial Code, issued by the Prime Minister at the beginning of a new administration. The responsibility of individual ministers for their own conduct and that of their departments a vital aspect of accountable and democratic parliamentary government. Ministerial responsibility is often described as a constitutional convention, yet it is a convention difficult to define with certainty and which, to a large degree, depends on the circumstances of each individual case. There is a distinction between individual ministerial responsibility and the collective responsibility that each minister has to support the government of which he/she is a member.

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78. Barnett, Hilarie, Constitutional and Administrative Law, (Cavendish Publishing Limited), Fourth Edition, P. 341

Collective Responsibility of Government

One of the most significant conventions of the constitution is the collective responsibility of all governmental ministers- irrespective of whether or not they hold a place in the Cabinet. The principal rationale of the doctrine lies in government accountability to Parliament and through Parliament to the electorate. Collective responsibility is also a political necessity – demonstrating unity and strength within government without which political responsibility would be undermined.

Three principal rules are subsumed within the concept :

If a government is defeated in the House of Commons on an issue of confidence it is conventionally obliged to tender its resignation. Deliberations within the Cabinet are to be kept secret. The records of Cabinet meetings are governed by rules restricting publication under the Public Records Act 1958. Discussions area also protected from disclosure in litigation by public interest immunity and may be covered by the Official Secrets Acts 1911-1989. Once a decision has been reached in the Cabinet, no minister may express dissent from that decision. If a minister is unable to concur with the he must resign.

THE CONVENTION OF COLLECTIVE RESPONSIBILITY

Content of the convention

Geoffrey Marshall has identified three strands within the convention:

The confidence principle

A government can only remain in office for so long as it retains the confidence of the House of Commons, a confidence which can be assumed unless and until proven otherwise by a confidence vote.

The unanimity principle

Perhaps the most important practical aspect is that all members of the government speak and vote together in Parliament, save in situations

where the Prime Minister and Cabinet themselves make an exception such as a free vote or an 'agreement to differ'.

The confidentiality principle

This recognises that unanimity, as a universally applicable situation, is a constitutional fiction, but one which must be maintained, and is said to allow frank ministerial discussion within Cabinet and Government. From these broad principles can be suggested a number of practical applications of the doctrine, with varying degrees of constitutional certainty within our political and governmental system.

A minister must not vote against government policy

This is perhaps the most fundamental point of the doctrine as, ultimately, voting strength in the House of Commons is not only the measure of confidence in and strength of a government, but is the test of its very right to exist. A vote is a clear public expression of a minister's support for the government. An unauthorised, dissenting vote would be expected to lead to immediate dismissal if there were no voluntary resignation. In general, an unauthorised abstention should lead to the same consequences, as maintenance of the doctrine is said to require not just the absence of dissent but also the expression of positive support. A minister must not speak against government policy: this is similar to the previous category, although a speech or other form of expression may not always be as clear cut as a vote. Ministers can always find ways, if they wish, of outwardly expressing 'loyal support' while sending out contrary signals by code words or phrases. Again, there is a general implication of positive support, not simply the absence of dissent. Jennings asserts that 'a minister who is not prepared to defend a Cabinet decision must, therefore, resign. Further 'from the minister's point of view it means only that he must ... speak in defence of the Government if the Prime Minister insists'. All decisions are decisions of the whole government this does not mean that the identity of the relevant departmental minister is not disclosed. For example, a decision on social security will be obviously, in normal circumstances, the immediate responsibility of the Social Security Secretary.

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Ministerial Code

The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On occasions it may be desirable to emphasise the importance of a decision by stating specially that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule.This aspect of confidentiality means, for example, that a Minister should not, without authorisation, attribute policies, proposals, arguments or votes to particular ministers or groups of ministers, especially if the motive of the 'leaking' minister is to distance himself or herself from that particular position or to attack or discredit other ministers or their arguments. 'Competitive' leaking by Ministers as in the Westland affair in 1986, or coded arguments. 'Competitive' leaking by Ministers as in the Westland affair in 1986, or coded ideological arguments as in the Thatcher Government of the 1980s.,are ways in which dissenting ministers or those involved in policy or other disputes can seek to fight their corner without explicitly breaching collective responsibility.

A former minister must not reveal Cabinet secrets

This extended example of confidentiality clearly has less force than revelations when a minister is still in office. As the Crossman diaries episode in the mid-1970s demonstrated, the time factor is crucial to the enforcement of the doctrine. Ministers who resign can if they wish make a public statement in Parliament, and publish a resignation letter, explaining the reason for their action. Where resignation statements reveal major policy or personal differences in Cabinet they can have serious consequences for the standing of the Prime Minister and the Government. And in principle such a revelation of Cabinet discussions requires the Queen's consent through the Prime Minister, because of the Privy Counsellor's Oath.

Collective responsibility- some recent developments

There has been a long running political and academic debate about whether Cabinet decision making has been in decline, particularly in the light of perceived increases in Prime Ministerial powers. This debate has intensified following the Hutton and Butler reports into the lead up to the war in Iraq, and led to speculation about what this might mean for the convention of collective responsibility. In Clare Short's resignation speech to the House of Commons on 12 May 2003 she gave a critical assessment of the current state of collective decision making.

The Ministerial Code

The major official guidance on the scope and extent of collective ministerial responsibility is contained in the Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers. This code was originally known as 'Questions of Procedure for Ministers'('QPM'), which was first made public in May 1992.The concept of collective responsibility runs through the text of the Ministerial Code.

The first principle of ministerial conduct that is listed in Section 1 of the Code states that: '(i) Ministers must uphold the principle of collective responsibility'; Para 3 defines Cabinet and ministerial committee business as, in part, 'questions which significantly engage the collective responsibility of the Government, because they raise major issues of policy or because they are of critical importance to the public'. It goes on to state that matters 'wholly within the responsibility of a single Minister and which do not significantly engage collective responsibility as defined above,' need not in general be brought to Cabinet or committee, and advises that 'a precise definition of such matters cannot be given; in borderline cases a Minister is advised to seek collective consideration'. Para 4 states the crucial point that Ministerial Committees 'support the principle of collective responsibility by ensuring that, even though an important question may never reach the Cabinet itself, the decision will be fully considered and the final judgment will be sufficiently authoritative to ensure that the Government as a whole can be properly expected to accept responsibility for it'.

Free votes

The two main ways in which the normal rules of collective responsibility as regards ministerial unanimity are suspended are the 'free vote' and the 'agreement to differ'. Although there may be occasions where the two concepts may appear to merge into each other, the basic difference appears to be that a free vote is one where there is no stated Government policy on the issue and therefore the question of dissent by some ministers does not arise, whereas an agreement to differ is a situation where the Government has adopted a policy but has allowed ministers to dissent publicly from that policy to some degree. Free votes are nowadays most commonly recognised in issues of conscience, for example social, moral or religious questions such as capital punishment, abortion or gay rights, or Private Members' Bills, or in certain votes on changes to parliamentary procedure. But free votes may also be used as a device to avoid a Parliamentary defeat, or any serious consequences of a defeat. A free vote, in particular circumstances, may be recognition of a significant split within Government or its Parliamentary party, an attempt to construct a large cross-party majority a desire to avoid having to devise and announce a Government policy on a difficult issue.

'Agreements to differ'

Perhaps nothing demonstrates the conventional nature of the unwritten UK constitution better than the few examples of authorised waiver, for strictly limited periods, of the doctrine of collective responsibility. When questioned about this in 1977, the Prime Minister, James Callaghan, said, 'I certainly think that the doctrine should apply, except in cases where I announce that it does not'. This demonstrates that the terms, duration and enforcement of the arrangement are a matter, ultimately, for the Prime Minister. Some have argued, in effect, that as an agreement to differ is itself a collective Cabinet decision, such an apparent split between fellow ministers is not a breach of collective responsibility, but an exercise and product of it. For example, in the 1932 debate on the agreement to differ on tariff policy the Lord President, Stanley Baldwin,

declared that 'we have collective responsibility for the departure from collective action'. In his evidence to the court in the case of the Crossman diaries, the then Cabinet Secretary, Sir John Hunt said: 'I would not regard the 1975 EEC referendum as breaching collective responsibility because this was a decision by the Cabinet as a whole to waive collective responsibility on one particular issue for a limited time. It was not a decision which any Minister took unilaterally.'

Some illustrative examples of agreements to differ

1. Tariffs policy (1932)

The first official 'agreement to differ' occurred in 1932 because of disagreements in the

National Government between Conservative ministers and their coalition partners over tariff reform. In the October 1931 general election the coalition candidates agreed not to stand in opposition to each other despite the clear split over tariffs. After the election, four members of Cabinet disagreed with the decision to impose a general tariff and proposed to resign. The Prime Minister, Ramsay MacDonald, persuaded them not to do so by offering to allow them to express their disagreement publicly. The dissenters demanded that they be free to speak and vote against any tariff proposals, that MPs have the same freedom and that the whips not exert any influence to persuade Members to support the Government line. The official terms of the 'agreement to differ' were published in 'The Times' of 23 January 1932.

2. 1975 EEC Referendum

Perhaps the most familiar instance of the twentieth century agreements to differ is that over the referendum of June 1975 on EEC membership. Europe had caused divisions within as well as between the two major parties, and the Labour Government had come into office in 1974 pledged to renegotiate the terms of UK entry and to allow the people to vote on the outcome, either by referendum or general election. Three Senior Cabinet Ministers - Michael Foot, Tony Benn and Peter Shore - wrote to the Prime

Minister in late November stating that 'Ministers will have very deep convictions that cannot be shelved or set aside by the normal process of Cabinet decision-making ... The only solution might be to reach some understanding on the basis of 'agreement to differ' on this single issue and for a limited period'. In a statement on 23 January 1975 the Prime Minister, Harold Wilson, announced that a referendum would be held before the end of June, once the outcome was known and the Government had made its recommendation.

3. 1977 European Assembly Direct Elections

By an Act of the Council of Foreign Ministers in 1976, EC member states agreed to try to

implement legislation for direct elections to the European Assembly to take place in Spring 1978. The UK promised its 'best endeavours' to do so, and the Labour Government promised legislation in the November 1976 Queen's Speech. Little happened due to party and Parliamentary pressures until the 23 March 1977 no-confidence vote led to the Lib-Lab pact to preserve the Government in office. The Government reaffirmed its promise to introduce legislation on direct elections in that session and the Prime Minister, James Callaghan, said that the Government would recommend a form of voting system following consultations on its White Paper to be published the following week. He promised that 'whatever the final recommendations on these matters, it will be subject to a free vote of both Houses of Parliament. As far as the Government are concerned all Members will be entitled to vote in any way that they think fit'. According to Tony Benn, the Prime Minister announced that there would be a free vote for Cabinet ministers on the bill at Cabinet on 26 May.

Access to a previous Government's papers

As with the issue of ex-ministerial memoirs or diaries, access to the papers of a previous administration by former or current ministers raises similar questions of continuing confidentiality. The Ministerial Code contains the following guidance: Ministers relinquishing

office without a change of Government should hand over to their successors those Cabinet documents required for current administration and should ensure that all others have been destroyed. Former Ministers may at any time, and subject to undertakings to observe the conventions governing Ministerial memoirs, have access in the Cabinet Office to copies of Cabinet or Ministerial Committee papers issued to them while in office. On a change of Government, the outgoing Prime Minister issues special instructions about the disposal of the Cabinet papers of the outgoing Administration.

Individual Ministerial Responsibility

In constitutional theory a minister holds personal responsibility for his or her own conduct and for every action undertaken by his or her department and is accountable to Parliament- and hence the electorate-for the department. In practice this theory is hard to sustain, particularly given the size of government departments. The classic position on individual ministerial responsibility is demonstrated by the Crichel Down affair in 1954 wherein a minister resigned his office following serious errors within his department, notwithstanding that he had no personal involvement with the matter. Nowadays the position is much changed and it is difficult to lay down any hard and fast rules as to when the sanction of resignation will follow from errors within a department. Between 1954 and 1982,no minister resigned office as a result of accepting responsibility for the wrongdoings of his or her department; however, 1982 saw the resignation of the Foreign Secretary and two Foreign Office ministers over the Falklands War. More recent resignations have stemmed from disagreements within Cabinet or personal conduct unassociated with actions within a department. In recent years ministers have tended to separate individual responsibility for matters relating to policy, for which they will not, generally laying the blame on the chief executive of the service or department in question. Individual responsibility which focuses on the ultimate sanction of departure from ministerial office, either by resignation or dismissal.

The convention of individual ministerial responsibility

The convention of ministerial responsibility antedates the modern party system. It developed at a time in the nineteenth century when the role of the government was limited and a competent minister could be assumed to have personal control of a department. The growth of mass parties, and the welfare state have changed the nature of the convention, but it remains an important aspect of the UK political system and the uncodified constitution. There are a number of interconnected practical demonstrations of accountability that a minister can make which can give effect to the requirement of individual ministerial responsibility to Parliament and to the public, in addition to any professional sanction or 'punishment'. Note the comment of the Defence Select Committee in the Westland affair: 'A Minister does not discharge his accountability to Parliament merely by acknowledging a general responsibility and, if the circumstances warrant it, by resigning. Accountability involves accounting in detail for actions as a Minister.' This may result in support for the decisions or actions in question, perhaps even if contrary to the views of a departmental or independent inquiry into them. The four main options available to a Minister who has to give effect to the requirement of individual ministerial responsibility are as follows :

Inform and explain : The basic requirement of accountability is that ministers explain their actions and policies to Parliament, and inform Parliament of events or developments within their sphere of responsibility. Thus ministers make statements on all sorts of issues from transport accidents to proposed new policy initiatives, and make available detailed explanations through Parliamentary answers, consultation papers, white and green papers and so on.

Apologise : Ministers who admit an error, of whatever kind, either by them personally or on behalf of their officials, will usually be expected to apologise to Parliament, as part of a full explanation, whether or not a resignation or dismissal is involved. It is often said that the House of Commons is generous and forgiving to those Members and ministers who admit their mistakes and atone for them, especially where the mistakes are not regarded as sufficiently serious

for resignation. In appropriate cases an Opposition may only seek an apology rather than a resignation, or the House may accept an apology even when resignation has been demanded originally.

Take action : A minister who is responsible for an unsatisfactory state of affairs will be expected to take appropriate remedial steps to correct it and to ensure that it should not happen again. This applies whether or not any resignations or dismissals are involved, although in some cases the remedial action may be promised and carried out by a successor in cases where the responsible minister has left office.

Resign : This is the ultimate accountability action and sanction. It is also the most difficult to categorise and explain. While the other actions noted above are essentially,in constitutional terms, administrative, executive actions, of ministers carrying out their ministerial duties to account in a substantive way to Parliament, resignation cases -- including those where resignation was successfully resisted, at least for some time, and cases of 'sideways' or other reshuffle -- can develop into essentially political battles, often, but not always, of a partisan nature.

Should ministers resign simply because 'something went wrong' in their departmental area or 'on their watch'? Or need they resign only when something went wrong because of something they, or their officials, did wrong? For example, did Lord Carrington and his two junior ministers resign because Argentina successfully took possession of the Falkland Islands in April 1982, or because Foreign Office policy failed to prevent it, or because Foreign Office policy failed to prevent it because it was flawed?

Recent developments in the convention of ministerial responsibility

A. The development of a ministerial code of conduct

Beyond the relevant provisions of the criminal and civil law and parliamentary rules of conduct affecting Members generally there are few if any 'rules' regarding ministerial responsibility which guide and bind ministers in their official capacity. The first official guidance note for ministers, Questions of procedure for ministers (QPM), was published in May 1992 although it had been in existence

before this as a confidential internal circular and was well known unofficially in the media, academic texts and in Parliament.[79] Following consideration by the Treasury and Civil Service Committee QPM was amended in 1995 to include the obligation not to mislead Parliament: Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with established Parliamentary convention, the law, and any relevant Government Code of Practice. QPM was revised and reissued as the Ministerial Code in 1997 with a forward from the new Prime Minister, Tony Blair, which stated that 'I will expect all Ministers to work within the letter and spirit of the Code.

Distinction between responsibility and accountability

Sir Thomas Dugdale's resignation over the Crichel Down case in 1954 represented an example of a traditional, if extreme, view of the convention of ministerial responsibility:

that a minister should take full responsibility for every action of the civil servants withinhis or her department, but the convention was restated shortly afterwards by the then Home Secretary, Sir David Maxwell.[80]

Ever since this case governments have attempted to make a distinction between a minister's duty to account to Parliament for the actions of their department and theirindividual responsibility. This distinction has been viewed as reflecting the complexity of modern government whereby a minister cannot be held to be responsible for the action of every civil servant, especially where operational issues are increasingly delegated to agencies. The distinction between operational and policy issues has been used by ministers to defend themselves from criticism for failures within their departments; this can be seen most clearly where previous Home Secretary's have

79. 6 Brazier, R (1997), Ministers of the Crown, p270
80. 21 HC Deb Vol. 530, cc 1286-87, 20 July 1954

sought to emphasise that prison escapes are the result of operational failings within the Prison Service rather than any policy decision for which they can be held personally responsible. However the distinction between responsibility and accountability has been contested by academics such as Matthew Flinders who has commented that it is 'confusing and ambiguous as to the requirements of ministerial responsibility where operational fault is concerned' and by the Public Services Committee which made the criticism that 'It is not possible absolutely to distinguish an area in which a minister is personally responsible, and liable to take the blame, from one in which he is constitutionally accountable'.

IV Some illustrative examples

A. Crichel Down : Sir Thomas Dugdale (1954)

This case has been regarded as the classic example of individual ministerial responsibilityin action, although in the subsequent 40 years there has been a lively academic debate about its meaning in this context.[81] The case itself concerned a claim of unfair treatment by a landowner when the Ministry of Agriculture and the Crown Lands Commissioners refused to resell to him land belonging to his family which had been compulsorily

purchased by the Air Ministry in 1937, apparently contrary to promises made concerning procedures for resale. Following backbench pressure, an inquiry was set up which made a number of criticisms of official procedures and practices in the handling of the matter.[82] The Minister of Agriculture, Sir Thomas Dugdale's initial statement to the House on 15 June 1954 stated that he accepted full responsibility for his officials but that he did not take the same view as the inquiry report of their actions. However in the full debate on

81. 36 See Woodhouse, D (1994), Ministers and Parliament, , pp96-106; Wheare, K C (1975), 'Crichel Down revisited', Political Studies, XXIII, pp390-408; Griffith, J (1987), 'Crichel Down: the most famous farm in British constitutional history', Contemporary Record, pp35-40; 'Crichel Down revisited' (1987), Public Administration.
65. pp339-47 and Nicholson, I F (1986), The Mystery of Crichel Dow.
82. 37 Inquiry by Sir Andrew Clark QC, Cmnd. 9176, presented in June 1954

20 July, on an adjournment motion, Dugdale gave a full account of the case and the report's findings, and restated what he believed to be the constitutional position: He announced at the end of his speech that he was resigning.

B. John Profumo (1963)

The facts of the Profumo episode are well-known. When the details of the complicated scandal began to leak out in Parliament and in the media, Profumo made a personal statement to the House on 22 March 1963 in which he said, *inter alia*, that 'there was no impropriety whatsoever in my acquaintanceship with Miss Keeler' and concluded by warning that 'I shall not hesitate to issue writs for libel and slander if scandalous allegations are made or repeated outside the House'. However, in his 4 June letter to the Prime.Minister, Profumo wrote that what he said on 22 March was not true and he had misled the Parliament, he could not remain a member of his Administration, nor of the House of Commons.

C. Devaluation: James Callaghan (1967)

This episode has obvious similarities with the ERM 'Black Wednesday' in 1992. The

Labour Government had been strongly and publicly opposed to devaluation, but were forced to do so on 18 November 1967, a Saturday. The Chancellor, James Callaghan, made a statement to the House on the following Monday on the devaluation and the related fiscal and economic measures. He sat down, according to Hansard, to cries of 'Resign'.

On the following two days there was a full scale debate, during which Macleod turned his attack on the Prime Minister himself and Sir Keith Joseph, for the Opposition, said that 'the responsibility must be pinned firmly on the Chancellor but, above all, on the Prime Minister'. In his memoirs, Callaghan records that, when the devaluation policy was being decided, 'I had already intimated to the Prime Minister that it was my firm decision to resign once the devaluation operation was complete

and I had accounted for myself to the House of Commons'. After three days of discussions between 27 and 29 November Callaghan accepted the Prime Minister's offer that he should become Home Secretary, with Roy Jenkins replacing him

D. Poulson: Reginald Maudling (1972)

Reginald Maudling resigned as Home Secretary on 18 July 1972 because of the revelations of the business practices and acquaintances of the architect John Poulson.

E. Falklands: Lord Carrington, Richard Luce, and Humphrey Atkins (1982)

Following the Argentine military attack on the Falkland Islands on 2 April 1982, the Foreign Secretary, Lord Carrington and two junior Foreign Office Ministers, Humphrey Atkins and Richard Luce, resigned. In his resignation letter to the Prime Minister, Lord Carrington wrote that there had been much press and Parliamentary criticism following the Argentine action: 'In my view, much of the criticism is unfounded. But I have been responsible for the conduct of that policy and I think it right that I should resign. As you know I have given long and careful thought to this. I warmly appreciate the kindness and support which you showed me when we discussed this matter on Saturday. The fact remains that the invasion of the Falkland Islands has been a humiliating affront to this country... I have concluded with regret that support will more easily be maintained if the Foreign Office is entrusted to someone else'.

F. Maze prison escape: James Prior (1983)

In September 1983 there was a mass escape from the Maze Prison in Northern Ireland,during which a prison officer was killed. The Northern Ireland Secretary, James Prior, set up an inquiry the following day headed by the Chief Inspector of Prisons, Sir James Hennessy. An authority in the convention of ministerial responsibility, Professor Diana Woodhouse describes the immediate political fallout of the escape.

G. Westland: Michael Heseltine, Leon Brittan (1986)

The Westland affair is, in many ways, the most complex and confusing episode of ministerial responsibility. Neither of the two ministerial resignations can be easily classified in the standard categories, as there appeared to be a variety of causes, major and minor, which may have led to each of the departures in the unfolding crisis. Although the central issue of the rescue of Westland, a troubled helicopter company, may have seemed to many, inside and outside Parliament, as a relatively minor political issue, it did appear 26 to encapsulate a number of more serious political themes, not least the question of Europe which was, directly or otherwise, the cause of the loss of a number of senior ministers from the Conservative government. Some suggested that the resignation was designed in part to protect other ministers, including the Prime Minister, from political danger.

H. Salmonella and eggs: Edwina Currie (1988)

Following a period of growing concern over the risk of Salmonella in eggs Edwina Currie, then a junior Health minister, referred in a TV interview on 3 December 1988 to official figures that indicated that most egg production was contaminated with salmonella.

These comments led to a collapse in egg consumption by the public who appeared to interpret her comments as meaning that most eggs were infected. Following instruction from Kenneth Clarke, then the Minister for Health, she took no public steps to rectify the public misunderstanding, and, after a brief period during which criticism mounted on both sides of the House, including loss of the support of the executive of the 1922 Committee, she resigned on 16 December. That day the Minister of Agriculture, John Mac Gregor, made a statement on financial assistance for egg producers. This appears to be a case of a resignation forced by the weight and breadth of opposition, both inside her own party, from the Opposition and outside of Parliament. Following the failure of her own and other senior minister's efforts to overcome the opposition to her remaining in office over the two weeks in December 1988, it would appear that Mrs. Currie's resignation was seen as necessary, or at least very helpful, if relations with the egg industry were to be restored.

