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SOME CONCEPTS OF THE BRITISH CABINET, 1765 - 1867

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INTRODUCTION

This paper will be a series of 'photographs' of the British cabinet as it was conceptualized at different times in the century between George III and Victoria. Essentially it will attempt to examine the thoughts of several writers who were influential in the theoretical development of British cabinet government.

There is however, influence and there is influence. One man may be considered significant because he gives classical formulation to a current idea or trend of thought, another because he strikes out on a new path. Thus the primary question, the focus of the paper, the criterion of the 'album' will be the role played by the particular writers in effecting the theoretical transition of the cabinet from its conceptualization as a collection of personal advisers to a king who is envisaged as the chief executive, to its consideration as a body of men responsible to the lower house of the legislature and in which legislative and executive functions are 'fused'.

If the monarch as a political actor, (as distinct from the Crown as an institution) and the legislature are pictured as the terminals on a line on which the ministry is a body moving from the former to the latter was its progress noted? If so, by whom? Who are the writers who conceived of it as having become 'detached' from the former and 'attached' to the latter? This illustration is of course very imperfect. (a) To speak of the 'monarch' and the 'legislature' as terminal points is to imply

an antipodal note which, at least according to the prevalent constitutional thought of the mid-eighteenth century, was not there, for the monarch was envisaged as possessing a 'share' in the legislature. (b) To refer to 'the legislature' is to suggest a unity which, because of (a) and because of the division of the non-monarchical bodies of the legislature into two houses, is false. Even if the term is restricted to mean only the two houses (as it will be throughout this paper), the strands of the line tend to unravel. (c) To speak of the cabinet becoming 'detached' from the one and 'attached' to the other is inaccurate as it never was (in the period under discussion) completely severed from either. It is rather a question of the shifting emphasis of the primacy of its relationship. In spite of these massive flaws it has been included simply as an attempt to illustrate what is a somewhat nebulous area.

To avoid what is potentially the greatest source of confusion since Eris threw the apple it should be noted at the outset that no distinction will be drawn between 'cabinet' and 'ministry'. Nor, for that matter, will distinctions be drawn among 'inner cabinet', 'outer cabinet', 'cabinet council', 'Select Lords', and 'conciliabulum'. I am not suggesting that the questions raised by these terms are unimportant; they would be vital if the function of this paper were to trace the historical development of the cabinet. It however, is not. It is an attempt to examine how several men thought of the ministers of the Crown.

Throughout the paper the terms 'cabinet' and 'ministry' will be used interchangeably to signify those members of the Privy

Council , some of whom occupy offices of state generally recognized as possessing power to influence executive actions, whose constant task throughout the period under discussion is to obtain legislative support for those policies, demands, desires, presented in the name of the monarch.

II

WILLIAM BLACKSTONE, 1723-1780

These are your riches, your great store; and yet
For all thi s sea-hoard of deciduous things,
Strange woods half sodden, and new brighter stuff;
In the slow float of differing light and deep,
No! there is nothing! In the whole and all,
Nothing that's quite your own.
Yet this i s you.

(Ezra Pound Portrait d'une Femme)

A. A Condition of the Discussion

Before sketching Blackstone's ideas on that area of government discussed above, a qualification or condition of the discussion must be outlined. Blackstone was only secondarily a political theorist, his chief area of concern was English common law.

It is quite true of course that the lines between political and legal theory were much more loosely drawn in the eighteenth century than they came to be later. This however does not invalidate the point that most of Blackstone's ideas relevant to the topic of this paper were included in his work as a result of the exigencies of his method of analyzing the common law. It was necessary to treat of them, but they were somewhat peripheral to his primary interest.