I. ERM 'Black Wednesday': Norman Lamont (1992)

At first sight there is an obvious parallel between the events of September 1992 and the devaluation crisis of November 1967, discussed above. For two years after October 1990, membership of the Exchange Rate Mechanism (ERM) had been a centrepiece of the Government's economic and financial policy, and, as such, withdrawal from it, or even adjustment of sterling's value within it, had been consistently rejected publicly by ministers. When sterling was forced to leave the ERM on 16 September 1992, so-called 'Black Wednesday', Parliament was recalled for an emergency debate on what was, in effect, a confidence motion.

J. Home Loan : Peter Mandelson and Geoffrey Robinson (1998)

On 23 December 1998 Geoffrey Robinson, the Paymaster General at the Treasury and Peter Mandelson, Secretary of State for Trade and Industry, resigned following Mr. Robinson's £373,000 loan to Mr Mandelson to support his purchase of a house in Notting Hill. The media interest in the revelation of the loan was exacerbated by a number of stories concerning the financial conduct of Mr. Robinson and oversight of these by Mr. Mandelson when Secretary of State at the Department of Trade and Industry. In his letter of resignation, Mr. Mandelson accepted that it was necessary for ministers not only to uphold high standards in public life but also to be 'seen to do so'. Subsequently, the Parliamentary Commissioner for Standards, Elizabeth Filkin, investigated complaints against Mr. Mandelson in relation to the late registration of the assistance from Mr. Robinson and the mortgage Mr Mandelson obtained.

The case is interesting because it highlights the different enforcement regimes relating to conduct of a minister as a minister and conduct of a minister when in the role of parliamentarian. The Parliamentary Commissioner has also investigated the conduct of other ministers, such as Dr John Reid, but only in relation to their conduct as a Member. The Committee on Standards in Public Life has made recommendations for a panel of investigators to be established to investigate allegations of impropriety in relation to ministerial conduct.

K. Hinduja Passport : Peter Mandelson (2001)

Following Peter Mandelson's return to the Cabinet, as Northern Ireland Secretary on 11 October 1999, the Observer alleged on 24 January 2001 that he had called the immigration minister Mike O'Brien to pass on an enquiry about the possibility of an Indian business man, Srichand Hinduja, obtaining British Citizenship. Concerns arose about whether undue influence had been exerted on behalf of Srichand and his brother, particularly as they had donated £1 million to sponsor the Faith Zone in the Millennium Dome when Mr Mandelson was the Minister in charge of the project in 1998. Following discussions between Tony Blair and Mr Mandelson, it was decided that he should resign, particularly in the light of vociferous calls for this in the press, and he announced this outside No. 10 on 24 January 2001.

L. Special Advisers : Stephen Byers (2002)

There was no single cause for the resignation of the Transport Secretary Stephen Byers in May 2002, but pressure for his resignation began on 9 October 2001 when the press published a leaked e-mail from Mr. Byers's special adviser, Jo Moore, sent on the day of the September 11 terrorist attack in New York, saying that it is 'now a good day to bury bad news'. A week later she apologised but controversy over her failure to resign continued and her email came to represent what the press saw as New Labour's obsession with 'spin'.

CHAPTER—14

THE BRITISH CROWN

In early days all powers of the government were centered in the man who wore the Crown-the state cap of royalty. Down to 1688, the king was an efficient factor in the constitution. He ruled as well as reigned. Thenceforth it became otherwise. The King[83] still reigns but he has gradually ceased to rule. And the fact that of the Constitution today is that the King has nothing to do with the affairs of the government.

FUNCTIONS OF THE MONARCHY

Personal authority of the King

In the actual conduct of the work of the government the Monarch personally performs certain specific acts and the most important of these is that the King must make certain that he has a government in the United Kingdom.[84]

The King as adviser

The Monarch's role as a critic, adviser and friend of the Ministers is very much important. According to Bagehot, the Sovereign has "three rights- the right to be consulted, the right to encourage, the right to warn." Under the British Constitutional system the Sovereign has a right to be made acquainted with everything for which his Ministers are responsible, and has an unlimited right of giving counsel to his government.

The King as mediator

The King very often acts as a mediator and uses his prestige to settle political conflict or diminish the virulence of the opposition. As he

83. The word 'King' is here used as a term common to either sex. The Head of the State is now a Queen, Queen Elizabeth II

84. Kapur, Anup Chand, Select Constitutions, S. Chand & Company Ltd. , Ramnagar, New Delhi. (Fuorteenth Edition, 1999) p.21

wields no political power and makes no political enemies his advice is deemed valuable and is generally accepted.

A symbol of unity

The King of Britain is at once King of Canada, Australia and New Zealand. The King is still a symbol of the free association of the members of the British Commonwealth of Nations.

The King as the Chief of the Nation

The king is not the leader of a party nor the representative of a class; he is the Chief of the nation. He is everybody's King. He is really everybody's king and that is precisely of all British people. The accession of the King, his coronation, his jubilee, are the unparalleled demonstration of popular and patriotic devotion.

King as a Social figure

The King is not merely a part of political machine; he is also an important part of the social structure and wields a great social influence. He is the leader of the society by general precedence. The presence of the King adds personal touch to the individuals feeling a personal responsibility to the collective action.

The King and Parliamentary system

The Cabinet system of government has nowhere proved workable plan without the presence of some titular Head of the State. From the political point of view a person who is free of party ties and stands above party considerations is the most desirable associate of Parliamentary system of government.

Crown's Prerogatives

Crown's prerogatives mean the powers exercised by the King by virtue of common law or custom. It sometimes used to cover all the powers of the Sovereign, or at least those which the Sovereign does not share with the subject. Crown's prerogatives are created for the benefit of people and cannot be exercised to their prejudice.

THE PREROGATIVE IN DOMESTIC AFFAIRS

These consist largely of powers, and in theory of some duties.

A. Executive prerogatives

The prerogatives that may be classed as executive, administrative or governmental are the residue of the powers which the King had when he really governed the country. At present they have to be read subject to the principle of ministerial responsibility. The government does not have to consult, or even to inform, Parliament before exercising prerogatives powers. [85] The following is the classification of the prerogatives relating to executive government :

(I) Appointment and dismissal

Appointment and dismissal of Ministers, other government officials; officials and man of forces, judicial officers and civil servants are made by the Crown.

(II) Control of the services

The King is the head of the Royal Navy, the Army and the Royal Air force. The supreme command and government of all forces by sea land and air, and all forts and places of strength, is vested in the Crown by both common law and statute.[86] The movement and disposition of forces lawfully raised is entirely under the control of the Crown.

(III) Administration of dependencies

It is still the function of the Crown to provide for the government of British colonies and other dependencies; and also to make laws for colonies acquired by conquest or cession until parliament takes over or the colony is granted representative institutions.

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85. O' Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, 2001, Eighth Edition, P.312
86. ibid.

(IV) Revenue

The ordinary revenues consisted of customary hereditary revenues such as feudal dues, income from Crown lands and other sources of

(V) Ecclesiastical prerogatives

The King nominates bishops of the Church of England on the advice of the Prime Minister. The Church has not been given the decisive voice in appointing its bishops, mainly because its senior bishops sit in the House of Lords.

(VI) The fountain of honour

The King is the 'fountain of honour'. The creation of peers is done on the advice of the Prime Minister. Most honours in the United Kingdom are conferred on the advice of the Prime Minister.

(VII) Emergency and defence

The Crown may use such force as is reasonably necessary to put down riot or insurrection.[87]The Crown is responsible for the defence of the realm by sea and land, and is the only judge of the existence of danger to the realm from external enemies although it is not the sole judge of the means by which such danger is to be averted.

B. Judicial prerogatives

The administration of Justice is one of the prerogatives of the Crown, but it is a prerogative that has long been exercisable only through duly appointed courts and judges. The following are the judicial prerogatives:

(I) The prerogative of mercy

The Sovereign, acting in England and Wales by the Home Secretary, may pardon offences of a public nature, which are prosecuted by the Crown[88]. Since 1997 the Home Secretary may seek assistance of Criminal Cases Review Commission in connection with the exercise of this power.

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87 . O' Hood Philips, Constitutional and Administrative Law, p.317

88. In Scotland and Northern Ireland, pardons are granted on the advice of the respective Secretaries of State.

(II) Appointment of Judges

The sovereign appoints the Lords of Appeal in Ordinary, the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Lords Justices of Appeal, by convention on the advice of the Prime Minister who consults the Lord Chancellor. The Crown appoints the puisne judges of the High Court by convention on the advice of the Lord Chancellor, who no doubt consults the Prime Minister. The Crown on recommendation of the Lord Chancellor also appoints Circuits judges to serve in the Crown Courts and County Courts.

Legislative prerogatives

The prerogatives in relation to prerogative in relation to the legislature include the power to summon, prorogue and dissolve parliament, and giving the royal assent to Bills. The sovereign has no prerogative power to legislate within the realm.[89] The Crown is not bound by an Act of Parliament-at any rate, to its detriment except by necessary words or necessary implication.

THE PREROGATIVE IN FOREIGN AFFAIRS

Act of state

Act of state is generally used for an act done by the Crown as a matter of policy in relation to another state, or in relation to an individual who is not within the allegiance of the Crown. Acts of states in relation to foreign affairs include the declaration of war and peace; making of treaties; annexation and cession of territory etc. Acts of state in relation to individuals imply those acts done under the authority of the Crown in relation to individuals have been held to be acts of state, so prevent an aggrieved person from obtaining redress for damage done in some cases.[90]

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89. Case of Proclamations (1610)
90. O' Hood Philips, Constitutional and Administrative Law, p.320-323.

Passports

The Crown has duty to protect its citizens abroad, although it is not legally enforceable. The alleged prerogative power of the Crown to refuse or impound passports has been described as arbitrary, objectionable and of doubtful legality.

Treaties

The treaty-making power is an executive power, which in British Constitutional Law is vested in the Crown A treaty is analogous to a contract between states. Its binding force is a matter of international law. The negotiations are conducted by agents of the Crown and are usually made subject to ratification of the Crown. Treaties are acts of state, and do not in general require parliamentary sanction.[91] There are, however, three classes of treaty which require confirmation by parliament. Those are treaties expressly made subject to ratification by parliament, treaties involving an alteration of English law or taxation and treaties affecting private rights.[92]

Sovereign Immunity

It is part of the royal prerogative in relation to foreign affairs to recognize or withhold recognition from foreign states and their head. Foreign states, their head, governments and diplomatic envoys recognised by
the Crown enjoy certain immunities from the jurisdiction of the English Courts.

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91. ibid,320-327
92. Lord McNair, The Law of Treaties,(1928) 59

CHAPTER—15

JUDICIARY IN THE UNITED KINGDOM[93]

Civil Courts in UK

Magistrates' Court

Magistrates' Court are the inferior criminal courts in England. In addition to their criminal jurisdiction, they exercise certain family law, administrative law and minor civil functions.

Now the magistracy is regulated by the Justice of the Peace Act, 1979 and the Magistrates' Court Act, 1980. These are the real identity of UK courts.

Magistrates of two types

Historically Kings and Queens in England were interested to resolve disputes. One of the unique feature was of the UK court system is the justices of the peace. The history of the justices of the peace as a judicial officer can be traced to the Justices of the Peace Act of 1361. In the 19th century their judicial functions were extended as the some offences becoming triable by petty sessions and with the establishment and development of matrimonial jurisdiction.

The antiquity of the justice of the peace had connection with the Norman Conquest. In the crusade of Christians against the Muslims many Christian died. But the Christians conquered. They acquired vast amount of wealth. So, the king wished to empower them. Another cause was the break out of black diseases which prevented the king to room for administering justice by sending people. So, the local people were appointed to administer justice.

There were called justices of the peace, as they had to maintain peace and tranquility in a society or territory. This system is still

93. This chapter is predominantly based on the lectures given by Professor Dr. Mizanur Rahman, in the classes of Comparative Law, at the University of Dhaka.

contemning in UK and in the same name. They are also known as lay Magistrates.

Appointment

The Queen on the recommendation of the Lord Chancellor appoints justices of the peace.

Qualification

According to section 7 of the justices of the peace Act, 1979, the only qualification laid down is that, the person residing in or within 15 miles of the commission area for which he or she in appointed:

The Lord Chancellor's Booklet states that the justices of the peace should be:

(1) Personally suitable in character integrity and understanding.

(2) Generally recognized as such by those among whom they live and work.

The Lord Chancellor emphasized that bench should include man and women from an backgrounds and walks of life throughout the petty sessions area and thereby reflect the local community.

Additional Qualifications

(1) The person must be very much interested to serve people.

(2) They have to the ready to provide time required in this regard. (Two days in every ten days).

Today there are 1000 Magistrate Courts in England and these are about 27,000 Justices of the peace. They handle $^1/_4$ of million of cases every year.

The Justices of the peace are unpaid. They are great. Critics term them 'great unlearned.' Clerk, i.e. solicitors, assists them. The clerks can participate in discussion in proceedings of the court.

Stipendiary Magistrates

Stipendiary magistrates are professional magistrates and they are real judges. They are government servant in true sense. They are different from the justices of they peace in the sense that they sit single in a proceeding while 3 justices of peace sit at a time.

Number of magistrates

In January 1996 there were 30, 326 active past time lay magistrates or Justices of the peace. On the other hand, there was provision for the appointment up to 60 full-time paid and stipendiary magistrates' in London and up to 40 in the local areas.

County Court

It is the first instance civil court in England. This court was first established in 1846 and it has a long history. The main objective to establish this court was to help the poor people and make their lives easier. Through country court a poor people can seek redress easily. This court was historically and popularly know as the 'Court of the poor' or Poor man's Court."

This court was established to mitigate the expenses of the poor as the rich could travel to London to seek redress but the poor could not. Even today it may be defined as a court of common people. It deals with minimum member of suits of civil nature.

Today the County Courts Act, 1984 and the County Courts Rules, 1981, regulate the county court.

Composition of the county court

There are more than 400 county courts in England today having 400 county court Judges the counts county are manned by single judge. In addition to this there are 125 Circuit Judges. There are 125 circuit courtt manned by a single judge.

Circuit Judges

Circuit Judges are also assigned to the county courts. There is no fixed court for them. All the counties are divided into several circuits and the circuit judges are assigned to such circuits.

Qualification of the judges

To be a circuit Judge or a Judge of the County court one must have the following qualifications:

(1) He must be a barrister of not less than ten years of standing.

(2) He shall be doing his duties up to 72 years of age. The retiring age in some cases can be extended up to 75 years.

The Registrar

The registrar may act as the judge and decide a case when the claim is within £200. He is not only an administrator of the court but also a judge in some cases. In order to be a registrar, he must be a solicitor of not less than seven years of standing. The registrar keeps the records prepare hearing, advise the jury and the judges.

Composition of the court

The court is manned by single judge. Sometime depending on the nature of the case judges are assisted by 8 members jury.

Jurisdiction of the court

The court exercises the following jurisdictions

(1) Contract and tort cases not exceeding £ 5,000 within the jurisdiction of the county court.

(2) In case of equity matters like trust, mortgage and agency not exceeding £ 10,000.

(3) In case of tax matters, e.g. land remit not exceeding £ 1000.

(4) In case of wills not exceeding £ 50,000.

(5) In many deal with the handing up of a company which is concerned with capital not exceeding £ 1,20,000

(6) Form 1467 by the Matrimonial Cases Act, 1967 matrimonial cases, divorce etc are dealt by this court.

(7) Bankruptcy matters.

Furthermore modern social legislation has reversed for the county courts a whole series of very important matters, notably those arising from housing law and legislative protecting tenants.

Procedure of the court

The procedure of the court is very simple. Due to sole judge system the delay is limited in administering Justice.

Appeal

An appeal from this court lies to the Court of Appeal. Due to less amount of the suit the parties do not generally prefer appeal.

High Court of Justice

The Judicature Act of 1873-75 created the High Court of Justice. The court had five divisions at that time, namely.

(1) Queen's Bench.
(2) Chancery
(3) Admiralty and divorce.
(4) Probate
(5) The Court of Exchequer and Common Pleas.

In 1880 the divisions 'Divorce and Admiralty' and 'Exchequer and Common Pleas' were amalgamated with the Queen's Bench Division.

Again in 1970, the Administration of Justice Act made the modern structure, of the High court of Justice. Now it has three divisions.

(1) The Queen's Bench Division. It is a court of first instance.
(2) The Chancery Division.
(3) The Family Division.

Now the High court of Justice is regulated by the Supreme Court Act, 1981. There are certain specific demarcations which are determined by rules of the supreme court?

Composition Each division of the High Court of Justice has a head in different designation.

There three divisions of the court are headed by following three chief Justices in the respective area:

(1) Chief of Queen's Bench: Lord Chief Justice.
(2) Chief of Chancery: The Lord Chancellor.
(3) Chief of Family Division: The President.

Queen's Bench Division

This court is one of the oldest courts of common law. The Chief of the court is Lord Chief Justice. It is said to have been called King's Bench or Queen's Bench as its record run in the name of king or Queen. It is the most active superior count in England.

Composition of the court

45 out of 85 Puisne Judges assist the Lord Chief Justice. So, the vast majority of Judges are here. Some times it many happen that 50 puisne Judges many sit in this division. It sits in 25 cities including London. In addition these are 85 puisne Judges.

Qualification of the Judges

To be a Judge of the High Court of Justice, one must be a barrister of not less than ten years of standing. Generally the Judges of the county court or the crown court are appointed judges of this court. The Crown on the advice of the Lord Chancellor appoints the judges.

Jurisdiction of the court

As a court of immense importance, it exercises three types of jurisdictions, namely:

Original jurisdiction

In its original jurisdiction, it deals with 3 kinds of cases.

(a) It exercises jurisdiction over all civil matters with unlimited pecuniary value which is beyond the limit of any County Court. The court mostly tries cases of contract and tort.

(b) The original jurisdiction of the court has been expanded from 1930 onward after the Admiralty Act,1970 since then, admiralty matters has come within its original jurisdiction.

(c) All commercial matters and cases referred to it by the commercial courts.

Generally it is only the Judges who sit to hear the cases. But in cases of very complicated nature a few member of jury many participate.

Appellate jurisdiction

Appeals from the county courts, magistrates' courts, any tribunal might go to this division and then it acts as appellate court. When only appeal lies to this court, it many hear the case by a bench of 2 or 3 Judges.

Supervisory jurisdiction

Queen's Bench Division does administrative, managerial functions of the courts. It decides the sitting of cases, supervision of lower courts including that of county court and magistrates' court and administrative jurisdiction.

In exercising this jurisdiction, this division exercises power by issuing writs of habeas corpus, mandamus, certiorari and prohibition by which inferior courts and tribunals are compelled to exercise their powers properly and restrained from exercising their jurisdiction improperly.3, 70,000 cases are heard by this court annually. This shows the burden that the court shares.

The Chancery Division

The Judicature Act of 1875 express by assigned to the Chancery Division those matters which belonged to the Court of Chancery. Thus, this division originated from the medieval period. The Judicature Act, of 1873 defines the function of this division.

Composition

Lord Chancellor is the chief of this Division. 13 puisne judges assist him. Generally when the proceedings takes place Lord Chancellor who is law minister in UK is supposed to take part is proceedings. But in reality his deputy, i-e Vice Chancellor presides over the session in the court in absence of the Lord Chancellor.

The Chancery Division sits in London and in 8 other big cities, i.e. in 9 places. Annually it deals with 47000 cases, $\frac{1}{3}$ of which are company matters.

Qualification of Judges

In order to be a Judge a person has to be a barrister of not less than to years of standing.

Jurisdiction of the division

This division exercises both (i) Original and (ii) appellate jurisdiction.

Original jurisdiction

(i) The most important its concerned matters are the execution of trusts, the redemption and for closure of mortgages the dissolution and accounts of partnership, specific performance of contracts etc.

(2) The Administration of Companies Act and Bankruptcy Acts enhanced the jurisdiction of this court and now it deals with matters as winding up of companies and bankruptcy etc.

(3) By the administration of Justice Act, 1970 the court has been given power to hear probate cases.

Appellate jurisdiction

The chancery division predominantly exercises original jurisdiction but in certain matters it has appellate jurisdiction. Thus, it hears appeals from county courts in bankruptcy matters and from the commissioner's decision relating to land and registration mattes. It also hears appeals under the Income Tax Act, 1952, under Industrial Assurance Act, 1923 certain industrial disputes appeal lies to this court.

The Family Division

This is the modern latest addition to the High-Court of Justice. It has superseded the former Court of Probate; Divorce and Admiralty Division by the Administration of Justice Act, 1970.The Act of 1970 regulate this division.

Composition

The chief of this division is known as "president." He is assisted by 16 puisne judges. It sits at 23 different places including London in England & wales.

Qualification of judges

A person has to be a barrister of not less than ten years standing in order to be a judge.

Jurisdiction of Family Division

It Exercises Both (i) Original and (ii) appellate jurisdiction.

Original jurisdiction it hears all sort of family matters e.g.

ii) Maintenance of wife

iii) Custody of children

iv) Legitimacy

v) Presumption of death

vi) Adoption

vii) Guardianship of children

viii) Custody of minors

ix) Title to property in the dispute between two spouses.

x) Validating of marriage, etc.

Appellate Jurisdiction

The divisional court of family Division hears appeals from the decisions of magistrates and the county court in family law matter.

Court of Appeal - Civil Division

It is a creation of the Judicature Act of 1873-1875. The Supreme Court Act of 1981 now regulates it.

The chief of this court is Lord Chancellor.

Composition of Court of Appeal

The Court of Appeal is composed of —

i) The Lord Chancellor (Presides, in principle)

ii) The Lord Chief Justice.

iii) Special Judges: The Master of the Rolls (commonly he presides)

iv) The Lord Justices of Appeal: They are justice of Appellate court.

v) The President of the Family Division.

There are 28 Lord Justices of Appeal. Lord Chancellor, Lord Chief Justice, Master of the Rolls, President of the Family Division is ex-officio Judges of the court of Appeal (civil-Division). In reality the

chief of the court of Appeal is the master of the Rolls and is appointed by the crown. The person must be a barrister of not less than 15 years standing. Generally the Judges of the High court are the Master of the Rolls of the Court of Appeal.

The Judges of the Court of Appeal are called Lord Justices of Appeal. Lord Justices of Appeal are the genuine Judges of the Court of Appeal. The other 4 are additional to them.

The Judges of the High Court of Justice may sit as judges in the Court of Appeal. In particular cases they are invited. But they are not regular. In rare cases law Lords (judges of the House of lords) may be invited to participate in the proceedings of the Court of Appeal.

Qualification of judges

In order to be a lord justice of Appeal of person has to a barrister of not less than 15 years standing:

This court sits only in London.

Quorum of the Court of Appeal

Three judges form the quorum of the court of Appeal but in practice usually 5-7 judges participate. The Supreme Court Act of 1981, provides that for deciding interlocutory matters 2 judges may sit for hearing.

Power of the Court of Appeal

The court of Appeal is authorized to uphold a decision or reverse a judgment or can substitute some other judgment in its place. It may send for re-trial and it can also amend the decision.

Jurisdiction of the Court of Appeal

It hears appeals from —

i) All Divisions of the High Court.
ii) County Courts in any case on questions of law.
iii) The Restrictive Practices Court.
iv) The Employment Appeal Tribunal
v) Interlocutory orders of a judge in chambers or in certain cases of Master in chambers.

The House of Lords

The House of Lords is technically the assembly of lords which forms the second branch of British Parliament. In addition to its functions as part of the legislature, it exercises judicial authority and now it is the final court of appeal in all matters civil and criminal from all courts in England and Wales.

So, it is the apex court of England. It is a judicial organ which has enormous role. It is not only a judicial organ but also a legislature.

It was established by the Appellate Jurisdiction Act of 1876. It has undergone a reform by the Administration of Justice Act, 1977.

Composition

The Judges of the House of lords are called "Law Lords". Under the Judicature Act, 1876, there was only a provision of two law lords, and now the number of "Law Lords" is 11.

Quorum

To hear and decide the quorum is 3. The Judicature Act. 1876 provides that there of the following persons must be present in order to hear and determine an appeal —

i) The Lord Chancellor

ii) The Lords of Appeal in ordinary / Law Lords and

iii) Such peers who have held high judicial offices as defined in the Act. In practice, most appeals are heard solely by the Lords of Appeal in Ordinary, who were generally appointed from the ranks of the Court of Appeal.

Cases are heard usually by a bench of five and not less than three Lords. The Appeal is brought in the form of a petition. Each judge expresses, separately, his own opinion technically called a speech. Decisions are taken by a majority.

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The Lords of Appeal is required to have held high judicial office for two years or be practicing barristers of not less than 15 years standing.

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Leap Frog Procedure

The Administration of Justice Act, 1969 has provided a 'leap frog' procedure whereby an appeal can go directly to the House of Lords from the trial court.

For this procedure the following conditions must be satisfied:

i) Both the parties must agree to refer it the House of Lords.

ii) Where a certificate has been granted by the trial court and where the house of lords has granted the leave of appeal.

iii) The issue must concern a point of law of grave national importance.

The decisions of the House of Lords are binding on all the lower courts in England. The judges of the House of Lords are free to give their individual judgment but then the majority judgment prevails for decision of the appeal.

The Law Lords hold office during good behavior and may be removed from office on the address of both the houses of Parliament. By the judicial Pension Act, 1970 the Law lords are required to vacate office on attaining the age of 75 years.

There is no procedure similar to the French practice of cassation avec renvoi — a quashing or annulment and re-transfer of the case to a different court of appeal for re-trial. Both the Court of Appeal and the House of Lords adjudicate on the merits of the case.

The Judicial Committee of Privy Council

The Committee is not a court. It only makes a report to the Crown, advising that the appeal should either be allowed or disallowed as the case many be. Its dissenting judgments are not disclosed. Though it is not that much of importance now in UK, Privy council is the highest court of Appeal for some commonwealth countries like Australia, Malaysia, Sierra Leone.

The Privy Council is an advisory body which developed out of the old Curia Regis and the task of its judicial committee is to give the Queen advice, which is invariably followed, on petition made to her as the fountain of justice by parties who have unsuccessfully exhausted the legal procedures in the national courts of commonwealth countries.

European Court of Justice

It is a supra national judicial organ. It is the creation of the Treaty of Rome, 1957. It is dominated by civil law system.

Criminal Courts in UK

The maintenance of democracy depends in a large measure on the just and efficient working of the courts of law. Judiciary indeed, is the never-failing-custodian of the liberties of the people in Britain and British justice-honest, impartial intelligent and available alike to rich and poor-has been the pride of Englishmen for centuries together.

The Criminal Law Act of 1977 provides 3 different types of offences namely:

(i) The one indictable offences are more serious offences, which are normally tried with a jury. An indictment is a written accusation of the crime-treason felony or misdemeanor-signed by the officer of the court.

(ii) The other non-indictable offences or summery offences are not serious offences. They are dealt with in magistrate's court and without a jury. Theses are minor types of offences, e.g. for violation of traffic rules.

(iii) There are other offences for which there is no hard and fast rule and they may be tried both as summarily or a full-fledged procedure many be adopted. Offences like 'theft', 'handling of theft property, fall under this category.

The criminal courts in the United Kingdom are as follows —

(i) The Houses of Lords;

(ii) The Court of Appeal (Criminal Division)

(iii) Divisional Court of the Queen's Bench Divisions;

(iv) The Crown Court;

(v) Magistrates' Court;

Magistrate's court

This court is at the bottom of the criminal court structure in England, which is sometimes known by its old name the court of petty sessions, or the court of summery jurisdiction. As defined by the Magistrate Courts Act. 1952, a magistrate's court is any justice or justices of peace acting under any enactment, or by virtue of his or their commission or under common law.

Function of the court

It may function as a court of original jurisdiction in which summery trial procedure is adopted. It may also function as a court to do the work of preliminary investigation.

Procedure of the court

Procedure of the Magistrate's court is regulated by -

(1) The Magistrate Court Act, 1980.

(2) The Criminal Justices Act, 1988.

Procedure in exercising original jurisdiction

When the offence is not grievous in nature the magistrate exercises original jurisdiction. No jury sits in such cases. Generally two magistrates sit and decide a case. In case of lay magistrate, there magistrates decide such cases. Such courts try offences like drunken driving.

Procedure in performing investigative functions

At the first stage the magistrate conducts the preliminary investigation as regards the nature, gravity of the offence which has come before he magistrate Court. Two magistrates sit and decide the preliminary investigation.

If a prima facie nature of a case is present it may be referral to the crown court for trial. So, it is very important step. The magistrate may thereby decide the case. In absence of prima facie case, it is discharged.

If a case is triable either by magistrate court or by crown court, then the magistrate has to decide whether there is a necessity of jury. Here the accused is given the choice of option as to the necessity of jury. If the accused wishes to be tried without jury, then the magistrate court tries the case. But in case of with jury, the case is tried by the crown court.

Composition of the court

Magistrates court, which are manned mainly by lay justices, handle some 97 per cent of all criminal cases. In 1989 there were 1.89 Million cases tried. Of these, 0.8 million were minor monitoring changes. Of them 0.6 million were other cases and they could only be tried in the magistrates' courts, 0.4 million were cases that could have been tried in the Crown Court but the defendant choose instead to have the case dealt summarily before the magistrate.

There are more than 550 Magistrates' Courts, some of which sit everyday, some of which sit very occasionally. They are manned by 26,000 lay magistrates and some 60 or so professional, full-time and paid stipendiary magistrates.

Crown Court

This is the pure criminal court in the United Kingdom. It was established on the recommendation of the Royal commission on Assizes and Quarter sessions - by the Court Act of 1971. According to jurist this Act brought about revolutionary changes in the court system of UK.

For more serious crimes which cannot be heard without a jury, there is now another court in England which is called crown court. The composition and the jurisdiction of the court is now contained in the Supreme Court Act, 1981.

Composition of the court

There are four different types of such courts depending on the nature of composition

(1) Court which try offences triable by a High Court Judge e.g. offences of grave nature e.g. murder.

(2) Courts which try offences which are triable by a High Court Judge are tried by a circuit judge or a recorder. This court tries offences like bodily harm grievous hurt.

(3) Courts which try offences which may by tried by either of the above mentioned judges.

(4) Courts which deal with offences which can be tried by circuit judges.

Qualification to be a judge

So, the crown court is basically there tiers of judiciary. At the highest level are the High Court Judges; below the High Court Judges are the circuit judges and recorders.

To be a judge of the Crown Court one should be a barrister of 10 years of standing, and to be a recorder a solicitor of 7 years of standing.

In very rare cases even the stipendiary professional magistrates may also sit as a judge of the crown court especially when the presence of the magistrate was deemed necessary for the ends of justice.

In England there are about 90 crown courts. All the big cities contain such courts. These courts hear annually 90,000 cases.

Jurisdiction of the Court

(1) To try punishable crime.

(2) To try offences which the magistrate court has ha concurrent jurisdiction but has sent to it for trial.

(3) To hear appeals from the decision of the Magistrates' Court.

Thus, it exercises both original and appellate jurisdiction.

Central Criminal Court

It is located in London. It is known as old Bailly Court. This court hears and judges all the criminal cases committed in London. In addition to the judges, the Mayor sits as a judge of the court.

Divisional court of Queen's Bench Division

It is a part of the high court. This court being a part of the High court has both original and appellate jurisdiction. As a criminal court it generally exercises appellate jurisdiction. It exercises its original jurisdiction only within the county of London and Middlesex.

Composition

This court consists of at least two but usually three judges of the division.

Jurisdiction

The appellate jurisdiction of the court is exercised over appeals from magistrate courts and the crown court. The court has also reversionary power to review the cases sent to it from the inferior courts by an order of certiorari.

Court of Appeal

Since 1968 when the Criminal Appeal Act, 1968 came into operation, the Court of Appeal started functioning as a criminal court. By the Act of 1968 the Court of Criminal Appeal of 1907 was abolished. Thus, the criminal division of the Court of Appeal is the successor of the Court of Criminal Appeal.

Composition of the court

The judges of the court are —

(1) The Lord Chief Justice.
(2) The Lord Justices of Appeal
(3) The Judges of the Queens Bench Division.

Jurisdiction of the court

(1) It can accept or reject an appeal.
(2) It can nullify a conviction by a lower court.
(3) According to the Administration of Justice Act, 1964, it can send a case to a lower court for retrial.

Prior to the Administration of Justice Act, 1964, if an appeal was made, the court not only decrease the punishment or return it but also could increase the punishment. This act removed the power of increasing punishment. Now, the court can not increase the punishment awarded by the lower court.

The practice of the court of Appeal shows that it removed the procedural limits or irregularities done by the lower court.

For example, RV. Mckken (1960)

Brief facts

In this case the judges in the crown court told the jury. I to catch a train of 5 O'clock. So, finish the procedure quickly. Then the jury said quickly "Yes" he is guilty.

In appeal the Court of Appeal found that there was a procedural mistake. Because, here the prisoner should have been allowed to show cause. So, there was a question of mistake or misunderstanding.

In R V. Rose (1982) (Newton)

Brief facts: In this case there had been a material irregularity in the course of the trial as the judges sent messages to the jury imposing time-limits or their deliberations. The Court of Appeal had quashed the conviction.

The House of lord affirmed the decision of the Court of Appeal.

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PART TWO

CHAPTER—1
BACKGROUND OF AMERICAN CONSTITUTION

The Declaration of Independence

The Declaration of Independence is the first formal American state paper. It is not judicially enforceable, and it establishes no legal rights or duties[1]. But the Declaration has had a decisive effect on the development of governmental system. It sets forth the ideals and reflects the standards of what might be called the American creed. This creed, with its stress on the rights of people, equality under the law, limited government, and government by consent of the governed, infuses the structures and practices of the Constitution. The Declaration of Independence remains the American conscience, a constant challenge to those who would subvert democratic processes or deny persons their inalienable rights.

So long as the menace of the French and the Spaniards existed in North America these colonies meekly submitted to the dictates of the mother-country, but with the extinction of the French and Spanish power in the Seven Year's War, things took a new turn. A historian remarks that with the triumph of Wolfe on the Heights of Amraham, began the history of United States. With the removal of the French holdings and pressure of the Spaniards, the colonists' dependence over Britain came to an end. Now they could freely demand the right of self-taxation. When this was denied, the colonies began to prepare for war. A Congress of Representatives of the State was called at Philadelphia in 1775. The Congress appointed George Washington, as Commander-in-Chief of the army. The French promised aid and ultimately the thirteen colonies declared war against England. On 4th July, 1776 was published the 'Declaration of Independence'. It was

1. Emmanuel Zafar, ibid,p. 1-5

declared that colonics "are free and independent Sates. They are absolved from all allegiance to the British Crown and as free and independent States have full power war, conclude peace, contract alliance, and to do all other acts and things which independent States may have right to do."

The Articles of Confederation.

The Articles of confederation did not materially alter the structure of powers of the government that had been governing the United States – unofficially but effectively- since 1775. They established a league of friendship, a "perpetual Union" of States, resting expressly on state sovereignty. The State legislatures promised to treat each other's citizens without discrimination, to give full faith and credit to each other's legal acts and public proceedings, and to extradite fugitives wanted in another state.

The structure of the central government was quite simple. There was only a single-chamber Congress. There was no executive, although a congressional committee consisting of one delegate from each state managed affairs when Congress was not assembled. There was no judiciary, although Congress acted as a court to resolve disputes among the states[2].

With the 'Declaration of Independence' begins the independent history of the United States. The colonies as a consequence of the declaration became independent of the Crown and politically independent of others. Thus the first thing to engage their attention after the 'Declaration of Independence' was to prosecute the war unitedly. On 11th July, 1975 a Committee was appointed which drafted the Articles of the Confederation. These Articles were approved by the Congress of the States on 15th November, 1777. The first of these Articles named the Confederation 'the United States of America'. The second Article stated that each State retained its sovereignty, freedom, independence and every power, jurisdiction und right, which was not by this Confederation expressly delegated to the Congress.

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2. Emmanuel Zafar, ibid,p. 1-5

The Philadelphia Convention leading to the Adoption of the Constitution

The Congress summoned the famous Confederation Convention at Philadelphia in 1787. Seventy four delegates were sent by twelve States as Rhode Island did not participate. Fifty five delegates attended at some times or the other, the average attendance being 35. At the end constitutional document was signed by only 39 delegates. The delegates to the Convention were all experienced persons. George Washington, James Madison, Alexander Hamilton, Benjamin Franklin and James Wilson were some of the highly talented and distinguished personalities. Almost to a man the delegates were drawn from professional and propertied classes. Forty out of them were September 17, 1787, a brief document embodying the constitution of the new government of the United States was signed unanimously by the States present. It was ratified by conventions in nine States agreed upon in the Philadelphia Convention and enforced on 4th March, 1789[3].

The constitution radically changed the character of the United States. It established a federal government allowing maximum liberty to the States. At the time of adoption of the constitution, some of the States kept out of the new federation, but later joined it. The number of States gradually rose from the original 13 to the present 50. The U.S.A. thus today is a federation of 50 States.

The Constitution in original consisted of only 7 Articles covering not more than 9 pages. It only provided a skeleton system. Since the Constitution was made under an atmosphere of fear and suspicion among the joining states, every detail of its working was not provided for. Despite its brevity, the Constitution laid down a pattern of government which for more than two centuries has served the people very well. Its basic elements were so soundly construed as to apply to the relatively simple needs of the 13 original States as also to the complex and varied requirements of the present day United States with some 300 million people and 50 states.

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3. Emmanuel Zafar, ibid,p. p.1-5

CHAPTER—2

CHARACTERISTICS OF THE CONSTITUTION OF THE UINTED STATES OF AMERICA

The Constitution that emerged from the Philadelphia Convention was a model of draftsmanship, of linguistic style, of shortness and of apparent clarity. It is the oldest written Constitution in existence and the shortest of the Constitution of any other nation, except the Chinese. It contains only 4,000 words, occupying ten to twelve pages in print[4]. The following are the fundamental characteristics of the Constitution.

Essential Characteristics

1. Federal Form of Government

The delegates at the Philadelphia Convention met to find means for establishing an effective national government. At the same time there was no serious discussion in the in the Convention of proposals which might have lowered the dignity of the individual States.

The Constitutional Basis of American Federalism

1. The Constitution grants certain legislative, executive, and judicial powers to the national government.
2. It reserves to the states powers not granted to the national government.
3. It makes the national government supreme. The Constitution, all laws passed in pursuance thereof, and treaties of the United States are the supreme law of the land. American citizens, most of whom are also state citizens, owe their primary allegiance to the national government.

2. Separation of powers

Another basic feature of the Constitution is the distribution of national political independence from one another. The personnel of

4. Kapur, Anup Chand, Select Constitutions, S. Chand & Company Ltd., Ramnagar, New Delhi. (Fuorteenth Edition, 1999) p. 146

each branch are chosen by different procedures and holds office for terms that are independent of those of the other branches. It is the independence of the three branches, not just the distribution of functions, that is the central feature of the system of separation of powers. In the United States, the president's power comes not from Congress but from the Constitution.

3. Judicial review

Judicial review is the authority of judges to interpret the Constitution and to refuse to enforce measures that, in their opinion, are in conflict with the Constitution; the ultimate authority is that of the justices of the Supreme Court. The study of the American Constitution is, therefore, in large measure a study of judicial derisions and opinions.

The Constitution does not specifically grant the courts the power to interpret the Constitution, but it furnishes sufficient verbal basis for the power. The first assertion of that power against an act of Congress was made in 1803 in Chief Justice John Marshall's famous opinion in the great case of Marbury v. Madison.

4. Written Character

Like other federal constitutions in the world, the American Constitution is written in form. It is a brief document consisting of only 7 Articles and 27 amendments. Indeed it was a skeleton constitution since the framers of the constitution left the details to be filled in by the Acts of the Congress. The constitution was thus a starting point or taking off ground. It has been adequately clothed with conventions, customs, judicial decisions and legislative measures. The unwritten element in the form of conventions has played a vital role so that the very nature of the constitution stands changed now. To take one example, the fathers of the constitution provided for indirect election of the President but as a matter of convention, he is now directly elected.

5. Constitutional Conventions

The framers of Constitution did not make a strong jacket. They only made a Constitution capable of giving a starting point; a take off

ground. They made a skeleton which was to be supplied with flesh and blood by way of customs, traditions and usages. During the long period of its working it is seen that development of conventions and traditions have changed the Constitution beyond recognition. For example, by way of convention, indirect election of the president has become a direct one. The first President of America, George Washington established a convention that a president should not continue for more than two terms. This convention was adhered to till 1940, when President Roosevelt offered himself for a third term and even fourth in 1944. But such was the force of convention set by Washington that the constitution was amended limiting the tenure of the president for 2 terms.

The followings are the examples of constitutional conventions in the United States:

Members of the Electoral College should vote for the Presidential candidate having the most votes in their state. This is enforced by law in many but not all states. Some electors have abstained or voted for a non-candidate as a form of protest.

Members of the U.S. House of Representatives should reside in the congressional district in which they are elected. There is a constitutional requirement that members of the House come from the state they represent, but no federal requirement as to district residency.

The losing major-party candidate in a presidential campaign should concede as soon as his or her loss is apparent, to avoid any public uncertainty as to the result. This was broken in 2000, when the results were a matter of significant debate and eventually litigation.

Leaders in the U.S. Senate should not campaign against their counterparts in the opposing party. This convention was broken in 2004, when Senate majority leader Bill Fristcampaigned against minority leader Tom Daschlein Daschle's home state of South Dakota. Daschle was defeated in his bid for reelection.

The two leading presidential candidates should be willing to engage in multiple televised debates with each other. The convention developed in the 1960 election, when Richard Nixon and John F. Kennedy held the first nationally televised debate.

6. Rigidity

The American Constitution is probably the most rigid constitution in the world. It can be amended by a very lengthy and burdensome process. Because of the complicated nature of the amendment procedure, sometimes, it takes years before an amendment becomes operative after it has been proposed. Every amendment, which can be moved in two different ways, must be ratified by three-fourths of the States. The rigidity of the constitution is obvious from the fact that during the 216 years it has been in operation, only 27amendments have been made in the Constitution.

7. Supremacy of the Constitution

The Constitution is the supreme law of the land. Neither the Centre nor the States can override it. The Supreme Court can declare a law or an executive order repugnant to the Constitution unconstitutional and invalid.

8. Bill of Rights

The Constitution guarantees fundamental rights of person, property and liberty. It is, however, noteworthy that the rights were incorporated in the Constitution by a number of amendments effected after the Constitution was promulgated. They were not enumerated in the original draft of the Constitution. But by subsequent amendments, individual liberty has been effectively safeguarded. These rights have been introduced in the Constitution on the insistence of federating stats and first 10 amendments were immediately made to incorporate the fundamental rights. The rights of citizens are enforceable by recourse to judiciary. These rights cannot be modified or suspended except by a Constitutional amendment.

9. Division of Powers

As the federal government requires a double set of government—that of centre and those of states there must be a division of powers between the two parts. The Constitution specifies power of the federal government and leaves the rest for the States.

10. Popular Sovereignty

An important feature of the American system is that it emphasizes the theory of popular sovereignty. Ultimate authority has been vested in the people. According to Madison, "The American system was based on that honorable determination which animates every votary of freedom, to rest our political experiments on the capacity of the mankind for self-government".

11. Republicanism.

The U.S.A. is a republic with the President as the elected head of the State. The Constitution derives its authority from the people. Moreover, the Constitution makes at binding upon every constituent State to have the republican form of government.

12. Presidential

The Constitution provides for the Presidential type of government in the U.S.A. All powers are vested in the President. Though the Constitution provides indirect election of the President but in practice his election has become direct. The President is not politically responsible to the Congress in the manner in which the executive is responsible to the legislature in Britain or India. He does not attend its sessions, nor initiates legislation directly, nor answers questions. The Congress cannot remove him during the term of his office which is fixed for four years. On the other hand, the President cannot dissolve the Congress. The members of his Cabinet are their members of the Congress nor answerable on it.

13. Dual Citizenship

The U.S. Constitution provides for dual citizenship for the people of the United States. An American is the citizen of the U.S.A as also of the State wherein he or she is domiciled. It is in contrast with the idea of single citizenship incorporated in the Constitution of India where every citizen irrespective of domicile is the Citizen of India alone.

CHAPTER—3

THE PARLIAMENT

The American Constitution vests the legislative powers of the federation in a bicameral legislature, known as the Congress. The Upper and Lower Chambers are called the Senate and the House of Representatives respectively. The legislative powers of both the chambers are co-equal, except that a Money Bill can only originate in the House of Representatives. But in, effect, the Senate is more powerful than the House. The Senate enjoys certain executive and judicial powers which the House does not[5]. The Senate is not only more powerful than the House, but is also the most powerful Second Chamber in the world.

The Senate

Term of Senate

The Senators are elected for a term of six years one third retiring every two years. The retiring Senators are eligible for re-election. Rather, every good Senator is elected over again. There are numerous examples of persons remaining members of the Senate for over 18 years. The Senate has a continuous life, as it is never dissolved as a whole.

Qualifications to be a member of Senate

The citizens of the U.S.A. with not less than 30 years of age can contest election to the Senate.They must have been residents of the U.S.A. for nine years at least.

They must be residents of the Sates which they want to represent, at the time of elections. They must not be holding any office of profit under the Government of the United States.

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5. Emmanuel Zafar, The Constitution of the United States of America, Irfan Law Book House, Lahore, Pakistan p.28-29

Composition of American Senate

Members of Senate

The U.S. Congress is a bicameral legislature, the Senate being its Upper Chamber. The U.S.A. is now a federation of 50 States and the Senate represents all the States on the basis of parity. It has strength of 100 members. Each State sends two Senators irrespective of its size and population. Formerly, the Senators were elected indirectly by the legislatures of the States as provided for in the original constitution. But this method was given up in 1913 when the Seventeenth Amendment to the constitution was effected the Amendment provided for direct election of the Senators by the people of the State concerned[6].

Its Presiding Office

The Vice -President of the U.S.A. not being its member is the *ex-officio* Chairman of the Senate. He is neither the leader of the majority party as is the case with the Speaker of the House of Representatives, nor is he partisan in the performance of his duties. He does not have as much influence over legislation as is exercised by the Speaker of the House of Representatives. He is only a dignified presiding officer of the Senate without having any specific functions except that he is a moderator. Pie votes only in case of a tie. He does not appoint the committees of the Senate nor does he control the states through his power of recognition.

The Senate also elects from among its own members a *President pro tempore* who presides in the absence of the Vice-president. He is, in fact, the nominee of the majority party in the Senate.

Its Committees

The most significant aspect of the organization of the Senate lies in the fact that it is divided into a number of committees each of which performs a particular function of the Senate. Some most important committees are on finance, appropriation, foreign relations, judiciary and inter State Commence. All issues before the Senate are referred to

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6. Emmanuel Zafar, ibid. 29

the relevant committees for opinion and advice. A Senator cannot be the member of more than two committees simultaneously. The Chairmanship of a committee is generally offered to a veteran Senator.