To illustrate this point, that section of the Commentaries on the Laws of England which deals specifically with the British constitution¹

1 William Blackstone, Commentaries on the Laws of England, first edition, (Oxford, 1765), volume I, pages 47-52.

and which was to draw Bentham's fire some eleven years later ¹ occupies five and one half pages. In this section Sir William moves from the inception of society itself to the perfection of the British constitution in slightly more than twice as much space as that devoted to the exposition of "scutages", "hydages", and "talliages". ² Further, the discussion was included largely to illustrate the definition of municipal law. ³

Probably because this area was not his primary field of interest Blackstone's thoughts on government are notable for their lack of originality and their dependence on his intellectual predecessors. This should not be taken to imply that his work should be considered secondary or of little worth; on the contrary, while he cannot be considered a seminal thinker his work is important because of Blackstone's personal importance as a transmitter of ideas, values, and opinions; secondly, it is worthy of study precisely because it is such a potpourri of influential ideas present in the intellectual climate of his day.

B. The Framework of the Concept

The framework of those of Blackstone's thoughts relevant to the topic of this paper is provided by two often confused but logically distinct concepts: a theory of a mixed constitution, and the concept of a division or separation of powers in which there is present an embryonic system of checks and balances.

1 In his Fragment on Government.

2 Commentaries, I, pp.299-301.

3 "I have now gone through the definition laid down of a municipal law . . . in the explication of which I have endeavoured to interweave a few useful principles, concerning the nature of civil government, and the obligation of human laws." (Commentaries, I, p.58).

The separation of powers concept, as it was then generally understood, was the product of a functional analysis of government into executive, legislative, and judicial elements. The criterion of the analysis is the sort of power, or rather the mode or aspect under which power is exercised. There are no specific 'advantages' associated with each branch; all governments are seen as fulfilling the three functions of administering the law, making the law, and interpreting the law.

When this analysis is coupled with the belief that the liberty of the subject and the exercise of governmental power are, in reality if not in theory, antipathetic, one result is the belief that the former can be guaranteed only if those who exercise each of the three powers are not united. To guarantee liberty each power must be in the hands of a different body of men and each body, because it operates in the same context as the other two and occasionally must act in conjunction with them, must be provided with the means to repel any attempt by either of the other two branches to engross its power.

The concept of a mixed constitution, or mixed state, is the product of an attempt to blend three types of government. The criterion of the typology is the number who govern. The resulting types are, in themselves, quite distinct from the functions of government; the latter do not enter the question. The typology arises in response to the question "who governs?" and not as an answer to "what are the functions of government?". If government is exercised by one the state is considered to be a monarchy; if by a few, it is an aristocracy; if by many, a democracy.¹

1 It should be noted that among some of the ancient Greek theorists each type had its perverted alter ego which existed in the nether world of illegitimate forms. These however, are peripheral to an analysis of the concept as it was utilized in the mid-eighteenth century.

Further, each type is seen as possessing its own particular 'virtue' or 'advantage'.

Obviously if mixed government is an attempt to blend these three categories it necessarily implies some sort of differentiation of the concept of government for were the latter considered simply as a generalized power it would be nonsensical to speak of the rule of the one, the few, and the many, at one and the same time. The point is that the attempt to blend monarchical, aristocratic, and democratic elements into one constitution need not necessarily imply their association with executive, judicial, and legislative functions. Conceivably one could have a constitution in which the laws are made by the few, executed by the many, and interpreted by the one.

Blackstone himself does not distinguish between these two logically discrete concepts; they are interwoven,¹ each thread contributing, in conjunction with the other to the majestic mosaic of the British constitution (and, implicitly, to the British common law).

It has often been noted that Blackstone's political thought owes much to Montesquieu. This is especially true of the former's concept of the separation of powers, however in regard to his notion of a mixed constitution it is suggested that the Commentator² may owe a greater debt directly to the Harringtonian tradition than he does to the great French moderate³.

1 As are many other elements in his work. For an interesting discussion of Blackstone's attempted synthesis of ideas then current see D.J.Boorstin's The Mysterious Science of the Law, (Cambridge Massachusetts, 1941).

2 As some of his disciples (perhaps in the Avefroist tradition) have so dignified him.

3 It is quite true of course that Montesquieu is himself a part of that tradition; however I am here referring to a possibly direct Harringtonian influence, not to the indirect influence he had via the mind of Montesquieu.

Blackstone does not follow Montesquieu's typology of "monarchical, republican, and despotic"¹ governments, rather he restricts himself to those three forms allowed by "the political writers of antiquity"² i.e. monarchy, aristocracy, and democracy. This of course need not imply that he derived his typology from Harrington³ -- the trilogy has been put forth by at least a score of theorists -- it does, however, suggest that he did not obtain it from Montesquieu.

Blackstone's assertion of the advantage of each type respectively, strength, wisdom and goodness, bears no resemblance to the principles⁴ of Montesquieu's four⁵ types, i.e. honour, moderation, virtue⁶ and fear. Further, the corollary which Blackstone

- 1 Montesquieu, The Spirit of the Laws, trans. T. Nugent, intro. F. Neumann, (New York, 1949), I, p.8. In the following chapter the republican form is subdivided into "democratic" and "aristocratic".
- 2 Commentaries, I, p.49.
- 3 Though they can be found there: "Government, according to the ancients, [*italics mine*] and their learned disciple Machiavel, . . . is of three kinds: the government of one man, or of the better sort, or of the whole people; which by their more learned names are called monarchy, aristocracy, and democracy." (Harrington, Oceana, intro H. Morley, The World's Greatest Literature series, vol. 60, (New York, 1901), p.184
- 4 The relationship between the advantage and the principle of each type is exceedingly tenuous. Blackstone is concerned with establishing a situation in which the mixed state (i.e. eighteenth century Britain) will emerge as the optimum form; Montesquieu is attempting to investigate "the human passions which set [*each species of government*] in motion". (Laws, I, p.19).
- 5 See footnote 1 for an explanation of this expansion of the classification.
- 6 The superficial resemblance between "goodness" and "virtue" vanishes when one recalls that Montesquieu is concerned with political virtue, i.e. "the love of one's country, and of equality" (Author's Explanatory Notes to Laws, p. lxxi).

draws, that "democracies are usually the best calculated to direct the end of a law; aristocracies to invent the means by which that end shall be obtained; and monarchies to carry those means into execution;"¹ does not seem to have been inspired by The Spirit of the Laws. Both, however, the assertion and its corollary are very close to Harrington's thought. Writing of the necessity of having two houses in the legislature, the latter maintains:

The wisdom of the few may be the light of mankind; but the interest of the few is not the profit of mankind nor of a commonwealth But as the council dividing consists of the wisdom of the commonwealth, so the assembly or council choosing should consist of the interest of the commonwealth: as the wisdom of the commonwealth is in the aristocracy, so the interest of the commonwealth is in the whole body of the people.²

Again:

The commonwealth consists of 'the senate proposing, the people resolving, and the magistracy executing;' whereby partaking of the aristocracy as in the senate, of the democracy as in the people, and of monarchy as in the magistracy, it is complete.³

Seemingly influenced by Harrington, Blackstone envisages Britain as a mixed state. It should be noted that thus far there is no implication (as there is in the separation of powers theory) of
limited

1 Commentaries, I, p.50.

2 Harrington, Oceana, pp.196-97.

The relationship between the Blackstonian 'goodness' and Harrington's view of the advantage of a democracy is very close when it is interpreted in conjunction with Blackstone's other statements on 'the good'. If goodness is the external and internal rule of right, and God has so created man "that we should want no other prompter to enquire after and pursue the rule of right, but only our own self-love, that universal principle of action" (Commentaries, I, p.40) then the pursuit of self-interest must lead to goodness. For Blackstone the common good and the common interest would seem to be interchangeable terms.

3 Harrington, Oceana, p.197.

limited government or the establishment of a system designed to protect individual liberties. The theory of the mixed constitution is an attempt to make government strong, wise, and good. It is an attempt to so blend the three categorical ideals as to derive the advantages of all and the disadvantages of none.