Powers of Senate

The Senate enjoys extensive legislative, financial, executive, judicial and miscellaneous powers. These may be discussed as follows :

(a) Legislative and Financial Powers

The Senate enjoys equal and coordinate legislative authority with the House of Representatives. Ordinary bills may be initiated in either House but the money-bills can only be originated in the Lower House. But this privilege of the House of Representatives is not of much significance because the Senate has vast amending powers. The Senate may strike out everything except the title of a money-bill. It may even substitute an entirely new bill and may send the same back to the House. In case, there is disagreement between the two Houses, a conference Committee consisting of 3 to 9 members from each House is constituted to resolve the deadlock.

(b) Executive Powers

The authors of the Constitution wished to make the Senate sort of Privy Council to aid and advise the President in the discharge of his executive functions[7]. The Senate enjoys a unique position as a legislative organ in the world since the Constitution has conferred upon it certain direct executive powers to check monarchial ambition of the President. All high appointments made by the President are subject to the consent and advice of the Senate. But by the growth of a convention known as 'senatorial courtesy' the President has acquired a lot of independent discretion in this connection.

(c) Control over Foreign Affairs

All treaties are negotiated and concluded in the name of the President. But all such treaties are subject to ratification by two-third majority of the Senate. The Foreign Affairs Committee of the Senate exercises considerable influence over the foreign policy of United

7. Emmanuel Zafar, ibid,p 31

States. The President keeps himself in close touch with this Committee and regularly acquaints it with the latest developments in foreign policy. It may be noted that all such treaties and agreements are to be placed before the Senate in the final form when it is difficult for it to withhold assent yet no wise President will launch his foreign policy without taking the Senate into his confidence.

(d) Judicial Powers

The Senate is the court for impeachment of the President, Vice-President and other high-ranking officials of the United States. The charges are to be preferred by the House of Representatives and the impeachment is to be conducted by the Senate. The Senate turns into a regular judicial tribunal when it site as a court. Prosecution is conducted by a Committee of members of the House of Representatives especially appointed for this purpose. The proceedings of impeachment are heard by the Committee of Judiciary of the Senate which is then presided over by the Chief Justice of the Supreme Court. Again, judges of the Supreme Court are appointed by the President with consent and advice of the Senate. Thus, the Senate has a lot of judicial patronage in its hands.

(e) Miscellaneous powers

(a) The Senate shares with the House of Representatives the power to propose amendments to the Constitution,

(b) The Senate decides the Vice-Presidential, election when no candidate gets an absolute majority of votes in the election and elects one out of the two candidates securing highest votes,

(c) The Senate appoints committees to investigate and report on the administration of the President. The Committees expose the scandals and inefficiency of the administration, if any.

Senate : Causes of Its Strength

Not a subordinate branch

In edition to that free general functions which the Founding Fathers of the Constitutions assigned to the Senate, it is also a legislative body. But it is a co-ordinate body and not a subordinate branch of Congress and exercises co-equal powers with the House of Representatives in making the national laws. There is no law in the

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United States, as it is in Britain, which empowers the House of Representatives to veto the Senate.

Conference Committees

In case of disagreement between the Senate and the House of Representatives the differences are resolved through a Conference Committee. The members of this Committee called "managers" are equally drawn, generally three and in exceptional cases five, from each Chamber and they confer together.

Political role of the Senators

"Senators are somewhat a different breed of political animal from the average representatives." The Senators represent, as compared with Representatives, more people and greater areas and thus, are not subject to the fluctuating public opinion and personal idiosyncrasies of the electors of a particular locality.

Senatorial solidarity

Closely allied with it is solidarity exhibited by the Senators. "In a sense the Senate is a mutual protection society." Each Senator jealously guards the rights and privileges of others irrespective of party ties and whenever an onslaught had been made to break its solidarity, as Roosevelt did to bypass the traditional method of senatorial courtesy in 1938, it has always stood together.

Independent spirit

One of the most important factors which accounts for the authority and independence of the Senators is the continuity, stability and traditions of the Chamber which the House of Representatives has not been able to develop. The entire membership of the House of Representatives must stand for re-election every two years and every time it is faced with the laborious task of reorganising itself.

Conservative character

The Constitution- makers had through that the Senate would prove the bulwark of conservatism. They had, accordingly, designed it and given it special powers so that it might serve as a check on the more radical House of Representatives.

Influence on foreign policy

The Senate has been the Congressional spokesman on foreign policy, and the House its junior partner. This is due to the Senate's treaty-ratifying authority and its veto powers over Presidential appointments of ambassadors, ministers and other important officials. The Senate can, also, influence the foreign policy through investigations.

HOUSE OF REPRESENTATIVES

Qualifications to be Member of the House

A candidate for election to the House of Representatives must possess the following qualifications :

1. He must be at least 25 years of age.
2. He must have been a citizen of U.S.A. for at least 7 years.
3. He must be a resident of the State from which he wants to contest election. In some States, the candidate is also required to be the resident of the constituency from which he wants to contest election. This is known as the 'Locality rule'.

He must not hold any office of profit under the Government of the United States.

(b) Privileges.

1. Each member is entitled to a fixed salary and several allowances.
2. He is allowed to write and send letters in his constituency free of postage.
3. He enjoys immunity against prosecution for anything said in the House.

COMPOSITION OF THE HOUSE

Members of the House

While the Senate represents the States, on the federal principle of equality, the House of Representative represents the U.S. citizen on national principle based on population[8]. The first Ho use of

8. Emmanuel Zafar, ibid,p. 35

Representatives consisted of 65 members but now its membership is permanently frozen at 435 unless changed by a law of the Congress. The House of Representatives consists of 435 members. The number of representatives for each State is fixed by the Congress in proportion to its population. Normally, 500,000 persons send one representative. The constitution, however, lays down that no Representative shall represent less than 30,000 citizens and each State must send at least one representative. The term, of the House of Representatives is two years. It cannot be dissolved earlier. It meets at regular intervals though special sessions can be convened by the President at any time. The House meets every year on 3rd of January und remains in session until its members vote to adjourn. Both the Houses adjourn simultaneously. In a disagreement on adjournment, the president's decision is final.

Committees of the House

The House elects a number of standing and 'regular' committees from amongst its members. These Committees examine all the bills referred to them and in most cases, these Committees introduce the bills in the House.

The Speaker

The House elects its own Speaker who presides over its sessions. The election of the speaker is held purely on party lines. He is the nominee of the majority party. The Speaker of the House of Representatives is a partisan and openly favours the party to which he belongs. The Speaker of the House of Representatives comes down from his chair and openly takes part in debates. The Speaker of the House of Representatives is virtually the leader of the majority party and legislative leadership devolves upon him. In a Parliamentary democracy like England, the leadership of the House lies in the hands of the executive but in the U.S.A. leadership is vested in the Speaker because of the absence of the executive from the House.

Powers

1. Legislative powers

As compared to the Senate, the House of Representatives has less authority. It enjoys co-equal and co-ordinate authority with the Senate in legislative and financial spheres[9]. Ordinary bills can originate in any one of the Houses but money-bills can be initiated in the House of representatives only. But this privilege of the House is not of much significance because the Senate can amend or reject both ordinary and money bills. In case of disagreement, the decision is either taken through mutual give and take or a Conference Committee consisting of 3 to 9 members from each House is constituted to resolve the deadlock it helps in settlement of the issue.

2. Absence of Executive Authority

The House has got no executive powers because the executive is neither responsible to nor removable by it as in the Parliamentary system, nor does it possess any direct executive powers and control like the Senate.

3. Judicial Powers

It shares the judicial powers of the Senate in the sense that charges against the President and other federal officials for impeachment are to be preferred by it.

4. Electoral Powers

It decides the election of the President when no candidate secures an absolute majority of votes. It elects one out of the three candidates securing the highest votes.

5. Constitution Amending Powers

It shares with the Seriate the power to propose amendments to the constitution.

6. Declaration of war

The House shares with the Senate the power to declare war. But the constitution does not permit the House to share its treaty-ratifying powers.

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9. Emmanuel Zafar, ibid,p32

CHAPTER—4

THE EXECUTIVE

(A) PRESIDENT

There is no political office in the world today that carries with it greater constitutional power and greater general responsibility than the American Presidency. Time and events, law and personality, have built the Presidential office into an unparalleled position of national leadership and world prestige.

Qualifications

The Constitution provides that a candidate for Presidency must fulfill the following conditions:

(a) He must be a natural born citizen of the United States.

(b) He must not be less than 35 years of age.

(c) He must, have live in the U.S.A. for not loss than 14 years. The question of residence was raised by the opponents of Herbert Hoover who has not been a resident for fourteen consecutive years immediately prior to his election in 1828, although he had resided in the United States considerably more than fourteen years considerably more than fourteen years altogether. According to Ferguson and McHenry the interpretation of Article II requiring residence of fourteen consecutive years "continuously and immediately preceding election appears unwarranted"[10].

Congress has in effect added to them by providing that persons convicted of various serious crimes will, in addition to other penalties, be incapable of holding office under the United States[11].

In practice the qualifications for Presidential candidate are severer than prescribed for. As a matter of rule, the candidates for Presidency are drawn from amongst the Senators, Governors of States, Cabinet ministers or important officials in the previous administration.

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10. Ferguson and McHenry, The American System and Government,p301.
11. Pritchett.C. Herman, The American Constitution,p.285.

Tenure and Re-eligibility

The President of the United States holds office for 4 years. The constitution, originally, did not put any restriction on the re-election of a President. George Washington, the first President, was elected twice but he refused to contest election for the third term. Since then a convention had been developed forbidding the re-election of President for more than two terms. The convention was scrupulously observed for a long time but it was violated during war years when President Roosevelt was re-elected for the third and fourth terms in 1940 and 1944. However, by the 22nd Amendment which was ratified by the required number of States in 1951, no person shall be elected to the office of President for more than two terms. It means that normally a person cannot be re-elected for the third time after the completion of two terms totaling 8 years. But if the President dies when 2 or more than 2 years of his term are over, the Vice-President succeeding him will have two more chances of contesting election. But if the Vice-President Succeeds to the office when there are more than two years to go till the time expires, he will get one more chance because the maximum term that can be enjoyed by any President is now fixed at 10 years.[12]

The succession

The original constitution is silent as to who shall succeed to the Presidency in case both President and Vice-President die or their offices fall vacant on account of resignation or disability or removal. The 25th Amendment ratified on Feb. 1967 designates the Vice-President as Acting President when the president is physically or mentally unable to carry on the duties of his office. It also authorises the President to nominate a Vice-President with the consent of the Congress if the office of the Vice-President falls vacant. The succession to the Presidency is as fallows.

If the President dies, the Vice-President becomes President. If the President becomes disabled, the Vice-President becomes Acting

12. Emmanuel Zafar, The Constitution of the United States of America, Irfan Law Book House, Lahore, Pakistan p.43-44

President during the disability. When the Vice-Presidency is vacant, a Vice-President may be nominated by the President, with confirmation by the Congress. Next to the Vice-President, in the line of Presidential succession is the speaker of the U.S. House of Representatives followed by President pro-tempore of the U.S. Senate, then the Secretary of State followed by other members of the Cabinet.

Mode of Election.

The constitution provided for indirect election of the American President[13]. The President is elected constitutionally, by an electoral college consisting of as many "Presidential Electors" as is the number of members in both houses of the congress, *i.e.*, 538 (438 present number of members in the House of Representative in 1988 and 100 members in the Senate). This electoral college is constituted in each State and consists of as many members as each State has in the Congress, *i.e.* both in the House of Representatives and the Senate. Since each State has 2 members in the Senate, it means that number of Presidential Electors in each State is equal to the numbers of its members in the House of Representatives plus 2. This means that a big state like the state of New York has 43 electoral votes (equal to its 41 members in the House of Representatives plus 2 in the Senate) and a small state like the state of Delaware has only 3 (equal to its 1 member in the House and 2 in the Senate). The winner of the Presidential election in a state receives all of its elector votes on 'winner-take-all basis'. The method of electing the Presidential Electors in each State has been left to be determined directly by the State concerned. Originally they were elected by the State legislatures, but now they are elected directly by the people. The Presidential Electors meet in each State and cast their votes on the day fixed for Presidential election.

If no candidate for the Presidency receives the necessary electoral majority on election day, the issue is thrown for decision of the

13. Emmanuel Zafar, ibid,p. 42

House of Representatives. There, each state, each state, irrespective of its population and size, casts for one of the three man who earlier had received the maximum electoral votes in the elections. There have been only three occasions in the American history in 1800,1824 and 1876 elections, when the Statewise.

Calendar pattern

The American political system moves according to calendar pattern. The Presidential Electors are elected on Tuesday after the first Monday in November of every leap year[14]. These electors meet in the capital of each State on the first Monday after the second Wednesday in December, and record their votes for the Presidential candidates. A certificate of election is then sent to the Chairman of the Senate by each state. On 6th January, the Congress meets in a joint session, where votes are counted; the person securing an absolute majority of votes is declared elected. In other words in counting the majority of votes, the majority of total votes is considered, and not simple majority. The new President is sworn into office 'on January 20. In case no candidate secures the required, majority of votes, the House of Representatives elects one person from amongst the first three candidates, securing the highest number of votes. In such a case, each State has one vote irrespective of the number of representatives in the House. It this attempt also fails, then after 4th March, the Vice-President automatically succeeds to the Presidential office.

Direct Election in Practice

Although the U.S. Constitution prescribes a system of indirect election, yet in practice election of the President has become almost direct. The change has been brought about by the growth of powerful political parties in America, months before the date of Presidential election, the major political parties had their national conventions and nominate their Presidential candidates. The parties in each State nominate their own candidates for the Presidential electoral college.

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14. Emmanuel Zafar, ibid,p. 42-43

The ballot papers are so printed that by one cross, a voter can vote for the whole list of Presidential electors put up by a particular party of his choice. This victory of a particular party in the election of Presidential electors means the election of the party's candidate to the Presidentship. The formal election in each State and counting of votes by the Congress, are conducted just as a necessary constitutional formality. Thus to all intents and purposed, the Presidential election in the United States has become direct. The country knows weeks before the actual date of election as to who is going to be elected. The voters in the States do not, in fact, cast vote for the Presidential Electors, but they cast a direct vote in favour of Presidential candidates whose names are already known to them. The election of the electoral college is just a formality. If the election of this intermediary body was to be excluded, the same result would accrue. Thus with the growth of strong political parties, the powers of electing the President has been actually transferred to the people although the framers of the constitution wished it otherwise[15].

Impeachment

The President may be removed from office before the expiry of his normal term through impeachment. The House of Representatives adopts by resolution, articles of impeachment charging the President with certain high crimes and chooses leaders to direct the prosecution before the Senate which acts as a judicial tribunal for impeachment. Its meeting is then presided over by the Chief Justice of the Supreme Court. The Senate may convict the President by two-third majority of its members present and voting. The penalty cannot extend more than the removal of the President from office and disqualification to hold any office of trust and responsibility under the United States. The method or impeachment is not an easy one. During the long constitutional history of the U.S.A. President Johnson and President Bill Clinton were subjected to the process of impeachment but impeachment could not be carried through for want of a required majority in the Senate.

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15. Emmanuel Zafar, ibid, 42.

Powers and Position of the American President

It is often remarked that the President of the United States wields the larges amount of authority ever wielded by anyone in a democracy. Lord Bryce regards the American Presidency as the greatest office in the world. Haskin declares that the President of the United States is the foremost ruler in the world. He enjoys real and effective powers as contrasted with the powers of the King or Queen of England.

"The Constitution intended that the executive should be more than a mere executive: it very considerably modified the pure idea of the separation of powers. He has become a very active legislative leader as well as an executive."

All these remarks are correct in their assertions that the powers of the American President, have increased enormously much against the spirit, of the original Constitution.

Sections 2 and 3 of Article II are devoted to enumeration of Presidential powers. But much of the President's authority has accrued to him by virtue of factors beyond the powers conferred upon him by the Constitution. The President of America now enjoys extensive executive, legislative, financial and judicial powers which may be discussed as follows :

1. Executive Powers of the President

(a) Chief Administrator

The President is the head of national administration. All executive action of the Republic is taken in his name. He is responsible for the enforcement of the federal laws and treaties with foreign States throughout the country. He sees to the implementation of the decisions of the courts and enforces the constitution and laws of the country. For the performance of these functions, he sends directions to the heads of the various departments. In the discharge of his executive functions, he is assisted by his own cabinet the members of which are the heads of the various departments.[16]

16. Emmanuel Zafar, ibid,p. 46

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16. Emmanuel Zafar, ibid,p. 46

(b) Commander-in-Chief

The President is the Supreme Commander of the armed forces of the United States. As such he is responsible for the defence of the country[17]. He appoints military officers with the advice and consent of the Senate and can remove them at will. Although the power to declare war vests in Congress yet the President can make war unavoidable and necessary by his conduct in the administration. As for example, President Truman took 'Police Action' in Korea without authorisation, by the Congress. During war, President's military powers increase enormously. He becomes the sole incharge of war operations. During World War II, President Roosevelt was given almost a blank cheque to conduct war on the part of the United States. He became a sort of constitutional dictator.

(c) Dictator of Foreign Relations.

The President represents the U.S.A. in foreign relation. He formulates the foreign policy of the United States. He appoints all diplomatic representatives of the U.S.A. to foreign States with the consent of the Senate. He receives the foreign diplomats accredited to the U.S.A. He can negotiate treaties and agreement with foreign States in his discretion. But all treaties with foreign States must be ratified by two thirds majority of the Senate. This is no doubt a limitation on his authority regarding the conduct of foreign relations. But the President is not to face any difficulty if majority in the Senate belongs to his party. The President is, however, placed in a difficult position when majority of the Senate is hostile to him.

(d) Appointments

The President makes a large number of appointments in the federal services. The power of making appointments is the most important and effective power in the hands of the President. It enables the President to command the allegiance of a huge number of federal officers and secure their support for implementation of his policy.There are two categories of federal Services, i.e. 'Superior Services' and 'Inferior Services'. Superior Services are appointed by

17. ibid

the President with the consent of the Senate and members of the 'Inferior Services' are appointed by the President alone, according to civil service rules[18].

(e) Power of law enforcement

The Constitution commands the President to take care that the laws are faithfully executed[19]. It also prescribes that the President, before he enters on the execution of his office, shall take an oath of affirmation that he would to the best of his ability preserve, protect and defend the Constitution.

(f) Emergencies

Emergencies in the life of every nation and is the fundamental of every state to meet them and preserve its existence. The exercise of emergency power of the President is based either on his military power, his responsibility to see that faithfully executed or an emergency power delegated to him by the Congress.

2. Legislative Powers

Consistent with the theory of Separation of Powers, the constitution confers upon the President, a limited legislative authority. The President does not possess the authority to summon, prorogue and dissolve the Congress. He cannot initiate any Bill directly in the Congress. The President unlike the British or Indian Prime Minister, is not the leader of the majority party in the house. He has no direct control over the legislature whatsoever.. During the course of time, the President has acquired a vital share in legislation. He has virtually become the 'chief legislator' in practice. Some of his legislative powers may be summed up as follows:

(a) Veto Power

All Bills passed by the Congress must be referred to the President for his final approval. The President can deal with them in three different ways: (a) He may give his assent to a Bill referred to him and the Bill will become an Act. (b) He may reserve the Bill with

18. Emmanuel Zafar, ibid.p.48
19. Article II Section 3

him in which case it becomes a law at the expiry of ten days without his signatures provided the Congress is still in session. The Bill in such a case is killed if the Congress adjourns before the expiry of ten days. This is known as Pocket Veto, (c) He may reject a Bill and may return it to the House with or without his amendments. In such a case, the Bill may be repassed by the Congress by its two-thirds majority in each House and then it will be obligatory on the part of the President to give his assent. The facts given above clearly show that the President has an effective role in law making.

(b) Messages

The President may send messages proposing some legislative measures. As the messages come from the highest functionary of the State, these cannot be easily ignored by the Congress. President's messages stir the nation and it is one great public document which is widely read and discussed. In fact, many, laws owe their origin to the Presidential messages. The famous 'Munro Doctrine' enunciated by President Munro was transmitted to the Congress through a message[20].

(c) Special Sessions

The President has the right to convene special sessions of the Congress. All important laws were passed in 1913 in special sessions convened according to the wishes of President Wilson. The practice of convening special session of the Congress was very common previously. But under the new Calender introduced by the Twentieth Amendment, the need of special session has become less because the interval between regular sessions has been lessened.

(d) Patronage

The President extensive patronage in his hands. He makes a large number of appointments in the federal services, The Senators and Representatives always want to win the President's favour in order to secure jobs for their supporters arid friends. The Presidents of the United States have often made bargains with members of the Confess to get their proposals-far legislation passed by them.

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20. Emmanuel Zafar, ibid,p. 48

(e) Appeal to Public Opinion

The President is not only the head of the Republic but also the leader of the nation. His office carries an inherent respect. The nation listens to him with attention. Whenever he finds that the Congress is pitched against him he can make direct appeal to the nation, and may create public opinion against his opponents in the Congress. There are instances when this method was effectively used by the President to put the Congress on the right errand.

(f) Personal Influence

Most of the Legislative programmes of the Congress are discussed by the President at the dinner table with the prominent party leaders in the Congress. The President, in fact, experiences no difficulty if his party has a majority in the Congress[21].

3. Delegated Legislation

In addition to an immense influence exercised by the President on the Congress, he can legislate on his own authority as well. He has the power to make rules and regulations in the form of executive orders. In most cases, the Congress makes laws in general outlines. The details are left to be filled in by the executive. The rules and regulations thus made have the force of law. This is known as delegated legislation or rule-making power. This power has increased immensely during recent years. President Roosevelt is supposed to have exercised this power extensively. He is said to have issue 3,703 executive orders during his Presidential career prior to 1941. During the same period the Congress passed only 4,553 laws.

4. Financial Powers

Although the control over federal finances has been vested in the Congress yet in actual practice, the President directs and controls finance. It is under the direct supervision of the President that the budget is prepared. It is placed before the Congress which can amend it in anyway. But the general practice shows that the budget is passed as it is. Very few members of the Congress understand the

21. Emmanuel Zafar, ibid,p. 48

technicalities involved in the budget and it is difficult to amend it on account of its niceties. The President is thus the general manager of the financial affairs of the government.

5. Judicial Powers

Like all other chief executive heads, the President of the United States enjoys the power to grant pardon, reprieve or amnesty to all offenders convicted for the breach of federal laws except those impeached by the Senate. He cannot grant pardon or reprieve for punishment under State laws. The President appoints the judges of the Supreme Court with the consent of the Senate. Thus he enjoys some judicial patronage.

(B) CABINET SYSTEM OF USA

The American Constitution did not envisage any Cabinet to aid and assist the President in the discharge of his functions[22]. However, in course of time, separate departments of the government have been created, each of which is under the charge of a Secretary. These Secretaries are the principal advisers of the President.

Appointment

They are appointed by every President when he enters upon his office, and are usually his ardent supporters in the political field. They are not members of the Congress, nor are they responsible to it. They are the President's personal advisers, first and foremost. However, their appointment like all other high appointments, is subject to the approval of the Seriate; although the Senate does not stand in his way as a matter of practice under normal circumstances.

Departments

At present there are 13 such departments. They are as follows:

1. Agriculture
2. Commerce
3. Defence
4. Education-X

22. Emmanuel Zafar, ibid,p. 50

technicalities involved in the budget and it is difficult to amend it on account of its niceties. The President is thus the general manager of the financial affairs of the government.

5. Judicial Powers

Like all other chief executive heads, the President of the United States enjoys the power to grant pardon, reprieve or amnesty to all offenders convicted for the breach of federal laws except those impeached by the Senate. He cannot grant pardon or reprieve for punishment under State laws. The President appoints the judges of the Supreme Court with the consent of the Senate. Thus he enjoys some judicial patronage.

(B) CABINET SYSTEM OF USA

The American Constitution did not envisage any Cabinet to aid and assist the President in the discharge of his functions[22]. However, in course of time, separate departments of the government have been created, each of which is under the charge of a Secretary. These Secretaries are the principal advisers of the President.

Appointment

They are appointed by every President when he enters upon his office, and are usually his ardent supporters in the political field. They are not members of the Congress, nor are they responsible to it. They are the President's personal advisers, first and foremost. However, their appointment like all other high appointments, is subject to the approval of the Seriate; although the Senate does not stand in his way as a matter of practice under normal circumstances.

Departments

At present there are 13 such departments. They are as follows:

1. Agriculture
2. Commerce
3. Defence
4. Education-X

22. Emmanuel Zafar, ibid,p. 50

5. Energy
6. Health & Human Services
7. Housing & Development
8. Interior
9. Labour
10. State Foreign Affairs
11. Transportation
12. Treasury
13. Attorney-General

Powers

The American Cabinet system differs greatly from the Cabinet system in other countries, like India or England[23]. The U.S. President cannot put his responsibility on the shoulders of the Cabinet nor can be make it responsible for the executive actions. In America, the Cabinet is more like the President's own Council of Advisers. In India, the President cannot afford to disregard the advice of the Cabinet. But in U.S.A. it is the President's sweet will whether to accept the advice of his Cabinet or not. There is a classic example of the fact showing how utterly the President can disregard their advice. Once an important subject was being discussed by seven members of President Abraham Lincoln's Cabinet, with Lincoln in the Chair. When it was put to vote the seven members voted in the negative, although Lincoln himself wanted a decision in the affirmative. He wound up the discussion by quietly saying: "The vote is 7 noes and 1 aye. Therefore the aye has it". This shows the utter subordination of the Cabinet to the President. This cannot happen in countries like India or the United Kingdom.

Utility of the Cabinet

The Cabinet has a character and importance of its own[24]. Membership in it continues to be the ambition of many politicians. And although there is a considerable variation in its prestige and

23. Emmanuel Zafar, ibid,p. 51
24. Anup Chand Kapur, Select Constitutions, p. 186

5. Energy
6. Health & Human Services
7. Housing & Development
8. Interior
9. Labour
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influence from administration to administration, yet it must meet once a week and transact two types of business. In the first place, the broad policies of the government are examined and discussed. The President may frequently consult the Cabinet on matters of top policy. He may accept the opinion or not, but the discussions bring out useful information and opinion, clarify views and promote morale in administration.

Proceedings

Proceedings are informal and there are no joules of debate. No official records of proceedings are maintained. Hardly any voting is there because ultimately it is the will of the President that prevails. This is in contrast with the Indian or British Cabinet, where all decisions are taken by a majority vote an regular records are maintained.

The Cabinet and the Congress

The members of the President's Cabinet do not sit in the Congress. However, they may be asked to appear before Congressional Committees to defend the executive actions, and to present the viewpoint of the President regarding certain legislation. One of the main reasons for the weakness of the Cabinet is that its members are not elected representatives of the people. As compared to this, the President is the popular representative.

To all intents and purposes, the Cabinet is the 'President's Family, and the President, as head of the family, dominates. President Wilson is reported to have treated his Secretaries as office boys. President Grant regarded them as second lieutenants whose only duty was to carry out the orders of the captain.

(C) VICE-PRESIDENT

The Constitution provides for the office of Vice-President of the United States as well[25]. The framers of the Constitution might have omitted the Vice-Presidency but when the method of electing the

25. Emmanuel Zafar, ibid,p. 52

President through the medium of Electoral College was decided upon, it became necessary to provide for an office the incumbent of which should succeed to the Presidency without delay. The Vice-President must meet all the qualifications of President since he may succeed to the Presidency in the event of the President's death, resignation or removal[26].

Mode of election

He is elected along with the President in the same manner. The Presidential electors cast two votes, one for the Presidential candidate and the other for Vice-Presidential candidate. A candidate for Vice-Presidency securing absolute majority of votes is declared elected. In the case no candidate secures an absolute majority of votes, the Senate elects, one out of the two candidates securing the highest votes. Two principles are kept in view in the election of the Vice-President. First, is that the President and Vice-President should not belong to the same State and the second is that the Parties while nominating their candidates for the two offices should keep in view the fact that both the candidates belong to the different wings of the Party.

Functions

(a) The Vice-President of America is the ex-officio Chairman of the Senate. He has a casting vote which can be used in case of a tie. Otherwise the Presiding officer has very little of authority, because the Senate has its own rules and customs which the Presiding officer must follow.

(b) The Vice-President is to succeed the President in case he dies, or resigns or is removed by impeachment. In this case he occupies the President's office for the remainder of the term. Vice-President Johnson succeeded to the Presidential office in 1963 on Kennedy's death. There have been eight such occasions when Vice-President succeeded to the Presidential office mostly on account of death of the Presidents.

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26. Anup Chand Kapur, Select Constitutions, p-164

(c) Sometimes the Presidents include the Vice-Presidents in their Cabinets as a matter of courtesy[27]. As for example President Roosevelt included Vice-President Henry Wallace in his Cabinet. President Eisenhower also sent Vice-President Nixon on a tour of Middle East, India and Pakistan. The object of associating the Vice-President with administration is to give him some training in this regard so that he may be able to handle Presidential office if chance be President Reagan also associated Vice-President Bush with the principle policies of his administration[28].

But the fact remains that the office of Vice-President is a very weak office because of an absence of some significant role. Roosevelt called it as 'an office unique in its functions or rather in its lack of functions'. Benjamin Franklin condemned the Vice-President as 'His superfluous Highness'.

Succession to Presidency

Ten Vice- Presidents have so far succeeded to the Presidency and nine in the event of death during their terms. The tenth Gerald Ford succeeded on Nixon's resignations. No case of Impeachment has made a vacancy for a Vice-President[29]. Nor there had been in an occasion on which the inability to discharge the powers and duties on the part of the President may have resulted into the moving up of the Vice-President. The result was that the question of succession to Presidency, except in case of death remained obscure[30].

27. Emmanuel Zafar, ibid,p. 52
28. Emmanuel Zafar, ibid,p. 52
29. Richard Nixon resigned in order to avoid possibility of impeachment.
30. Anup Chand Kapur, Select Constitutions, p-166

CHAPTER—5

AMERICAN DUE PROCESS

Due process of law is a legal concept that ensures the government will respect all of a person's legal rights instead of just some or most of those legal rights, when the government deprives a person of life, liberty, or property. Due process has also been interpreted as placing limitations on laws and legal proceedings in order to guarantee fundamental fairness, justice, and liberty[31]. The legal systems of many nations embrace some variant of this, such as the concept of fundamental justice in Canada.

International due process

Lots of nations recognize some form of due process under customary international law. Although the specifics are not clear, there has been consensus that a nation must guarantee foreign visitors a basic minimum level of justice and fairness. Some nations have argued that they were bound to grant no more rights to aliens than they did to their own citizens—the doctrine of national treatment—which also means that both would be vulnerable to the same deprivations by the government. With the growth of international human rights law and the frequent use of treaties to govern treatment of foreign nationals abroad, the distinction in practice between these two perspectives has all but disappeared.

Due process in the United States

The Fifth Amendment contains a guarantee of basic due process applicable only to actions of the federal government : "No person shall be... deprived of life, liberty, or property, without due process of law...." The Fourteenth Amendment contains the same phrase, but expressly applied to the States. The Supreme Court has interpreted the two clauses identically, so under the federal Constitution, there is no substantial difference in protection from federal or State action.

31. www.aboutaustronomy.com

However, State constitutions also have their own guarantees of due process that may, by their own terms or by the interpretation of that State's judiciary, extend even more protection to individuals than under federal law.

The Due Process Clause of the U.S. Constitution is descended from a similar clause of the Magna Carta in which the King of England agreed in the year 1215 A.D. that "No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his peers, or by the Law of the Land." Thus, the core historical meaning of the Due Process Clause is that the government cannot deprive anyone if the Law of the Land forbids it. In other words, neither the King nor an American President may take away your life, liberty, or property if the law denies him that power. Due Process under the federal Constitution has additionally been interpreted as a restraint on the ways that legislatures may alter the law, although some judges over the years have objected to stretching the Due Process Clause beyond what was intended by Magna Carta[32]. As a limitation on Congress, the Due Process Clause has been interpreted by the majority of the Supreme Court to have both procedural and substantive components, meaning that it imposes restrictions on legal procedures—the ways in which laws may operate—and also on legal substance—what laws may attempt to do or prohibit. The distinction between substance and procedure is difficult in both theory and practice to establish. Moreover, the substantive component of due process has proven to be very controversial, because it gives the U.S. Supreme Court considerable power to strike down state and federal statutes in order to legalize activities that a majority of the judges don't think should have been criminalized in the first place.

32. www.aboutaustronomy.com

Procedural due process

Procedural due process is essentially based on the concept of procedural fairness. As a bare minimum, it includes an individual's right to be adequately notified of charges or proceedings involving him, and the opportunity to be heard at these proceedings. In criminal cases, fair procedures help to ensure that an accused person will not be subjected to cruel and unusual punishment, which occurs when an innocent person is wrongly convicted

Criminal prosecutions and civil cases are governed by explicit guarantees of rights under the Bill of Rights and as incorporated under the Fourteenth Amendment to the States. However, when the Constitution has not laid out the specific procedures that must be followed in other government proceedings, due process provides a minimum floor of protection to the individual that statutes, regulations, and enforcement actions must at least meet, in order to ensure that no one is deprived of life, liberty, or property arbitrarily and without opportunity to affect the judgment or result. This minimum protection extends to all government proceedings that can result in an individual's deprivation, whether civil or criminal in nature, from parole violation hearings to administrative hearings regarding government benefits and entitlements to full-blown criminal trials. In criminal cases, many of these due process protections overlap with procedural protections provided by the Eighth Amendment to the United States Constitution, which guarantees reliable procedures that protect innocent people from being punished, which would be tantamount to cruel and unusual punishment.

Personal jurisdiction

Procedural due process places limits on the assertion of personal jurisdiction over a defendant to a lawsuit, limiting the locations where that defendant may be hauled into court. This is of particular relevance in cases involving business transactions conducted across state lines, where the defendant may not have set foot in the other state, but still conducted affairs with the other state's residents through correspondence, the shipment of goods, or indirect agents.

This limitation also applies to jurisdiction over foreign defendants in U.S. courts.

In a somewhat complicated line of cases, the Supreme Court has required that the defendant had established minimum contacts with the jurisdiction wishing to act as a forum for the litigation, such that the defendant should not be surprised that he was subject to suit in that location. The defendant must have purposefully availed himself of the privilege of conducting business within that jurisdiction—intentionally directing his activities at that state and its residents. Simply put, the defendant's actions determine where he can be sued, rather than the actions or movement of the plaintiff. Courts are still working out how this applies to lawsuits regarding internet activity and business, though they appear to be in agreement that the "passive" posting of a website is not enough posting of a website is not enough to establish widespread jurisdiction wherever someone wants to sue the web author over the contents[33].

A court in one state must have a means of notifying the resident of another, to comply with the notice requirement of due process. This is typically done through "long-arm statutes" that provide for service of process upon the defendant in another jurisdiction through agents located or sent there. Because out-of-state defendants can't always be located easily, some state or local laws may allow for service by publication. An example of this would be printing a notice of the lawsuit in a newspaper published where the defendant is believed to reside. Because the failure of a defendant to appear in court results in a default judgment against him, such measures must be sufficiently calculated to give actual notice to the defendant to satisfy due process.

Incorporation

Incorporation is the legal doctrine by which the Bill of Rights, either in full or in part, is applied to the states through the Fourteenth Amendment's Due Process Clause. Although incorporation started with, a First Amendment case, it really began in earnest in the

33. www.aboutaustronomy.com

1940sand 1950s. Justice Hugo Black famously favored the jot-for-jot incorporation of the entire Bill of Rights. Justice Felix Frankfurter, however—joined later by Justice John M. Harlan—felt that the federal courts should only apply those sections of the Bill of Rights whose abridgement would deny a "fundamental right." It was the latter course that the Warren Court of the 1960s took, although, in the end, almost all of the Bill of Rights was incorporated against the states.

Substantive due process defined

Though on its face, the idea that due process is not only procedural but substantive seems paradoxical, the Court has endorsed that view[34]. Note that the boundary between substance and procedure is far from exact. The Supreme Court has held for much of its history that due process must include limits not only on how people are put on trial , but also limits on what kind of control majorities can have over minorities and individuals . The court has viewed the due process clause as embracing those fundamental rights that are "implicit in ordered liberty." Just what these rights are is not always clear. Substantive due process has protected such rights as marriage and raising children, and the extension of much of the Bill of Rights over the States. However, what are seen as past abuses and present excesses of this doctrine continue to spur debate over its use.

Development and use as a doctrine

The idea of substantive due process was developed in the nineteenth century, rather than being part of the legacy of Magna Carta James Madison explained as follows, when he proposed the Bill of Rights to Congress in 1789: "Magna Carta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed." Magna Carta forbade the King from disobeying Parliament, and the framers of the Bill of Rights (including Madison) understood that Magna Carta did not forbid Parliament from doing anything.

34. www.aboutaustronomy.com

Substantive due process was first applied by Supreme Court in a subsection of Dred Scott v. Sandford (1856).Dred Scott was a slave who claimed that passing into territory where slavery was prohibited destroyed his owner's property rights over him. The court ruled in three parts. First, it argued that Dred Scott was not a citizen of the United States therefore he had no right to liberity under the Constitution of 1856—this argument, now harshly repudiated, is not based on the Due Process clause but did establish that the Court considered Dred Scott to be property. Second, the court argued that no Federal law could exist which per se appropriated property without advance notice and opportunity for judicial review—this was a Due Process argument. Thus, the decision established that the absence of a procedure violates Due Process just as much an unfair procedure. After the Fourteenth Amendment applied due process restrictions to states, the Supreme Court used this same doctrine to protect a liberty of contract by routinely striking down those economic and labor regulations which restricted particular economic activities per se without opportunity for judicial review.

It is also charged that Substantive Due Process developed and became common currency as a consequence of the Court's desire to accomodate the railroads and trusts of the late 19th Century. As judges became more deferential to legislative judgment in the area of commerce, substantive due process shifted away from upholding laissez-faire economics to recognizing individual rights considered to be fundamental liberty interests. This has included the incorporation of most of the Bill of Rights under the Fourteenth Amendment to apply to the laws and actions of states, as well as the recognition of rights concerning family and privacy not elsewhere in the text of the Constitution. See, for example, Griswold v. Connecticut, where privacy was said to be found in what the Court called the "penumbras" of certain amendments, such as the First, Fourth, and Ninth. Substantive due process has notably been invoked to invalidate laws in such areas as abortion in Roe v. Wade and most recently in Lawrence v. Texas regarding the rights of gays and lesbians to sexual intimacy.

Criticisms of substantive due process

The same criticisms of the doctrine continue as in the past: that justices are reading their personal views into the Constitution instead of interpreting it. However, the disagreements now are usually much more concerned with what, based on tradition and history, should be embraced under such protections of fundamental liberty rather than whether there are such unspoken guarantees in the Constitution in the first place[35].

Originalists - including two current Supreme Court Justices, Thomas and Scalia- stringently reject Substantive Due Process, and believe that due process should only limit legislators with respect to actual due process. Scalia, in particular, has been caustically dismissive of the legitimacy of the doctrine, calling it a "judicial usurpation". Both Scalia and Thomas, though have occaisionally joined Court opinions that do not challenge the doctrine, and have in their dissents taken more to arguing over how substantive due process should be employed based on Court precedent. In other words, the main debate in recent decades within the Court over substantive due process has been more about where to apply it, and less about whether it should be applied at all.

Types of scrutiny

There are two forms of scrutiny to which legislation is subjected under substantive due process review. When the governmental action is infringing upon a fundamental right, strict scrutiny is used. In order to pass muster under strict scrutiny review, the act/legislation in question must be closely related to a compelling government interest, and it must be necessary to achieve this interest. Strict scrutiny is almost always fatal for legislation. When the governmental action is infringing upon a non-fundamental right, the rational basis test is used. In order to pass muster under rational basis review, the legislation/act in question must be reasonably related to a legitimate governmental interest. Statutes examined under rational basis scrutiny almost always upheld.

35. www.aboutaustronomy.com

CHAPTER—6

COURT SYSTEM OF USA[36]

Generally by Court System of USA means how America administers justices. Under the constitution of the United States there are two series of courts, namely, the state courts and the federal courts. Thus, the distinctive feature of the judicial system of America is that it contemplates separate and distinctive system of state courts and federal courts. The federal courts are established under federal laws and the state court under state laws.

Under clause (1) of Article (3) of the constitution of USA it is mentioned that the judicial power of United States shall vest in a Supreme Court and those sub-ordinate courts which shall be established by the Congress by law from time to time." In this way, the composition, constitution and jurisdiction of the Supreme Court has not been described in the constitution and this all has been left to Congress.

Problems in studying American Courts

(i) Overlapping of jurisdiction of federal court and state courts.

(ii) Inconsistency regarding the formation of state courts.

(iii) Composition of courts in various states differs from one another. Appointment procedures of the judges in various courts are not the same.

Federal structure of US courts

United States has 50 states. So, we have 50 different court structures in USA. But for all these 50 states there is another unified court structure which is federal structure of United State Courts.

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36. This chapter is predominantly based on the lectures given by Professor Dr. Mizanur Rahman, in the classes of Comparative Law, at the University of Dhaka.

Necessity of federal court structure

The importance of federal judiciary is twofold:

Firstly, in a federal form of court, there is a need of such a power which can adjudicate the disputes arising between the federation and different units.

Secondly, American constitution system being based on the principle of the separation of power of the government and the executive are independent of each other. Disputes relating to jurisdiction may arise between the two and there is a need of federal judiciary to settle them.

Law to be applied in case of federal jurisdiction of US courts

By far the largest number of civil suits in the United States is decided by state courts. Federal courts have jurisdictions only under special conditions. The fear that the courts of state might not afford complete justice to a party domiciled in another state explains the existence of federal jurisdiction in another class of case. In case of diversity of citizenship jurisdiction case the federal courts shall be competent to try the case under certain conditions.

But it was a difficult question as to what laws are to the applied by such courts. In the United States there is no federal common law and 50 common laws of 50 states. This question vexed people for about a century.

The Supreme Court's decision in SWIFT V. TYSON (1842) it was established that in areas of judge-made law, the federal court should apply not the case law of any particular state but rules of federal law which were to be independently developed. This decision was based on the hope that in their way the decisions of the federal courts might gradually build up a 'federal common law' which might be taken over by the courts of the several states and thus form a point of around which American law might form.

This hope had not borne fruit. The courts of the states were far from the decisions of the federal courts and offer enough hit upon deviant rules. This gave litigants an incentive to try all kinds of devices to

bring the case before the federal rather than the state courts or vice versa, depending on whether federal or state common law offered them the more favorable rule.

These unfortunate effects induced the Supreme Court to take some initiative.

In Erie Railroad Co. V. Tomp Kins, (1938) the Supreme Court said. "We are abandoning our previous holding and decide that, except in cases controlled by a federal statute, federal courts should in principle apply the written of unwritten law of the state in which it sat".

So, by this case 'moving to federal common law' rule was changed and it acted as a milestone for a total depart form a federal common law.

Now in 'diversity o citizenship jurisdiction cases, the federal courts apply the law of the state in which it sits.

Federal jurisdiction of US Courts

According to the Supreme Court Act, 1925 the US Federal courts have the following 5 types of jurisdiction. This is called the federal jurisdiction of the US Courts.

(1) Those case in which USA itself is a party. So, when in a case USA is involved, it will not go to the state courts.

(2) Cases involving foreign officials if they are a party to a case.

(3) Cases in which citizens of different states of US are involved provided that the claim in the dispute is not less than 50,000 dollar. This is known as diversity of citizenship jurisdiction.

It follows form the rules of jurisdiction in diversity of citizenship cases' that, to take an example, a federal court sitting in California can decide a suit brought by a Texas citizen for damages in tort against a Californian defendant. The question immediately arises whether the federal court should apply Californian or Texas tort law or whether it may not have to apply federal port law instead.

(4) When the case involves the U.S. constitution and other federal laws.

(5) Cases involving specialty matters, i.e. patent, trademark, copyright, customers, trust, monopoly laws, bankruptcy etc.

For example any dispute concerning the W.T.O. would lie to the federal court of USA.

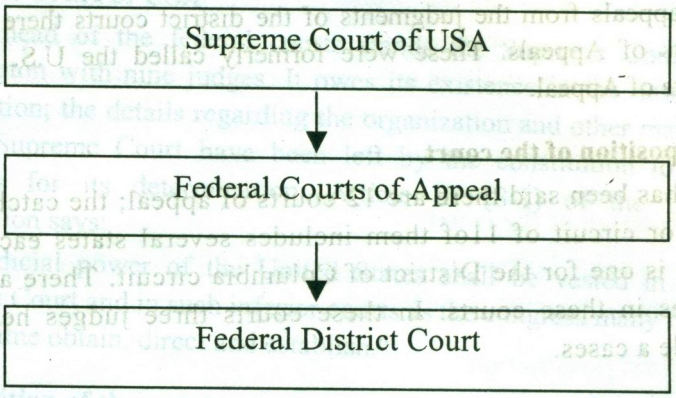
At last, it must be added that in exceptional cases the state court might have concurrent jurisdiction over the two of the above mentioned five issues, i.e. 3, and 4 case related matters.

Structure of the USA Federal courts

The situation in the United States is rendered more complicated system of courts. It is clear from the fact that there are complete courts systems not only in each of the several states but also in the United States. So, far as federal courts are concerned by article III of the Constitution the judicial power is vested in the Supreme Court and 'such inferior courts as the Congress may form time to time ordain and establish. About 30 million cases are disposed of by US courts of them 5% only are dealt by federal courts and 95% by state courts.

In 1789, in one of the Judiciary Act, passed by it, Congress exercised the power to create lower federal courts by establishing District Courts as federal court of first instance and Courts of Appeals the first set up of intermediate courts with purely appellate jurisdiction was established by Congress in 1891. So, we find the Federal Supreme Court, the Courts of Appeal and District courts in the arena of federal courts. The federal judicial pyramid like that in many states is three tiered. At the bottom are the district courts from these courts on appeal lies to the U.S courts of Appeal and from these appeal lies to the Supreme Court of USA.

A brief discussion or the federal courts of USA is given below.



(i) Federal District Court: At the bottom of the federal court structure in U.S.A. are the district courts. As has already been said, it was the creation of an Act of 1789 in which Congress exercised the power to create lower federal courts.

Composition of the court

There are close to 100 district courts in the United States many having only one while other states with large population may be divided into two or four districts each of which has a district court to bring such courts within the reach of the litigants, the Congress has divided the country into districts and provided district court for each of them. Furthermore, many districts have more than one judge. So, there are about 650 District Judges who normally sit alone.

The Judges are all professional Judges. The generally sit alone although on occasion a bench of three many hear certain cases. Each district court has a clerk, usually a young lawyer who has just completed his university training who assists him in his research.

In civil actions seeking money damages, the Constitution guarantees a right to a jury trial if a jury is requested by either party. Statutes sometimes accord jury trial in other cases criminal prosecutions other them for misdemeanors, are conducted with juries unless the defendant waives that right.