While the evidence of Harrington's influence is not conclusive, it is felt that it is suggestive. If Blackstone is truly indebted to Harrington it would provide one explanation as to why the usually careful William joined the mixed constitution notion and the separation of powers concept in such a slipshod manner¹.

In advocating a separation of powers Blackstone follows Montesquieu very closely. The master and his pupil both envisage a system in which executive and legislative functions are distinct, though not without interconnections. For Montesquieu "the executive power ought to be in the hands of a monarch, because this branch of government, having need of despatch, is better administered by one than by many".² Deeply influenced, Blackstone suggests "for, as with us the executive power of the laws is lodged in a single person, they have all the advantages of strength and dispatch, that are to be found in the most absolute monarchy".³

In Montesquieu's eyes the legislature "being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the

1 Though of course it cannot reconcile the two.

2 Montesquieu, Laws, I, p.156.

3 Commentaries, I, p.50.

legislative".¹ Blackstone, with a slight variation, concurs:

As the legislature of the kingdom is entrusted to three distinct powers entirely independent of each other; first, the king; secondly, the lords spiritual and temporal, which is an aristocratical assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property; and thirdly, the house of commons, freely chosen by the people from among themselves [sic], . . . there can no inconvenience be attempted by either of the three branches [sic], but will be withstood by one of the other two; each branch being armed with a negative power, sufficient to repel² any innovation which it shall think inexpedient or dangerous.

Now all of this is an orthodox statement of the separation of powers doctrine but when it is interpreted in conjunction with those of Blackstone's statements cited earlier it becomes both less and more. Less, in that he pays little attention to the judicial power as a function of government;³ more, in that he interweaves with it a theory of a mixed

1 Montesquieu, Laws, I, p.160.

2 Commentaries, I, pp.50-51.

3 There are at least two possible explanations for this omission.
 (a) The 'democratic' implications of Montesquieu's statements on the judicial power (that judges should be selected from among the people, that their terms should be temporary) must have been repugnant to a man who believed in the arcana of the common law. He waxed poetic when he dealt with its inner (to some it was its invisible) logic; "and hence it is that our lawyers are with justice so copious in their encomiums on the reason of the common law; . . . that the law is the perfection of reason". (Commentaries, I, p.70) This is later qualified; it is not "every unlearned man's reason, but of artificial and legal reason warranted by the authority of law". (ibid. p.77) This in turn suggests that the unlearned man would not make a good lawyer, much less a good judge. (b) It may have been simply the result of his method. He is attempting 'to interweave a few useful principles, concerning the nature of civil government, and the obligation of human laws'. Perhaps he felt that anything as vast and complex as the judicial branch (unlike the executive and legislative) could not be compressed into a few paragraphs. In any event, he later indicates that he assumes the judicial to be an essential function, coordinate with, yet not equal to, the legislative:
 -- "But if the parliament will positively enact a thing . . . which is unreasonable, I know of no power that can control it; and the examples usually alleged . . . do none of them prove, that . . . the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government."
 (ibid. p.91).

constitution: thus the attempted translation of the British King, Lords, and Commons into the archetypes of monarchy, aristocracy, and democracy.

From his statements as to the respective merits of each form and his belief that these had been institutionalized in the most advantageous manner in the British constitution, one might reasonably expect to find the House of Lords justified on the grounds that it possesses the greatest share of the wisdom of the kingdom. And indeed Blackstone does treat of the peers as though they comprised Harrington's "natural aristocracy"¹, i.e. those whose qualities place them above other men. He asserts, in what must be one of the most sweeping panegyrics since the days of Pericles, that they are selected for their 'piety', 'birth', 'wisdom', 'valour', or 'property'².

Now it should follow that the House of Lords be assigned functions which reflect the advantage of the aristocratic element of the mixed constitution. In other words, because Blackstone's assumptions and substantive arguments are similar to Harrington's, one would expect him to reach similar conclusions and envisage a system analogous to that which operates with " 'the senate proposing, the people resolving and the magistracy executing' "³.