Courts of appeal

For appeals from the judgments of the district courts there are 12 Courts of Appeals. These were formerly called the U.S. Circuit Courts of Appeal.

Composition of the court

As has been said there are 12 courts of appeal; the catchments area or circuit of 11of them includes several states each, and there is one for the District of Columbia circuit. There are 168 judges in these courts. In these courts three judges hear and decide a cases.

Function of the courts

Generally it decides on the basis of the briefs of the trial courts. These courts may also hold trial. One of the judges write the judgment. Judges may concur or dissent when there is concurrence; the judges have to write their own opinions because these opinions may be useful in taking decision by the Supreme Court.

Jurisdiction of the court

The court of appeal has no original jurisdiction. It hears all appeals from the district courts with a few exceptions of the cases in nothing federal legislation and validity of federal and state laws etc.

The court of appeal has also power to review the judgments of the district courts that exercise concurrent jurisdiction with the court of claims in adjudicating claims against the United States. It can also review certain classes of orders issued by federal trade commission and Federal Reserve Board.

Though in 1925 congress has given the final right of appeal in some cases, but the Supreme Court can call for such for review.

Appointment of the judges

The judges of the Court of Appeal are appointed by the President and are confirmed by the Senate. They hold office during their good behavior.

Supreme Court of USA

At the head of the federal courts stands the Supreme Court in Washington with nine judges. It owes its existence in the national constitution; the details regarding the organization and other matters of the Supreme Court have been left by the constitution to the congress for its determination. Article III (S-1) of the USA constitution says:

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the congress many from time to time obtain, direct and establish."

Composition of the court

Originally this court was established in the wall street of New York City. Then it was shifted to Philadelphia and present by it is situated in Washington. For conducting the trial the quorum is of six judges.

The Supreme Court of USA was established on 1st February 1790. Initially it consisted of one chief justice and 5 others judges. The numbers of judges have been changed from time to tome. In 1807 the number of the judges become 7; 9 in 1837, 7 in 1866 and again 9 in 1869 presently there is a chief justice and 8 other judges in the Supreme Court. Now, it sits with nine judges in all cases.

Working of the court

In order to keep the Supreme Court's workload within limits, an Act of 1925 gave the judges discretion to decide which cases were important enough to justify an appeal being heard by the highest court of the land. According to the normal practice the Supreme Court will proceed to a decision the merits if, after a summery consideration of the case at least four judges are in of so doing. This is termed 'rule of four.' If the application for appeal is subjected, no reason for refusal is given, though very occasionally one of justices will very briefly say why he would not have chosen the hear the case.

The court may decide the matter on the basis of briefs which have been submitted; such a decision is normally unanimous and contains either no reason at all or only very brief reasons for confirming or quashing the judgment in question. In a specific group of cases parties are entitled to a decision on the merits.

Jurisdiction of the court

The court has both original and appellate jurisdiction but it exercises original jurisdiction in rare cases.

Original jurisdiction

According to article 3 clause (2) Supreme Court has original jurisdiction in the following types of matters.

(i) Such matters which are concerned with ambassador public minister and

(ii) Such matters in which federation of United States of America or, one or more than one state of federation of America is party.

Appellate jurisdiction

Except the above mentioned matters, in all offer matters, the Supreme Court has appellate jurisdiction. According to jurisdiction Act of 1925 in which some amendments were also made in 1937, the court is vested with following appellate Jurisdiction:-

(i) When the highest court of any state has given the decision against any law or treaty of the United States or has declared such law of any state valid which is contrary to the constitution or any law or treaty of the United States of America.

(ii) When any federal court of appeal of America has given judgment against the law of any state federal constitution, law or treaty; and

(ii) Some special kinds of matter which have arisen due to the decision of the district courts.

Apart from this, Supreme Court through the writ of certiorari can call for such cases for consideration from the state courts in which the questions of any provision of the constitution or treaty is involved.

The Supreme Court is not nested with advisory jurisdiction.

Review jurisdiction

The right of interpreting the constitution can be said to be the most important right of the Supreme Court. Under this right it has the right of consider the constitutional validity of the laws made by the federal Congress and state legislatures, Supreme Court can deicide the constitution of state and federal laws on the basis of following criterion.

Firstly, whether the legislature has the right to make the disputed law.

Secondly, whether the law has been framed or the basis of due process of law or not.

It is to be mentioned here that annually about 7800 cases come to this court but only 100 of them are heard by the court on the merits.

Session of the court

The session of the Supreme Court begins from the first Monday of October every year and generally continues till last week of June next year. Chief justice can call special session of the court. Trials are conducted on Tuesday, Wednesday Thursday and Friday. On Saturday judges make mutual discussion and on Monday give decisions publicly. Along with every judgment the detailed opinion of the court is enclosed.

Appointment of the judges

Judges are appointed by the president on the recommendation of the Senate. Consent of the Senate is essential. In the absence of the consent, the Senate can reject the appointments made by the residents. In 1970 the senate rejected to approve the nomination of Herald cross well by the president Nixon.

Selecting process in the Senate is a difficult one. Public hearing of the person who applies to be judge is held. It is so much digging of

the private life of the person who wishes to be the judge. For example, an essay written by the applicant during his school-life may be taken into consideration in order to find out his normal base and previous history.

In an appointment procedure the alleged relation of the applicant Thomas with his clerk Anita Hill and her comment was taken into consideration and was discussed. At last, that district judge became the judge of the Supreme Court.

In appointment claims, counter claims, discussion continues up to three months. Most of the applicants become obliged to say, "I just want to come out of the process rather to be a judge of the Supreme Court". Many applicants withdraw applications during hearing.

But once anybody is appointed a judge, he enjoys full independence which is of immense importance in case of the administration of justice in USA. The terms of the judges are till his life time. They con remain continue the office subject to their good conduct. If any judge has served the Supreme Court for ten years and attained the age of 70 years or has served for 15 years and attained the age of 65 years he can voluntarily retire. After retiring he shall be getting his salary till his life time.

In the concluding paragraph it can be added that the federal judiciary of the united states is made up of the Federal courts which have the duty of explaining and interpreting federal laws, setting law suits between citizens of different states and punishing certain kinds of law breaking. The interpretative duties of the federal courts extend to treaties and agreements with foreign powers and even to the highest law of the loud, the constitution itself.

State Courts in USA

The United States has 50 states so we have 50 different court structures in USA, apart from the federal court system.

Each state has its own particular indicial organization and it is therefore difficult to make valid generalizations about the whole of state court system: The sizes, population of each state differ widely and different court structure has resulted. Sometimes it will have

two degrees, whereas in about two thirds of the states there are three levels, a supreme court, a court of appeal and a court of first instance.

Each state is free to decide as to what courts it will establish, what their jurisdiction shall be, and how their judges are to be selected.

Sometimes it will have only two degrees court, whereas, in about two-third states there are three tier court systems. In about 39 states there are three tier courts and 11 states there are two tier courts.

The organization of the courts in each state differs widely from other states, but certain broad of likeness are formed in them.

(a) Justices of the peace

At the buttons of the state judicial system in rural and semi-rural regions stands the justice of the peace who have limited inferior jurisdiction in petty civil matters. The justices of the peace are elected from the areas which they serve and their courts are not the courts of record. In some states they are appointed by the Governor.

They hardly ever have any legal training and the procedure they employ is a very simplified one. They administer justice on the basis of common sense. In fact it is a very simplified, informal procedure of resolution of dispute of very petty matter.

(b) Municipal Courts

In the large cities the lowest courts are the so-called "Municipal courts" staffed by qualified judges. Although time jurisdiction is very limited but municipal courts are conducted by professional trained judges. This court concentrates on high way offences as Traffic courts. Undoubtedly this jurisdiction of the municipal court is very significant for this country. Because this is a country which is highly mobile. This court deals with civil matters of small importance as small claim courts.

Private law dispute can also be settled by municipal courts. But obviously their jurisdiction is limited. In fact municipal courts are additional courts. These are not within the two or three tier system of courts.

(c) County courts

Over and about the court of justices of the peace different kinds of courts are established. In some states county superior courts have been established and in some states intermediate courts have been established. In county courts normally there is one judge. These courts exercise both civil and criminal jurisdiction in exercising original and appellate jurisdiction in some states by merging two or there courts a district or circuit court has been established.

The procedure of county court is very formal. To make thing confusing county courts are known as District courts, in some other places like federal district court and to make thing more and more complicated in New York the county court is known as Supreme Court.

From the decision of county court or District court appeal lies to the court of Appeal or to the highest count of the state

(d) Appellate court

These courts have been established our the county counts or district courts. They are mainly vested with appellate jurisdiction in 15 states there are court of appeal.

(e) Supreme court of the state

On the apex of the entire judicial the system of the state, there is a supreme court. In few states it has different names e.g. in Connecticut, this highest court is known as Supreme Court of Errors in New York, Mary land, the Court of Appeals.

Usually, theses courts have appellate jurisdiction, although in certain states they also enjoy original jurisdiction in certain matters. The decisions of these courts are final so far as the dispute is not concerning a matter of the state.

Appointment of judges in state courts

Since judicial decisions demands mature judgment, knowledge of contemporary social and economic conditions, through knowledge of law, highest personal integrity with ability to be impartial and non-partisan, it is pre-requisite that judges should be selected by some

method which will emphasize these qualities and minimize political considerations.

The made of appointment of judges in various states in the United States varies. In some states judges are appointed by the Governor in some status they are appointed by the legislature in a state they are appoints by a nominating committee and in most states judges are elected the following in the picture as to the mode of appointment in various states:

Mode of appointment	Number
By the Governor	18
By the Legislature	3
By Nominating Committee	1
By election	28

It is clear from the above picture that judges in most cases in various states are elected. Election may be either:

(i) Partisan election

(ii) Non-partisan election.

About in 12 states the judges are elected by partisan election and in about 17 states the election is non-partisan. In case of election any one can contest as a judge. But generally only professional people are elected. In partisan election parties help a lot in electing a judge.

One important feature in case of partisan election is that once any body is appointed judge by the party affiliation, they forget the past and do their best to be independent in exercising their judicial functions.

CHAPTER—6

COMPARISON OF AMERICAN AND BRITISH CONSTITUTIONS

A comparison of these Constitutions shows that there are both similarities and differences between the two[37].

Similarities

As regard similarities, both the Constitutions are democratic in nature. In both countries, the people elect legislatures by universal franchise. In the long run, it is the will of the people that prevails in both the countries. Neither the British Cabinet and the Prime Minister nor the American President can go against the wishes of the people.

In both countries, political parties play an important part. Without them, the large number of elections cannot be held and without those elections, the democratic institutions in both the countries cannot function.

In both countries, the rights of the people are secured. In the United States, a charter of the rights of the people is embodied in the Constitution. In the case of the United Kingdom, the rule of law guarantees to the people their rights and privileges.

In both countries, the Courts have played an important part in safeguarding the rights of the people. In both countries judges and lawyers have acted fearlessly in the performance of their duties and thus the executive has not been able to encroach upon the liberties of the people.

In both countries, conventions play an important part.

Dissimilarities

However, there are many differences between the two Constitutions, in the United Kingdom; they have a parliamentary

37. M. A. Malik, Outlines of the Constitution of the United States of America, PLD Publishers, Lahore, Pakistan, (1995) p-45

form of Government which means that the executive is responsible to the legislature. The Ministry remains in office so long as it enjoys the confidence of the House of Commons and it must resign as soon as it loses the confidence of the House of Commons. The Ministers sit in Parliament and are answerable to it. The head of the judiciary in the United Kingdom is Lord Chancellor who is not only member of the British Cabinet but also presides over the House of Lords. On the other hand, in the United States, they have a Presidential form of Government in which the executive is not responsible to the legislature. The person who is elected as President holds his office for 4 years and no adverse vote in the Congress can force him to resign. Neither the President nor the members of his Cabinet sit in the Congress and hence are not accountable to it.[38]

The American Constitution is based on the principle of separation of powers. The American President, the American Congress and the Supreme Court of America are all independent of one another. Neither the President can dissolve the Congress not the Congress can out-vote the President. The Supreme Court can declare ultra vires any law passed by the Congress. All the three organs of the Government are independent of each other. On the other hand, there is mixed separation of powers in the United Kingdom.

The United Kingdom has a unitary form of Government and all powers are centred in the hands of the Central Government. In the United States, they have a federal form of Government in which authority is divided between the Federal Government and the States. Whatever powers are not given to the Federal Government by the States, are retained by them. The result is that the States also enjoy a lot of authority, although it cannot be denied that there is a tendency to add to the powers of the Federal Government.

The British Parliament is supreme. Dicey referred to the sovereignty of the British Parliament. The British Parliament can do whatever it

38. ibid

APPENDIX-I

The Magna Carta, 1215

Clauses marked (+) are still valid under the charter of 1215, but with a few minor amendments. Clauses marked (*) were omitted in all later reissues of the charter. In the charter itself the clauses are not numbered, and the text reads continuously. The translation sets out to convey the sense rather than the precise wording of the original Latin.

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's

elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(2) If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight l00s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'

(3) But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.

(4) The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

(5) For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

(6) Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be' made known to the heir's next-of-kin.

(7) At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

* (10) If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

* (11) If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

* (12) No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

+ (13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all

other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

* (14) To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

* (15) In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.

(16) No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

(17) Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

(18) Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

(19) If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

(20) For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal

court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

(21) Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

(22) A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.

(23) No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

(24) No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

* (25) Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

(26) If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man s will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

* (27) If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

(28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

(29) No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this servlce.

(30) No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

(32) We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

(34) The writ called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

(35) There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

(36) In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

(37) If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

+ (39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

+ (40) To no one will we sell, to no one deny or delay right or justice.

(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants

found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

* (42) In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.

(43) If a man holds lands of any 'escheat' such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other 'escheats' in our hand that are baronies, at his death his heir shall give us only the 'relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the 'escheat' in the same manner as the baron held it.

(44) People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

* (45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

(46) All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

(47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

* (48) All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

* (49) We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

* (50) We will remove completely from their offices the kinsmen of Gerard de Athée, and in future they shall hold no offices in England. The people in question are Engelard de Cigogné', Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.

* (51) As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.

* (52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61). In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

* (53) We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first a-orested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

* (55) All fines that have been given to us unjustly and against the law of the land, and all fines that we have exacted unjustly, shall be

entirely remitted or the matter decided by a majority judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61) together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgement shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

(56) If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgement of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgement of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

* (57) In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgement of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

* (58) We will at once return the son of Llywelyn, all Welsh hostages, and the charters delivered to us as security for the peace.

* (59) With regard to the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights, we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgement of his equals in our court.

(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

* (61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security :

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chiefjustice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If-one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

* (62) We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

* (63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fulness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the abovementioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28.

Appendix-II

The Bill of Rights,1688

An act for declaring the rights and liberties of the subject and settling the succession of the crown.

Whereas the lords spiritual and temporal, and commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did upon the thirteenth day of February, in the year of our Lord one thousand six hundred eighty eight [1688/9] present unto their Majesties then called and known by the names and stile of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons, in the words following: viz.

Whereas the late King James The Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom.

1 By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

2 By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused concurring to the said assumed power.

3 By issuing and causing to be executed a commission under the great seal for erecting a court called, The court of commissioners for ecclesiastical causes.

4 By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament.

5 By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6 By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

7 By violating the freedom of election of members to serve in parliament.

8 By prosecutions in the court of Kingís bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

9 And whereas of late years, partial, corrupt, and unqualified persons have been returned and served on juries in trials and particularly divers jurors in trials for high treason, which were not freeholders.

10 And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

11 And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12 And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons, upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James the Second having abdicated the government, and the throne being thereby vacant, his highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants; and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two and twentieth day of January, in this year one thousand six hundred eighty eight, in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted: upon which letters, elections have been accordingly made,

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare;

1 That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2 That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3 That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature are illegal and pernicious.

4 That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

5 That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

6 That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7 That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law.

8 That election of members of parliament ought to be free.

9 That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10 That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

11 That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

12 That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13 And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premisses, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premisses, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence, That his said highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties.

II The said lords spiritual and temporal, and commons, assembled at Westminster, do resolve, That William and Mary prince and princess of Orange be, and be declared, King and Queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue to the princess Anne of Denmark and the heirs of her

body; and for default of such issue to the heirs of the body of the said prince of Orange. And the lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

III And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy may be abrogated.

I A.B. do sincerely promise and swear, That I will be faithful, and bear true allegiance, to their Majesties King William and Queen Mary:

So help me God.

I A.B. do swear, That I do from my heart abhor, detest, and abjure as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm :

So help me God.

IV. Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration.

V. And thereupon their Majesties were pleased, That the said lords spiritual and temporal, and commons, being the two houses of parliament, should continue to sit, and with their Majesties royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

VI. Now in pursuance of the premisses, the said lords spiritual and temporal, and commons, in parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

VII. And the said lords spiritual and temporal, and commons, seriously considering how it hath pleased Almighty God, in his marvellous providence, and merciful goodness to this nation, to provide and preserve their said Majesties royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts think, and do hereby recognize, acknowledge and declare, That King James the Second having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege and lady, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of the said realms, with all honours, stiles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining, are most fully, rightfully, and intirely invested and incorporated, united and annexed.

VIII And for preventing all questions and divisions in this realm, by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation doth, under God, wholly consist and depend, The said lords spiritual and temporal, and commons, do beseech their Majesties that it may be enacted, established and declared, That the crown and regal government of the said kingdoms and dominions, with all and singular the premisses thereunto belonging and appertaining, shall be and continue to their said Majesties, and the survivor of them, during their lives, and the life of the survivor of them; And that the intire, perfect, and full exercise of the regal power and government be only in, and executed by his Majesty, in the names of both their Majesties during their joint lives; and after their deceases the said crown and premisses shall be and remain to the heirs of the body of her Majesty; and for default of such issue, to her royal highness the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of his said Majesty; And thereunto the said lords spiritual and temporal, and commons do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities for ever; and do faithfully promise, That they will stand to, maintain, and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates against all persons whatsoever, that shall attempt any thing to the contrary.

IX. And whereas it bath been found by experience, that it is inconsistent with the safety and welfare of this protestant kingdom, to be governed by a popish prince, or by any King or Queen marrying a papist; the said lords spiritual and temporal, and commons, do further pray that it may be enacted, That all and every person and persons that is, are or shall be reconciled to, or shall hold communion with, the see

or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be, and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons, being protestants, as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing, or marrying as aforesaid, were naturally dead.

X. And that every King and Queen of this realm, who at any time hereafter shall come to and succeed in the imperial crown of this kingdom, shall on the first day of the meeting of the first parliament, next after his or her coming to the crown, sitting in his or her throne in the house of peers, in the presence of the lords and commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen) make, sub scribe, and audibly repeat the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second, intituled, An act for the more effectual preserving the Kingís person and government, by disabling papists from sitting in either house of parliament. But if it shall happen, that such King or Queen, upon his or her succession to the crown of this realm, shall be under the age of twelve years, then every such King or Queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or the first day of the meeting of the first parliament as aforesaid, which shall first happen after such King or Queen shall have attained the said age of twelve years.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

XII And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

XIII. Provided that no charter, or grant, or pardon, granted before the three and twentieth day of October in the year of our Lord one thousand six hundred eighty nine shall be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other than as if this act had never been made.

Appendix-III

The Petition of Rights 1628

The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

To the King's Most Excellent Majesty,

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembles, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I, commonly called Stratutum de Tellagio non Concedendo, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty, or your Privy Council, against the laws and free custom of the realm.

III. And whereas also by the statute called 'The Great Charter of the Liberties of England' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his

free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people.

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

IX. And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty, and the prosperity of this kingdom.

APPENDIX-IV

The Act of Settlement, 1701

Whereas in the first year of the reign of Your Majesty, and of our late most gracious sovereign lady Queen Mary (of blessed memory), an Act of Parliament was made, entitled, "An Act for declaring the rights and liberties of the subject, and for settling the succession of the crown," wherein it was (amongst other things) enacted, established, and declared that the crown and regal government of the Kingdoms of England, France, and Ireland, and the dominions thereunto belonging, should be and continue to Your Majesty and the said late Queen, during the joint lives of Your Majesty and the said Queen, and to the survivor: and that after the decease of Your Majesty and of the said Queen, the said Crown and regal government should be and remain to the heirs of the body of the said late Queen; and for default of such issue, to Her Royal Highness the Princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of Your Majesty. And it was thereby further enacted, that all and every person and persons that then were, or afterwards should be reconciled to, or shall hold communion with the see or Church of Rome, or should profess the popish religion, or marry a papist, should be excluded, and are by that Act made for ever incapable to inherit, possess, or enjoy the Crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same: and in all and every such case and cases the people of these realms shall be and are thereby absolved of their allegiance: and that the said Crown and government shall from time to time descend to and be enjoyed by such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons, so reconciled, holding communion, professing or marrying, as aforesaid, were naturally dead:

After the making of which statute, and the settlement therein contained, your majesty's good subjects, who were restored to the

full and free possession and enjoyment of their religion, rights, and liberties, by the providence of God giving success to your majesty's just undertakings and unwearied endeavours for that purpose, had no greater temporal felicity to hope or wish for, that to see a royal progeny descending from Your Majesty, to whom (under God) they owe their tranquillity, and whose ancestors have for many years been principal assertors of the reformed religion and the liberties of Europe, and from our said most gracious sovereign lady, whose memory will always be precious to the subjects of these realms: and it having since pleased Almighty God to take away our said sovereign Lady, and also the most hopeful Prince William, Duke of Gloucester (the only surviving issue of Her Royal Highness the Princess Anne of Denmark) to the unspeakable grief and sorrow of Your Majesty and your said good subjects, who under such losses being sensibly put in mind, that it standeth wholly in the pleasure of Almighty God to prolong the lives of Your Majesty and of Her Royal Highness, and to grant to Your Majesty, or to Her Royal Highness, such issue as may be inheritable to the Crown and regal government aforesaid, by the respective limitations in the said recited act contained, do constantly implore the divine mercy for those blessings: and Your Majesty's said subjects having daily experience of your royal care and concern for the present and future welfare of these Kingdoms, and particularly recommending from your throne a further provision to be made for the succession of the Crown in the Protestant line, for the happiness of the nation, and the security of our religion; and it being absolutely necessary for the safety, peace, and quiet of this realm, to obviate all doubts and contentions in the same, by reason of any pretended title to the Crown, and to maintain a certainty in the succession thereof, to which your subjects may safely have recourse for their protection, in case the limitations in the said recited act should determine: therefore for a further provision of the succession of the Crown in the Protestant line, we Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, do beseech Your Majesty that it may be enacted and declared, and be it enacted and declared by the

King's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the most excellent Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the most excellent Princess Elizabeth, late Queen of Bohemia, daughter of our late sovereign lord King James the First, of happy memory, be and is hereby declared to be the next in succession, in the Protestant line, to the imperial Crown and dignity of the said Realms of England, France, and Ireland, with the dominions and territories thereunto belonging, after His Majesty, and the Princess Anne of Denmark, and in default of issue of the said Princess Anne, and of His Majesty respectively: and that from and after the deceases of His said Majesty, our now sovereign lord, and of Her Royal Highness the Princess Anne of Denmark, and for default of issue of the said Princess Anne, and of His Majesty respectively, the Crown and regal government of the said Kingdoms of England, France, and Ireland, and of the dominions thereunto belonging, with the royal state and dignity of the said Realms, and all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities, to the same belonging and appertaining, shall be, remain, and continue to the said most excellent Princess Sophia, and the heirs of her body, being Protestants: and thereunto the said Lords Spiritual and Temporal, and Commons, shall and will in the name of all the people of this Realm, most humbly and faithfully submit themselves, their heirs and posterities: and do faithfully promise, that after the deceases of His Majesty, and Her Royal Highness, and the failure of the heirs of their respective bodies, to stand to, maintain, and defend the said Princess Sophia, and the heirs of her body, being Protestants, according to the limitation and succession of the Crown in this act specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

II. Provided always, and be it hereby enacted, That all and every person and persons, who shall or may take or inherit the said Crown, by virtue of the limitation of this present act, and is, are or

shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be subject to such incapacities, as in such case or cases are by the said recited act provided, enacted, and established; and that every King and Queen of this Realm, who shall come to and succeed in the imperial Crown of this Kingdom, by virtue of this act, shall have the coronation oath administered to him, her or them, at their respective coronations, according to the act of Parliament made in the first year of the reign of His Majesty, and the said late Queen Mary, entitled, An act for establishing coronation oath and shall make, subscribe, and repeat the declaration in the act first above recited mentioned or referred to, in the manner and form thereby prescribed.

III. And whereas it is requisite and necessary that some further provision be made for securing our religion, laws and liberties, from and after the death of His Majesty and the Princess Anne of Denmark, and in default of issue of the body of the said Princess, and of His Majesty respectively; be it enacted by the King's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same,

That whosoever shall hereafter come to the possession of this Crown, shall join in communion with the Church of England, as by law established;

That in case the Crown and imperial dignity of this Realm shall hereafter come to any person, not being a native of this Kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England, without the consent of Parliament;

That no person who shall hereafter come to the possession of this Crown, shall go out of the dominions of England, Scotland, or Ireland, without the consent of Parliament;

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well governing of this Kingdom, which are properly cognizable in the Privy Council

by the laws and customs of this Realm, shall be translated there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same;

That after the said limitation shall take effect as aforesaid, no person born out of the Kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents) shall be capable to be of the Privy Council, or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself or to any other or others in trust for him;

That no person who has an office or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons;

That after the said limitation shall take effect as aforesaid, judges commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them;

That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.

IV. And whereas the laws of England are the birth-right of the people thereof, and all the Kings and Queens, who shall ascend the throne of this Realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: the said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the laws and statutes of this Realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by His Majesty, by and with the advice of the said Lords Spiritual and Temporal, and Commons, and by authority of the same, ratified and confirmed accordingly.

APPENDIX V

THE DECLARATION OF INDEPENDENCE OF AMERICA

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We holds these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That when ever any Form of government becomes destructive of these ends, it is the Rights of the People to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seen most likely to effect their Safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity, which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of justice, by refusing Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the World:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated our Government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high seas to bear Arms against their Country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless

Indian Savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Rights ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

APPENDIX VI

ARTICLES OF CONFEDERATION

Article-I. The stile of this confederacy shall be "The United State of America".

Article-II. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article- II. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to each other, against all force offered to, or attacks made upon them, on accounts of religion, sovereignty, trade, or any other pretence whatever.

Article-IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States, and the people of each States, and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other state of which the owner is an inhabitant; provided also that no imposition, duties, or restriction shall be laid by any State, on the property of the United States, or either of them.

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article-v. For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

NO State shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six year; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from asserts and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason felony, or breach of the peace.

Article-VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy form, or enter into any conference, agreement, alliance or treaty with any kind, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall

always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quality of arms, ammunition and camp equipage.

No States shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted; nor shall any State grant commit ions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war, by the United States in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, until the United States in Congress assembled shall determine otherwise.

Articles-VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment

Articles-VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Articles-IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentions in the sixth article-of sending and receiving ambassadors-entering into treaties and alliances, provided that no treaty

of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to or from prohibiting the export ion of any species of goods or commodities whatsoever-of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated-of granting letters of marque and reprisal in times of peace-appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more State concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners, or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out sp each of the United States, and from the list of such persons each party shall alternatively strike out one, the petitioners beginning, until the number shall be reduced it thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner

before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted; the grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States In Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States-fixing the standard of weights and measures throughout the United States-regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated-establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office-appointing all officers of the land forces, in the service of the United States, excepting regimental officers-appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States-making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be

denominated "a Committee of the states", and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united States under their direction-to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term to three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriated and apply the same for defraying the public expenses- to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted, -to build and equip a navy- to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisitions shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the united States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quato of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint

a commander in chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for the adjourning from day to day be determined, unless by the votes of a majority of the United States in congress assembled.

The Congress of United States shall have power to adjourn to any time within the year, and to place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatives of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest with them; provided that no power be delegated to the said committee, for the exercise of which, by the article of confederation, the voice of nine States in the United States assembled is requisite.

Article-XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission, be agreed to by nine States.

Article-XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions, which by this confederation are submitted to them. And the article of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

APPENDIX VII

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section 1 : All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

Section 2 : The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence

Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3 : The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4 : The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5 : Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6 : The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7 : All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8 : The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United

States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repeal Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of

the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9 : The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases or Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.

Section 10 : No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a

Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section 1 : The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if

such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately choose by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in choosing the President, the Votes shall be taken by States, the Representatives from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice President.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2 : The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3 : He shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4 : The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Section 1 : The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2 : The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3 : Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving

them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV

Section 1 : Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2 : The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3 : New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4 : The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and

district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII

The Electors shall meet in their respective states and vote by ballot for President ` and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice- President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number

of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice- President shall act as President, as in the case of the death or other constitutional disability of the President--The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States

Amendment XIII.

Section 1 : Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2 : Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV.

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2 : Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3 : No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4 : The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion,

shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5 : The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV.

Section. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

Section. 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the

United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation

Amendment XX

Section. 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may

choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Section. 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII

Section. 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President, when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Sec. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII

Section. 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV

Section. 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation

Amendment XXV

Section. 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives has written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives has written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI

Section. 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

APPENDIX VIII

Landmark Cases on the Constitutional Law of UK

Attorney-General v Jonathan Cape Ltd. [1976]
QB 752 Queen's Bench Division (Widgery LCJ)

• *Confidentiality and Cabinet discussions - judicial recognition of convention of collective ministerial responsibility.*

Facts

Richard Cross man kept a political diary 1964-70 whilea cabinet minister. After his death his diary was edited for publication and submitted to the Secretary to the Cabinet in accordance with custom. The diary contained detailed accounts of discussions at Cabinet meetings and the secretary refused to consent to publication. Crosssman's literary executors went ahead with publication, and the Attorney-General sought an injunction to stop it.

Held

The Court had power to restrain the improper publication of information acquired by a minister in confidence, and the doctrine of collective responsibility justified the restriction of confidential Cabinet discussions.

Attorney-General for New South Wales v trethowan [1932]
AC526 Privy Council (Viscount Sankey LC, Lords Blanesburgh, Hanworth, Atkin and Russell) (Dixon J in the Australian High Court affirmed)

• *Limitations on the power of Parliament subject to a 'higher law'.*

Facts

The legislature of New South Wales proposed and passed a measure which, under s7A of its Constitution Act 1902-29 should have then been put to the electorate. The Legislative Council (or those members of it other than the plaintiffs who were suing) proposed to put the measure to the Governor-General for approval without holding a referendum.

Section 7 provided (inter alia) that:

'7A (1) The legislative Council shall not be abolished nor, subject to the provisions of subsection six of this section, shall its constitution or powers be altered except in the manner provided in this section.

(2) A Bill for any purpose within subsection one of this section shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with section. ....

(6) The provisions of this section shall extend to any Bill for the repeal or amendment of this section.

Held

An injunction was granted to prevent the measure taking effect.

Costa v ENEL [1954]
ECR 585 European Court of Justice

• *Community law and national law -doctrine of primacy of Community law*

Facts

Italy had national the production and distribution of electricity, and transferred the assets of the private undertakings to a new state body, ENEL. Costa, and a shareholder in one of the private undertakings which had been nationalised, and also as a consumer, claimed before and Italian court that the1962 nationalisation legislation infringed provisions of the EEC Treaty. The matter went to the European Court, Where the Italian government argued that it was obliged to apply its national legislation.

Held

Community law prevails over subsequent incompatible national law.

Ellen Street Ltd v Minister of Health [1934]

1 KB 590 Court of Appeal (Scrutton and Maugham LJJ, Talbot J)

• *Power of Parliament to alter its own provisions — sovereignty of Parliament*

Facts

The plaintiffs sought to have compensation for compulsorily acquired land paid on a earlier more favourable basis rather than that laid down in a later stature.

Held

The later stature must prevail.

Beach v Freeson [1972]

1 QB 14 Queen's Bench Division (Geoffery lane J)

• *Scope of MPs' immunity from actions of defamation — art 9 of the Bill of Rights 1689*

Facts

The defendant, a Member of Parliament, had sent two letters, one to law Society and the other to the Lord Chancellor, setting out complaints made by a constituent about the plaintiff's firm of solicitors. The plaintiff sued the defendant of libel.

Held

Judgment would be given for the defendant.

Hamilton v Al Fayed [2001]

AC395 House of lords (lords Browne Wilkinson, Steyn, Cooke, Hpe and Clyde)

• *Defamation action — whether contravening art 9 of the Bill of Rights 1689*

Facts

The plaintiff was a former MP. The defendant had alleged, during a television broadcast, that the plaintiff had accepted money and other gifts in return for agreeing to ask questions in Parliament relation to the defendant's business interests. The allegations were investigated by the parliamentary Commissioner for Standards who concluded that there was compelling evidence that the plaintiff had accepted cash payments in return for lobbying on the defendant's behalf. In

turn the Standing Committee on standards and Privileges had concluded that it could neither add to nor subtract from the findings of the Commissioner. The Committee's report was debated in, and approved by, Parliament in November 1997.

The plaintiff nevertheless brought defamation proceedings against the defendant on the basis that, whatever the findings of the Parliamentary Commissioner for Standards and the Committee and Privileges, the matter had not been investigated in judicial matter, and he had not been given a proper opportunity to clear his name. The defendant applied to have the defamation proceedings struck out on the basis that they constituted an infringement of art 9 of the Bill or Rights —i.e. they questioned the validity of proceedings in Parliament. That application was rejected by Popplewell J at first instance and by the Court of Appeal. The defendant appealed to the House of Lords.

Held

The appeal was dismissed.

Council of Civil Service Unions v Minister for the Civil Service [1985] AC 37 House of Lords (Lords Fraser, Scarman, Roskill, Diplock and Brightman)

• *Reviewability of prerogative power—scope of judicial review*

Facts

Acting pursuant to delegated prerogative power, art4 of the Civil Service Order in Council 1982, the Minister for the Civil Service (the Prime Minister) issued an oral instruction to the unions representing those civil servants employed at Government Communications Headquarters (GCHQ), altering the conditions of service so as to prohibit membership of trade unions by the civil servants employed there. Past practice had been for the Prime minister to consult the unions at GCHQ before making such changes. The reason for not doing so on this occasion was a fear that the proposed changes might prompt industrial action at GCHQ, which would have a deleterious effect on national security.

Tow questions fell to be considered by the House of Lords, Firstly, whether the exercise of prerogative power by the Prime Minister was reviewable, and secondly, if it was, whether the use of such power had been contrary to the rules of natural justice due to lack of prior consultation.

On the review ability of prerogative power.

Held

Delegated Prerogative power was not immune from judicial review; the scope of such powers could be ascertained by reference to their object, or procedure by which they were to be exercised. The justifiability of matter in dispute was more relevant factor than the source of the power being exercised. The declaration sought by the union was refused on other grounds however (national security).

R v secretary of state for Foreign and Commonwealth Affairs, ex parte Everett [1989]

2 WLR 224 Court of Appeal (Civil Division) (O' Conner, Nicholls and Taylor LJJ)

Prerogative power to issue and revoke passports — whether reviewable.

Facts

The applicant, whilst residing in Spain, had applied for the renewal of his passport. As there was a warrant for his arrest issued in England, the Foreign Office declined to renew the applicant's passport, but did offer, in its letter dated 24 July 1986, a one-way travel document to England. He was not informed of the reason why his passport renewal had been refused. the applicant was granted an order of certiorari at first instance quashing the refusal of a renewed passport and the Secretary of appealed to the Court of Appeal.

Held

The appeal would he allowed.

***Boddington v British Transport Police* [1998]**

2 All ER 203 House of Lords (lords Irvine, Browne Wilkinson, Slynn, Steyn and Hoffmann)

• *Bye-law prohibiting smoking on trains—whether valid—whether challengeable by way of defence to criminal proceedings.*

Facts

The defendant was convicted of the offence of smoking a cigarette in a railway carriage where smoking was prohibited, contrary to bye-law 20 of the British Railways Board's Bye-lays 1965, made under s67 of the Transport Act 1962, as amended. The bye-law that prohibited smoking if notices were put up to that effect in train carriages. The defendant did not contest the facts and was fined 10 upon conviction. The defendant appealed by way of case stated contending that, although the bye-law itself might not be ultra vires, the complete ban effected by putting up notices in all train carriages on given lines was excessive, thus the bye-law had not been properly brought into effect. His appeal was dismissed by the Divisional Court and the defendant appealed to the House of Lords where the following certified questions was considered:

'(a) may a defendant raise as a defence to a criminal charge a contention that a bye-law. or an administrative decision made pursuant to powers conferred by it, is ultra vires;

(b) if so, (i) does the answer to the questions depend on whether the bye-law or administrative decision is bad on its fact; and (ii) may the criminal court consider whether the bye-law or administrative decision is reasonable, and if, so by reference to what criteria, those state in *Kruse v Johnson*, or those stated in *Wednesbury*, or some other criteria?

Held

The appeal was dismissed. Although a defendant in criminal proceedings was, subject to statutory indications to the country, permitted to contest the validity of the measure under which he was being prosecuted, in the present case there had been no illegality regarding the bye-law or the manner in which it had been brought into force.

APPENDIX-IX

Landmark Cases on the Constitutional Law of USA

Since the U.S. Supreme Court first convened in 1790, it has rendered thousands of opinions on everything from the powers of government to civil rights and freedom of the press. Although many of these decisions are little known and of little interest to the general public, several stand out because of the impact they have had on American history. A few of the most significant cases are summarized here.

MARBURY V. MADISON (1803)[41]

5 U.S. 137

Argued: --- Decided:

The clerks of the Department of State of the United States may be called upon to give evidence of transactions in the Department which are not of a confidential character.

The Secretary of State cannot be called upon as a witness to state transactions of a confidential nature which may have occurred in his Department. But he may be called upon to give testimony of circumstances which were not of that character.

Clerks in the Department of State were directed to be sworn, subject to objections to questions upon confidential matters.

Some point of time must be taken when the power of the Executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And the power has been exercised when the last act required from the person possessing the power has been performed. This last act is the signature of the commission.

If the act of livery be necessary to give validity to the commission of an officer, it has been delivered when executed, and given to the Secretary of State for the purpose of being sealed, recorded, and transmitted to the party.

In cases of commissions to public officers, the law orders the Secretary of State to record them. When, therefore, they are signed

41. www.landmark cases of us supreme court.org

and sealed, the order for their being recorded is given, and, whether inserted into the book or not, they are recorded.

When the heads of the departments of the Government are the political or confidential officers of the Executive, merely to execute the will of the President, or rather to act in cases in which the Executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

The President of the United States, by signing the commission, appointed Mr. Marbury a justice of the peace for the County of Washington, in the District of Columbia, and the seal of the United States, affixed thereto by the Secretary of State, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and the appointment conferred on him a legal right to the office for the space of five years. Having this legal right to the office, he has a consequent right to the commission, a refusal to deliver which is a plain violation of that right for which the laws of the country afford him a remedy.

To render a mandamus a proper remedy, the officer to whom it is directed must be one to whom, on legal principles, such writ must be directed, and the person applying for it must be without any other specific remedy.

Where a commission to a public officer has been made out, signed, and sealed, and is withheld from the person entitled to it, an action of detinue for the commission against the Secretary of State who refuses to deliver it is not the proper remedy, as the judgment in detinue is for the thing itself, or its value. The value of a public office, not to be sold, is incapable of being ascertained. It is a plain case for a mandamus, either to deliver the commission or a copy of it from the record.

To enable the Court to issue a mandamus to compel the delivery of the commission of a public office by the Secretary of State, it must

be shown that it is an exercise of appellate jurisdiction, or that it be necessary to enable them to exercise appellate jurisdiction.

It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create the cause.

The authority given to the Supreme Court by the act establishing the judicial system of the United States to issue writs of mandamus to public officers appears not to be warranted by the Constitution.

It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each.

If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.

At the December Term, 1801, William Marbury, Dennis Ramsay, Robert Townsend Hooe, and William Harper, by their counsel, **[p138]** severally moved the court for a rule to James Madison, Secretary of State of the United States, to show cause why a mandamus should not issue commanding him to cause to be delivered to them respectively their several commissions as justices of the peace in the District of Columbia. This motion was supported by affidavits of the following facts: that notice of this motion had been given to Mr. Madison; that Mr. Adams, the late President of the United States, nominated the applicants to the Senate for their advice and consent to be appointed justices of the peace of the District of Columbia; that the Senate advised and consented to the appointments; that commissions in due form were signed by the said President appointing them justices, &c., and that the seal of the United States was in due form affixed to the said commissions by the Secretary of State; that the applicants have requested Mr. Madison to deliver them their said commissions, who has not complied with that request; and that their said commissions are withheld from them; that the applicants have

made application to Mr. Madison as Secretary of State of the United States at his office, for information whether the commissions were signed and sealed as aforesaid; that explicit and satisfactory information has not been given in answer to that inquiry, either by the Secretary of State or any officer in the Department of State; that application has been made to the secretary of the Senate for a certificate of the nomination of the applicants, and of the advice and consent of the Senate, who has declined giving such a certificate; whereupon a rule was made to show cause on the fourth day of this term. This rule having been duly served, **[p139]**

Mr. Jacob Wagner and Mr. Daniel Brent, who had been summoned to attend the court, and were required to give evidence, objected to be sworn, alleging that they were clerks in the Department of State, and not bound to disclose any facts relating to the business or transactions of the office.

The court ordered the witnesses to be sworn, and their answers taken in writing, but informed them that, when the questions were asked, they might state their objections to answering each particular question, if they had any.

Mr. Lincoln, who had been the acting Secretary of State, when the circumstances stated in the affidavits occurred, was called upon to give testimony. He objected to answering. The questions were put in writing.

The court said there was nothing confidential required to be disclosed. If there had been, he was not obliged to answer it, and if he thought anything was communicated to him confidentially, he was not bound to disclose, nor was he obliged to state anything which would criminate himself.

The questions argued by the counsel for the relators were, 1. Whether the Supreme Court can award the writ of mandamus in any case. 2. Whether it will lie to a Secretary of State, in any case whatever. 3. Whether, in the present case, the Court may award a mandamus to James Madison, Secretary of State.

GIBBONS V. OGDEN (1824)

The first government of the United States under the Articles of Confederation was weak, partly because it lacked the power to regulate the new nation's economy, including the flow of interstate commerce. The Constitution gave the U.S. Congress the power to "regulate commerce ...among the several states....," but that authority was challenged frequently by states that wanted to retain control over economic matters.

In the early 1800s, the state of New Yourk passed a law that required steamboat operators who traveled between operators who traveled between New Yourk and New Jersey to obtain a license from New York. Aaron Ogden possessed such a license. Thomas Gibbons did not. When Ogden learned that Gibbons was competing with him, and without permission from New York, Ogden sued to stop Gibbons.

Gibbons held a federal license to navigate coastal waters under the Coasting Act of 1793, but New York State Courts agreed with Ogden that Gibbons had violated the law because he did not have a New York State license. When Gibbons took his case to the Supreme Court, however, the justices struck down the New York law as unconstitutional because it infringed on the U.S. Congress's power to regulate commerce. "The word 'to regulate' implies, in its nature, full power over the thing to be regulated," The Court said. Therefore, "it excludes, necessarily, the action of all others that would perform the same operation on the same thing."

DRED SCOTT V. SANDFORD (1857)

Dred Scott was a slave whose owner, John Emerson, took him from Missouri, a state that allowed slavery, to Illinois, where slavery was prohibited. Several years later Scott returned to Missouri with Emerson. Scott believed that because he had lived in a free state, he should no longer be considered a slave.

Emerson died in 1843, and three years later Scott sued Emersons's widow for his freedom. Scott won his case in a Missouri court in 1850 but in 1852 the state supreme court reversed the lower court's decision. Meanwhile, Mrs. Emerson remarried, and Scott became the

legal property of her brother, John Sanford (misspelled as Sandford in court records). Scott sued Sanford for his freedom in federal court, and the court ruled against Scott in 1854.

When the case went to the Supreme Court, the justices ruled that Scott did not become a free man by virtue of having lived in a free state and that, as a black man, Scott was not a citizen and therefore was not entitled to bring suit in a court of law. The decision was widely criticized, and it contributed to the election of Abraham Lincoln, who opposed slavery, as president in 1860 and hastened the start of the Civil War in 1861. *Dred Scott v. Sandford* was overturned by the thirteenth Amendment to the Constitution, which abolished slavery in 1865, and the Fourteenth Amendment, which granted citizenship to former slaves in 1868.

NATIONAL LABOR RELATIONS BOARD (NLRB) V. JONES & LAUGHLIN STEEL CORP (1937)

While *Gibbons v. Ogden* established the supremacy of Congress in regulation interstate commerce, *NLRB v. Jones & laugblin* extended congressional authority from regulation of commerce itself to regulation of the business practices of industries that engage in interstate commerce.

Jones & Laughlin, one of the nation's largest steel producers, violated that National Labor Relations Act of 1935 by firing 10 employees for engaging in union activities. The act prohibited a variety of unfair labor practices and protected the rights of workers to from unions and to bargain collectively. The company refused to comply with an NLRB order to reinstate the workers. A Circuit Court of Appeals declined to enforce the board's order, and the Supreme Court reviewed the case.

At issue in this case was whether or not Congress had the authority to regulate the "local" activities of companies engaged in interstate commerce-that is, activities that take place within one state. Jones & Laughlin maintained that conditions in its factory did not affect interstate commerce and therefore were not under Congress's power to regulate. The Supreme Court disagreed, stating that "the

stoppage of those [manufacturing] operations by industrial strife would have a most serious effect upon interstate commerce Experience has abundantly demon started that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose o collective bargaining is often an essential condition of industrial peace." By upholding the constitutionality of the National Labor Relations Act, the Supreme Court handed a victory to organized labor and set the stage for more far-reaching regulations of industry by the federal government.

BROWN V. BOARD OF EDUCATION (1954)

Prior to this historic case, many states and the District of Columbia operated racially segregated school systems under the authority of the Supreme Court's1896 decision in *Plessy v. Ferguson,* which allowed segregation if facilities were equal. In 1951 Oliver Brown of Topeka, Kansas, challenged this "separate-but-equal" doctrine when he sued he city school board on behalf of his eight-year-old daughter. Brown wanted his daughter to attend the white school that was five blocks from their home, rather than the black school that was 21 blocks away. Finding the schools substantially equal, a federal court ruled against Brown.

Meanwhile, parents of the other black children in south Carolina, Virginia, and Delaware filed similar lawsuits. Delaware's court found the black schools to be inferior to white schools and ordered black children to be transferred to white schools, but school officials appealed the decision to the Supreme Court.