This, Blackstone does not do. Appearing to change theorists in midstream, he sees its functions through the prism of Montesquieu;

1 Harrington, Oceana, p.196.

2 See above, p.11.

3 Harrington, Oceana, p.197. Cited above, p.9.

the primary purposes envisaged for the Lords are to provide an internal check on the legislative power, and to protect the nobility itself, that great corporate interest of society. Neither of these has any necessary relation to the institutionalization or utilization of the kingdom's store of wisdom.

In regard to the executive, Blackstone, following Montesquieu, arms it as well as the other two branches of the legislature " with a negative power, sufficient to repel any innovation which it shall think inexpedient or dangerous".¹ Within the context of the separation of powers theory, this makes very good sense. If it is, *assumed*, that the power of legislature equals the power of sovereignty, the executive's "negative upon their [i.e. the legislators'] proceedings"² is essential if it is to retain its independence and permit the maintenance of moderate government. Yet within the context of Blackstone's mixed constitution theory it is superfluous and indeed detrimental to the whole concept.

If the function of the legislature is to propose measures for the common good and the function of the executive is to carry them into execution, then to grant the executive a veto which can be exercised on "any innovation which it shall think inexpedient or dangerous"³ is to provide the means for the emasculation of the legislative power.

1 Commentaries, I, p. 51.

2 ibid. p. 51.

3 ibid. p. 51.

Further evidence of the rough edges which Blackstone leaves between the two concepts can be adduced from these statements in which he explicitly treats of sovereignty. As Robert Shackleton points out :

For the proponents of sovereignty, political authority was indivisible, or at least was divisible only subjectively (i.e. according to the persons wielding it) and not functionally or objectively. If political authority can be divided into three separate powers, sovereignty is impossible.¹

For Blackstone, by sovereign power "is meant the making of laws".²

Wisdom, goodness, and strength "are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well constituted frame of government".³ Consequently, sovereignty resides in the legislature; of Parliament he writes "here then is lodged the sovereignty of the British constitution; and lodged as beneficially as is possible for society".⁴ The characteristics of sovereignty are that it is supreme, irresistible, absolute, uncontrolled⁵, and these imply a monist view of its nature.

While this can be made consistent with a theory of a mixed constitution it cannot be reconciled with the view that Parliament comprises (partially at least) two powers which are independent of each other and three bodies each "armed with a negative power, sufficient to repel any innovation which it shall think inexpedient or dangerous".⁶

1 R. Shackleton, "Montesquieu, Bolingbroke and the Separation of Powers", French Studies, III, (1949), p. 26

2 Commentaries, I, p. 49

3 ibid. p. 48

4. ibid. p. 51

5 These qualities are strikingly like those suggested by Bolingbroke. "There must be an absolute, unlimited, and uncontrollable power lodged somewhere in every government;" (On the Idea of a Patriot King, Letters On the Spirit of Patriotism and On the Idea of a Patriot King, intro. A. Hassell, (Oxford 1817), p. 58).

6 Commentaries, I. p. 51.

Consequently, because of the imperfect blending of the theories of the mixed constitution and the separation of powers, there is a rather schizoid quality in Blackstone's treatment of sovereignty reminiscent of the Hobbesian sovereign who can rely on unlimited loyalty as long as he is secure but can count on none when he is threatened.

C. Blackstone's Concept of the Cabinet

Influenced by these two concepts, or rather the aggregation of them, Blackstone seems to view government as essentially divisible into executive and legislative functions. The monarch as person (as distinct from the Crown as institution) is the sole legal executive; however, he shares in and acts on the legislative power insofar as he has :

the right to veto proposals of the legislature;
a monopoly on the power to summon parliament;
a veto over the appointment of the Speaker of the Commons.

The remainder of the legislative power is in the hands of a bicameral legislature which derives an implicit justification as the manifestation of the kingdom's goodness and wisdom but whose primary purpose is to subdivide the awesome power of legal sovereignty in order that it may not prove oppressive. It influences the executive insofar as it has the power of "enquiring into, impeaching, and punishing the conduct (not indeed of the king, which would destroy his constitutional independence; but, which is more beneficial to the public) of his evil and pernicious counsellors",² and as it, or rather a part of it controls the annual supply of money for government expenditures.

1 That is a monopoly in relation to the other two constituents of the legislature. Actually parliament is summoned by the King's court with the advice of his Privy Council.

2 Commentaries, I. p. 151.

In Blackstone's thoughts the cabinet seems to occupy a position in which its primary responsibility is to the king rather than to the legislature. As the Commentator does not explicitly treat of the cabinet, the evidence to support the prior statement cannot be explicit. It is felt, however, that the inferential data are sufficient to justify this writer's interpretation of Blackstone's view.

In Chapter Nine, dealing with subordinate magistrates, Blackstone writes that he does not propose to investigate the powers and duties of the great officers of state (the Lord Treasurer, Lord Chamberlain, the principal secretaries,) ". . . because I do not know that they are in that capacity in any considerable degree the objects of our laws, or have any very important share of magistracy conferred upon them;"¹

It is suggested that Blackstone cannot have meant by this statement that the men occupying these positions played no very important role in the activities of government for these reasons :

a) He was himself a member of the House of Commons for some nine years,² in which capacity he cannot have failed to observe that the activities of the king and his counsellors went far beyond the mere rejection of proposed legislation .

b) His good friend and sometime patron William Murray Lord Mansfield as Chief Justice of the King's Bench was a member of several ministries over a fifteen year period, and had even been a member of the inner Cabinet for some time prior to 1775.³

1 Commentaries, I. p. 327

2 From 1761 to 1768 as the representative for Hindon in Wiltshire. In 1768 he was returned for Westbury in Wiltshire, which position he held until February 1770 when he became a judge of the Court of King's Bench

3 A B Keith in The British Cabinet System, Second ed., (London, 1952), p.23.

c) In reference to a bill advanced during the reign of Queen Anne, he writes : . . . "there was an instance of creating no less than twelve [new peers] together; in contemplation of which, in the reign of King George the First, a bill passed the House of Lords and was countenanced by the then ministry; for limiting the number of the peerage . . .".¹

For these reasons Blackstone cannot have been unaware of the existence or importance of ministries.

While it seems paradoxical that he would deny the importance of ministers while realizing the importance of ministries the paradox is only apparent. One need only assume that when Blackstone writes of the great officers of state "I do not know that [they have] any very important share of magistracy conferred upon them" he is referring to 'magistracy' in the strict legal sense of "the right both of making and of enforcing the laws",² and the apparent dichotomy can be healed.

What Blackstone is saying in effect is this: while I admit that these men are important political actors, this importance is derivative or contingent for they do not in their capacity as individuals 'have any very important share of magistracy conferred upon them'.

Within the context of a constitution the powers of these men can find their source in one of three places:

1 Commentaries, I, p. 152, Even the choice of the term "countenanced" is suggestive.

2 ibid. p. 142.

- they can be established directly by law. This source he has already eliminated;
 - they could be derived from the legislature if these great officers were envisaged as the extension of that body. However he nowhere gives any indication that he views them in this light, in fact quite the reverse. In its relation to the King's councillors the legislature is always envisaged as having the power to check and punish those who owe their allegiance to the executive;
 - they can be derived from the legal powers of the monarch as sole executive.
- It is suggested that Blackstone envisages the great officers of state, those holding positions which eventually were to become 'cabinet posts', as the extension^{of} instruments of the king. They are politically significant because they are legally the minions of the monarch.

This view of the position occupied by ministers between the executive and the legislature tends to be substantiated by Blackstone's thoughts on the relationship between ministers. When he writes of the legislature's power of "enquiring into, impeaching, and punishing the conduct (not indeed of the king, which would destroy his constitutional independence; but, . . .) of his evil and pernicious counsellors", ¹ he seems to be suggesting that just as the king has a negative in the proceedings of the legislature, so here, the legislature has a negative on the proceedings of the ministers. The key point, however, is that in this view the ministers are regarded not as instruments by which the legislative may impose its will on the king, but rather as instruments of the king which at times must be resisted if the imposition of the

1 Commentaries, I, p. 150.

king's will on the legislature is to be prevented.