The Court heard arguments from all these cases at the same time. The briefs field by the black litigants included data and testimony from psychologists and social scientists who explained why they thought segregation was harmful to black children. In 1954 a unanimous Supreme Court found that "..... in the field of education the doctrine of 'separate but equal' has on place," and ruled that segregation in public schools denies black children "the equal protection of the laws guaranteed in the Fourteenth Amendment."

GIDEON V. WAINWRIGHT (1963)

MIRANDA V. ARIZONA (1966)

Two Supreme Court decisions in the 1960s supported the rights of persons accused of committing crimes.

Clarence Earl Gideon was arrested for breaking into a poolroom in Florida in 1961. When he requested a court-appointed lawyer to defend him, the judge denied his plea, saying that state law required appointment of lawyer only in capital cases-cases involving a person's death or calling for the death penalty. Gideon defended himself and was found guilty. While in prison, he spent hours in the library studying law books and handwriting a petition to the Supreme Court to hear his case. The Court decided that Gideon was denied a fair trial and ruled that every state must provide counsel for people accused of crimes who cannot afford to hire their own. When Gideon was retried with the help of a defense attorney, he was acquitted.

Just three years later the Supreme court decided that the accused should have the right to counsel long before they get to a courtroom.

Ernesto Miranda was convicted in a state court in Arizona of kidnapping and rape. His conviction was based on a confession Miranda gave to police officers after two hours of questioning, without being advised that he had the right to have an attorney present. In its ruling the Supreme Court required that police officers, when making arrests, must give what are now known as Miranda warnings - that suspects have the right to remain silent, that anything they say may be used against them, that they can have a lawyer present during questioning, and that a lawyer will be provided if they cannot afford one.

Miranda v. Arizona is one of the Supreme Court's best known decisions, as Miranda warnings are dramatized routinely in American movies and television programs. However, in 1999 a federal court of appeals challenged the decision in the case of *Dickerson v. United States*, in which a convicted bank robber claimed he had not been properly read his rights. In June 2000, the Supreme Court overturned *Dickerson* in a 7-to-2 ruling that strongly reaffirmed the validity of *Miranda*.

NEW YORK TIMES CO.
V. SULLIVAN (1964)

The first Amendment to the U.S Constitution guarantees freedom of the press, but for years the Supreme Court refused to use the first Amendment to protect the media from libel lawsuits —lawsuits based on the publication of false information that damages a person's reputation. The Supreme Court's ruling in tionized libel law in the United States by deciding that public officials could not sue successfully for libel simply by proving that published information is false. The Court ruled that the complainant also must prove that reporters or editors acted with "actual malice" and published information "with reckless disregard of whether it was false or not."

The case arose from a full-page advertisement placed in the New York Times by the Southern Christian Leadership Conference to raise money for the legal defense of civil rights leader Martin Luther King, Jr., who had been arrested in Alabama in 1960.L.B Sullivan, a city commissioner in Montgomery, Alabama, who was responsible for the police department, claimed that the ad libeled him by falsely describing the actions of the city police force. Sullivan sued the four clergymen who placed the ad and the New York Times, which had not checked the accuracy of the ad.

The advertisement did contain several inaccuracies, and a jury awarded Sullivan $500,000. The Times and the civil rights leaders appealed that decision to the Supreme Court, and the Court ruled unanimously in their favor. The Court decided that libel laws cannot be used "to impose sanctions upon expression critical of the official conduct of public officials," and the requiring critics to guarantee the accuracy of their remarks would lead to self-censorship. The Court found no evidence that the Times or the clergymen had malicious intent in publishing the ad.

GEORGE W. BUSH *v.* ALBERT GORE(, 2000][42]

On writ of Certiorari to the Florida Supreme Court

On December 8, 2000, the Supreme Court of Florida ordered that the Circuit Court of Leon County tabulate by hand 9,000 ballots in Miami-Dade County. It also ordered the inclusion in the certified vote totals of 215 votes identified in Palm Beach County and 168 votes identified in Miami-Dade County for Vice President Albert Gore, Jr., and Senator Joseph Lieberman, Democratic Candidates for President and Vice President. The Supreme Court noted that petitioner, Governor George W. Bush asserted that the net gain for Vice President Gore in Palm Beach County was 176 votes, and directed the Circuit Court to resolve that dispute on remand. The court further held that relief would require manual recounts in all Florida counties where so-called "undervotes" had not been subject to manual tabulation. The court ordered all manual recounts to begin at once. Governor Bush and Richard Cheney, Republican Candidates for the Presidency and Vice Presidency, filed an emergency application for a stay of this mandate. On December 9, we granted the application, treated the application as a petition for a writ of certiorari, and granted certiorari.

The proceedings leading to the present controversy are discussed in some detail in our opinion in *Bush* v. *Palm Beach County Canvassing Bd., ante,* p. ____ *(per curiam) (Bush I)*. On November 8, 2000, the day following the Presidential election, the Florida Division of Elections reported that petitioner, Governor Bush, had received 2,909,135 votes, and respondent, Vice President Gore, had received 2,907,351 votes, a margin of 1,784 for Governor Bush. Because Governor Bush's margin of victory was less than "one-half of a percent . . . of the votes cast," an automatic machine recount was conducted under 102.141(4) of the election code, the results of which showed Governor Bush still winning the race but by a diminished margin. Vice President Gore then sought manual recounts in Volusia,

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42. This is a collection from www.

Palm Beach, Broward, and Miami-Dade Counties, pursuant to Florida's election protest provisions. Fla. Stat. 102.166 (2000). A dispute arose concerning the deadline for local county canvassing boards to submit their returns to the Secretary of State (Secretary). The Secretary declined to waive the November 14 deadline imposed by statute. 102.111, 102.112. The Florida Supreme Court, however, set the deadline at November 26. We granted certiorari and vacated the Florida Supreme Court's decision, finding considerable uncertainty as to the grounds on which it was based. *Bush I, ante*. On December 11, the Florida Supreme Court issued a decision on remand reinstating that date.

On November 26, the Florida Elections Canvassing Commission certified the results of the election and declared Governor Bush the winner of Florida's 25 electoral votes. On November 27, Vice President Gore, pursuant to Florida's contest provisions, filed a complaint in Leon County Circuit Court contesting the certification. Fla. Stat. 102.168 (2000). He sought relief pursuant to 102.168(3)(c), which provides that "receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election" shall be grounds for a contest. The Circuit Court denied relief, stating that Vice President Gore failed to meet his burden of proof. He appealed to the First District Court of Appeal, which certified the matter to the Florida Supreme Court.

Accepting jurisdiction, the Florida Supreme Court affirmed in part and reversed in part. *Gore* v. *Harris,* So. 2d.(2000). The court held that the Circuit Court had been correct to reject Vice President Gore's challenge to the results certified in Nassau County and his challenge to the Palm Beach County Canvassing Board's determination that 3,300 ballots cast in that county were not, in the statutory phrase, "legal votes."

The Supreme Court held that Vice President Gore had satisfied his burden of proof under 102.168(3)(c) with respect to his challenge to Miami-Dade County's failure to tabulate, by manual count, 9,000 ballots on which the machines had failed to detect a vote for

President ("undervotes"). Noting the closeness of the election, the Court explained that "on this record, there can be no question that there are legal votes within the 9,000 uncounted votes sufficient to place the results of this election in doubt." *Id.*, at. A "legal vote," as determined by the Supreme Court, is "one in which there is a 'clear indication of the intent of the voter. ' " . The court therefore ordered a hand recount of the 9,000 ballots in Miami-Dade County. Observing that the contest provisions vest broad discretion in the circuit judge to "provide any relief appropriate under such circumstances," Fla. Stat. 102.168(8) (2000), the Supreme Court further held that the Circuit Court could order "the Supervisor of Elections and the Canvassing Boards, as well as the necessary public officials, in all counties that have not conducted a manual recount or tabulation of the undervotes ... to do so forthwith, said tabulation to take place in the individual counties where the ballots are located.

The Supreme Court also determined that both Palm Beach County and Miami-Dade County, in their earlier manual recounts, had identified a net gain of 215 and 168 legal votes for Vice President Gore. Rejecting the Circuit Court's conclusion that Palm Beach County lacked the authority to include the 215 net votes submitted past the November 26 deadline, the Supreme Court explained that the deadline was not intended to exclude votes identified after that date through ongoing manual recounts. As to Miami-Dade County, the Court concluded that although the 168 votes identified were the result of a partial recount, they were "legal votes [that] could change the outcome of the election.". The Supreme Court therefore directed the Circuit Court to include those totals in the certified results, subject to resolution of the actual vote total from the Miami-Dade partial recount.

The petition presents the following questions: whether the Florida Supreme Court established new standards for resolving Presidential election contests, thereby violating Art. II, §1, cl. 2, of the United States Constitution and failing to comply with 3 U.S.C. § 5 and whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses. With respect to the equal protection question, we find a violation of the Equal Protection Clause.

II

A

The closeness of this election, and the multitude of legal challenges which have followed in its wake, have brought into sharp focus a common, if heretofore unnoticed, phenomenon. Nationwide statistics reveal that an estimated 2% of ballots cast do not register a vote for President for whatever reason, including deliberately choosing no candidate at all or some voter error, such as voting for two candidates or insufficiently marking a ballot. See Ho, More Than 2M Ballots Uncounted, AP Online (Nov. 28, 2000); Kelley, Balloting Problems Not Rare But Only In A Very Close Election Do Mistakes And Mismarking Make A Difference, Omaha World-Herald (Nov. 15, 2000). In certifying election results, the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements.

This case has shown that punch card balloting machines can produce an unfortunate number of ballots which are not punched in a clean, complete way by the voter. After the current counting, it is likely legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting.

B

The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College. U.S. Const., Art. II, §1. This is the source for the statement in *McPherson* v. *Blacker*, 146 U.S. 1, 35 (1892), that the State legislature's power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself, which indeed was the manner used by State legislatures in several States for many years after the Framing of our Constitution. History has now favored the voter, and in each of the several States the citizens themselves vote for Presidential electors. When the state legislature vests the right to vote for President in its people, the right to vote as

the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter. The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. See *id.*, at 35 ("[T]here is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated") (quoting S. Rep. No. 395, 43d Cong., 1st Sess.).

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. See, *e.g., Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663, 665 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment"). It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964).

There is no difference between the two sides of the present controversy on these basic propositions. Respondents say that the very purpose of vindicating the right to vote justifies the recount procedures now at issue. The question before us, however, is whether the recount procedures the Florida Supreme Court has adopted are consistent with its obligation to avoid arbitrary and disparate treatment of the members of its electorate.

Much of the controversy seems to revolve around ballot cards designed to be perforated by a stylus but which, either through error or deliberate omission, have not been perforated with sufficient precision for a machine to count them. In some cases a piece of the card–a chad–is hanging, say by two corners. In other cases there is no separation at all, just an indentation.

The Florida Supreme Court has ordered that the intent of the voter be discerned from such ballots. For purposes of resolving the equal

protection challenge, it is not necessary to decide whether the Florida Supreme Court had the authority under the legislative scheme for resolving election disputes to define what a legal vote is and to mandate a manual recount implementing that definition. The recount mechanisms implemented in response to the decisions of the Florida Supreme Court do not satisfy the minimum requirement for non-arbitrary treatment of voters necessary to secure the fundamental right. Florida's basic command for the count of legally cast votes is to consider the "intent of the voter." *Gore* v. *Harris*, __ So. 2d, at ___ (slip op., at 39). This is unobjectionable as an abstract proposition and a starting principle. The problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary.

The law does not refrain from searching for the intent of the actor in a multitude of circumstances; and in some cases the general command to ascertain intent is not susceptible to much further refinement. In this instance, however, the question is not whether to believe a witness but how to interpret the marks or holes or scratches on an inanimate object, a piece of cardboard or paper which, it is said, might not have registered as a vote during the machine count. The factfinder confronts a thing, not a person. The search for intent can be confined by specific rules designed to ensure uniform treatment.

The want of those rules here has led to unequal evaluation of ballots in various respects. See *Gore* v. *Harris*, ___ So. 2d, at ___ (slip op., at 51) (Wells, J., dissenting) ("Should a county canvassing board count or not count a 'dimpled chad' where the voter is able to successfully dislodge the chad in every other contest on that ballot? Here, the county canvassing boards disagree"). As seems to have been acknowledged at oral argument, the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.

The record provides some examples. A monitor in Miami-Dade County testified at trial that he observed that three

members of the county canvassing board applied different standards in defining a legal vote. 3 Tr. 497, 499 (Dec. 3, 2000). And testimony at trial also revealed that at least one county changed its evaluative standards during the counting process. Palm Beach County, for example, began the process with a 1990 guideline which precluded counting completely attached chads, switched to a rule that considered a vote to be legal if any light could be seen through a chad, changed back to the 1990 rule, and then abandoned any pretense of a *per se* rule, only to have a court order that the county consider dimpled chads legal. This is not a process with sufficient guarantees of equal treatment.

An early case in our one person, one vote jurisprudence arose when a State accorded arbitrary and disparate treatment to voters in its different counties. *Gray* v. *Sanders*, 372 U.S. 368 (1963). The Court found a constitutional violation. We relied on these principles in the context of the Presidential selection process in *Moore* v. *Ogilvie,* 394 U.S. 814 (1969), where we invalidated a county-based procedure that diluted the influence of citizens in larger counties in the nominating process. There we observed that "[t]he idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government." *Id.,* at 819.

The State Supreme Court ratified this uneven treatment. It mandated that the recount totals from two counties, Miami-Dade and Palm Beach, be included in the certified total. The court also appeared to hold *sub silentio* that the recount totals from Broward County, which were not completed until after the original November 14 certification by the Secretary of State, were to be considered part of the new certified vote totals even though the county certification was not contested by Vice President Gore. Yet each of the counties used varying standards to determine what was a legal vote. Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties. In addition, the recounts in these three counties were not limited to so-called undervotes but extended to all of the ballots. The

distinction has real consequences. A manual recount of all ballots identifies not only those ballots which show no vote but also those which contain more than one, the so-called overvotes. Neither category will be counted by the machine. This is not a trivial concern. At oral argument, respondents estimated there are as many as 110,000 overvotes statewide. As a result, the citizen whose ballot was not read by a machine because he failed to vote for a candidate in a way readable by a machine may still have his vote counted in a manual recount; on the other hand, the citizen who marks two candidates in a way discernable by the machine will not have the same opportunity to have his vote count, even if a manual examination of the ballot would reveal the requisite indicia of intent. Furthermore, the citizen who marks two candidates, only one of which is discernable by the machine, will have his vote counted even though it should have been read as an invalid ballot. The State Supreme Court's inclusion of vote counts based on these variant standards exemplifies concerns with the remedial processes that were under way.

That brings the analysis to yet a further equal protection problem. The votes certified by the court included a partial total from one county, Miami-Dade. The Florida Supreme Court's decision thus gives no assurance that the recounts included in a final certification must be complete. Indeed, it is respondent's submission that it would be consistent with the rules of the recount procedures to include whatever partial counts are done by the time of final certification, and we interpret the Florida Supreme Court's decision to permit this. See ____ So. 2d, at ____, n. 21 (slip op., at 37, n. 21) (noting "practical difficulties" may control outcome of election, but certifying partial Miami-Dade total nonetheless). This accommodation no doubt results from the truncated contest period established by the Florida Supreme Court in *Bush I*, at respondents' own urging. The press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees.

In addition to these difficulties the actual process by which the votes were to be counted under the Florida Supreme Court's decision raises further concerns. That order did not specify who would recount the ballots. The county canvassing boards were forced to pull together ad hoc teams comprised of judges from various Circuits who had no previous training in handling and interpreting ballots. Furthermore, while others were permitted to observe, they were prohibited from objecting during the recount.

The recount process, in its features here described, is inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer. Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities.

The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections. Instead, we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards. When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.

Given the Court's assessment that the recount process underway was probably being conducted in an unconstitutional manner, the Court stayed the order directing the recount so it could hear this case and render an expedited decision. The contest provision, as it was mandated by the State Supreme Court, is not well calculated to sustain the confidence that all citizens must have in the outcome of elections. The State has not shown that its procedures include the necessary safeguards. The problem, for instance, of the estimated 110,000 overvotes has not been addressed, although Chief Justice Wells called attention to the concern in his dissenting opinion.

Upon due consideration of the difficulties identified to this point, it is obvious that the recount cannot be conducted in compliance with

the requirements of equal protection and due process without substantial additional work. It would require not only the adoption (after opportunity for argument) of adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them, but also orderly judicial review of any disputed matters that might arise. In addition, the Secretary of State has advised that the recount of only a portion of the ballots requires that the vote tabulation equipment be used to screen out undervotes, a function for which the machines were not designed. If a recount of overvotes were also required, perhaps even a second screening would be necessary. Use of the equipment for this purpose, and any new software developed for it, would have to be evaluated for accuracy by the Secretary of State, as required by Fla. Stat. §101.015 (2000).

The Supreme Court of Florida has said that the legislature intended the State's electors to "participat[e] fully in the federal electoral process," as provided in 3 U.S.C. § 5. See also Palm Beach Canvassing Bd. v. Harris, 2000 WL 1725434, *13 (Fla. 2000). That statute, in turn, requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed.

Seven Justices of the Court agree that there are constitutional problems with the recount ordered by the Florida Supreme Court that demand a remedy. See post, at 6 (Souter, J., dissenting); *post*, at 2, 15 (Breyer, J., dissenting). The only disagreement is as to the remedy. Because the Florida Supreme Court has said that the Florida Legislature intended to obtain the safe-harbor benefits of 3 U.S.C. § 5 Justice Breyer's proposed remedy–remanding to the Florida Supreme Court for its ordering of a constitutionally proper contest

until December 18-contemplates action in violation of the Florida election code, and hence could not be part of an "appropriate" order authorized by Fla. Stat. §102.168(8) (2000).

* * *

None are more conscious of the vital limits on judicial authority than are the members of this Court, and none stand more in admiration of the Constitution's design to leave the selection of the President to the people, through their legislatures, and to the political sphere. When contending parties invoke the process of the courts, however, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.

The judgment of the Supreme Court of Florida is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Pursuant to this Court's Rule 45.2, the Clerk is directed to issue the mandate in this case forthwith.

It is so ordered.

UNITED STATES V. NIXON

418 U.S. 683

CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1766 Argued: July 8, 1974 --- Decided: July 24, 1974 [*]

Following indictment alleging violation of federal statutes by certain staff members of the White House and political supporters of the President, the Special Prosecutor filed a motion under Fed.Rule Crim.Proc. 17(c) for a subpoena *duces tecum* for the production before trial of certain tapes and documents relating to precisely identified conversations and meetings between the President and others. The President, claiming executive privilege, filed a motion to quash the subpoena. The District Court, after treating the subpoenaed material as presumptively privileged, concluded that the Special

Prosecutor had made a sufficient showing to rebut the presumption and that the requirements of Rule 17(c) had been satisfied. The court thereafter issued an order for an *in camera* examination of the subpoenaed material, having rejected the President's contentions (a) that the dispute between him and the Special Prosecutor was non-justiciable as an "intra-executive" conflict and (b) that the judiciary lacked authority to review the President's assertion of executive privilege. The court stayed its order pending appellate review, which the President then sought in the Court of Appeals. The Special Prosecutor then filed in this Court a petition for a writ of certiorari before judgment (No. 73-1766), and the President filed a cross-petition for such a writ challenging the grand jury action (No. 73-1834). The Court granted both petitions.

Held:

1. The District Court's order was appealable as a "final" order under 28 U.S.C. § 1291 was therefore properly "in" the Court of Appeals, **28 U.S.C. § 1254** when the petition for certiorari before judgment was filed in this Court, and is now properly before this Court for review. Although such an order is normally not final and subject to appeal, an exception is made in a

limited class of **[p684]** cases where denial of immediate review would render impossible any review whatsoever of an individual's claims,

United States v. Ryan, **402 U.S. 530**, 533. Such an exception is proper in the unique circumstances of this case, where it would be inappropriate to subject the President to the procedure of securing review by resisting the order and inappropriate to require that the District Court proceed by a traditional contempt citation in order to provide appellate review. Pp. 690-692.

2. The dispute between the Special Prosecutor and the President presents a justiciable controversy. Pp. 692-697.

(a) The mere assertion of an "intra-branch dispute," without more, does not defeat federal jurisdiction. *United States v. ICC,* **337 U.S. 426**. P. 693.

(b) The Attorney General, by regulation, has conferred upon the Special Prosecutor unique tenure and authority to represent the United States, and has given the Special Prosecutor explicit power to contest the invocation of executive privilege in seeking evidence deemed relevant to the performance of his specially delegated duties. While the regulation remains in effect, the Executive Branch is bound by it. *United States ex rel. Accardi v. Shaughnessy,* **347 U.S. 260**. Pp. 694-696.

(c) The action of the Special Prosecutor within the scope of his express authority seeking specified evidence preliminarily determined to be relevant and admissible in the pending criminal case, and the President's assertion of privilege in opposition thereto, present issues "of a type which are traditionally justiciable," *United States v. ICC, supra,* at 430, and the fact that both litigants are officers of the Executive Branch is not a bar to justiciability. Pp. 696-697.

3. From this Court's examination of the material submitted by the Special Prosecutor in support of his motion for the subpoena, much of which is under seal, it is clear that the District Court's denial of the motion to quash comported with Rule 17(c), and that the Special Prosecutor has made a sufficient showing to justify a subpoena for production before trial. Pp. 697-702.

4. Neither the doctrine of separation of powers nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. *See, e.g., Marbury v. Madison,* 1 Cranch 137, 177; *Baker v. Carr,* **369 U.S. 186**, 211. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, the confidentiality of **[p685]** Presidential communications is not significantly diminished by producing material for a criminal trial under the protected conditions of *in camera* inspection, and any absolute executive privilege under Art. II of the Constitution would plainly conflict with the function of the courts under the Constitution. Pp. 703-707.

5. Although the courts will afford the utmost deference to Presidential acts in the performance of an Art. II function, *United States v. Burr*, 25 F.Cas. 187, 190, 191-192 (No. 14,694), when a claim of Presidential privilege as to materials subpoenaed for use in a criminal trial is based, as it is here, not on the ground that military or diplomatic secrets are implicated, but merely on the ground of a generalized interest in confidentiality, the President's generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial and the fundamental demands of due process of law in the fair administration of criminal justice. Pp. 707-713.

6. On the basis of this Court's examination of the record, it cannot be concluded that the District Court erred in ordering *in camera* examination of the subpoenaed material, which shall now forthwith be transmitted to the District Court. Pp. 713-714.

7. Since a president's communications encompass a vastly wider range of sensitive material than would be true of an ordinary individual, the public interest requires that Presidential confidentiality be afforded the greatest protection consistent with the fair administration of justice, and the District Court has a heavy responsibility to ensure that material involving Presidential conversations irrelevant to or inadmissible in the criminal prosecution be accorded the high degree of respect due a President, and that such material be returned under seal to its lawful custodian. Until released to the Special Prosecutor, no *in camera* material is to be released to anyone. Pp. 714-716.

BURGER, C.J., delivered the opinion of the Court, in which all Members joined except REHNQUIST, J., who took no part in the consideration or decision of the cases. **[p686]**

About the Author

The author Md. Rezaul Karim is an advocate of Supreme Court of Bangladesh. He has been selected as an Assistant Judge by the Judicial Service Commission. He stood Second Class First position in LL.B. (Hons.) and First Class Third position in LL.M. from Dhaka University. For his brilliant result in LL.B. (Hons.) he was awarded Justice Syed Md. Hossein Memorial Gold Medal' by Dhaka University at its 42nd convocation. He comes from Bhulna of Thakurgaon District.

Constitutional law of UK & USA
Karim, Rezaul.
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