Indirect confirmation of this view of the ministers as the instruments of the king can be found in Blackstone's treatment of the Privy Council. While it is true, of course, that the terms 'privy council' and 'ministry' were very far from being synonymous, insofar as membership of the former was a prerequisite to the latter, an important inference can be drawn from his treatment.

The assumption on which his treatment rests is very simple: that the Privy-Council is a council belonging to the king. Thus Blackstone writes that the sole constituent of who shall be a counsellor and what shall be the size of the council is the king's will. Further, he writes of the councillor's duties in such a manner that a George III (or a Henry VIII for that matter) could find little cause to complain¹. The only thought which strikes a different tone from the vassal-lord theme is the idea that the counsellor should maintain his own integrity and that his advice should be for the 'good of the public'.

While these notes are different they are not necessarily discordant for, in regard to the first, it does not follow that a man must renounce his own personality in order to be considered the servant of another; in the second case Blackstone, in a subsequent chapter, writes that the king's principal duty is to govern according to law. The role of the monarch is seen as a necessary constituent in the government of the state. Thus in theory, if not in fact, the injunction to advise 'for the king's honour and the good of the public' need not place the

1 He is "1.To advise the king according to the best of his cunning and discretion. 2.To advise for the king's honour and good of the public, without partiality 3.To keep the king's counsel secret. 4.To avoid corruption. 5.To help and strengthen the execution of what shall be there resolved. 6.To withstand all persons who would attempt the contrary. 7.To observe, keep, and do all that a good and true counsellor ought to do to his sovereign lord." (Commentaries, I, p.223).

councillor in the position of a man serving opposing interests. Consequently, the general position, that Blackstone envisages the Privy Council as the instrument of the king, seems valid.

Now, historically, by the 60's it was no longer true (if it ever had been) that the king's will was the sole determinant of who should be a privy councillor. Attempts ¹ had been made, with varying degrees of success, to impose ministers (and thus privy councillors).

It would be unreasonable to assume that Blackstone was unfamiliar with these efforts, yet he obviously felt that they were not sufficiently important to force him to qualify his view that the king's will is the sole constituent in the creation of a privy councillor. As he did view the Council as belonging to the king, and nowhere qualifies this view to the extent of providing grounds for believing that he felt a part of that august body owed its allegiance elsewhere, it would tend to confirm, in conjunction with the points made earlier, the view that Blackstone, insofar as he considered government ministers, envisaged them as the instruments or extension of the monarch.

Perhaps the best concretization of Blackstone's thoughts in this area is the American presidential cabinet. He envisages or implies a system in which a group of individuals singly responsible to an

1 For example some of those who had comprised the so-called 'Whig ministry' of 1708 had found little personal favour with Queen Anne.

executive whose power is constitutionally guaranteed, exercise powers which are dependent or contingent upon that source. While the inter-relationships among Blackstone's thoughts, his popularity among the American colonists¹, the written, rigid American constitution, and present day American executive institutions, provide a fascinating subject for speculation, they are beyond the scope of this paper.

As yet unasked, though it runs through this section like a theme, is the question : was Blackstone as completely unaware of the changes which had taken place in executive-legislative resolutions as his thoughts thus far treated would indicate ? Is the characterization of him as one "who should have known better"² valid ?

The answer would seem to be no. There are better grounds for asserting that Blackstone was aware of these developments rather than the opposite, though admittedly he seems not to have fully perceived their significance.

In a section dealing with the king's revenues, he writes :

Upon the whole therefore, I think it is clear that whatever may have become of the nominal, the real power of the crown has not been too far weakened by any transactions in the last century. Much is indeed given up; but much is also acquired. The stern commands of prerogative have yielded to the milder voice of influence;³

and again, speaking of the reduction of the executive power :

- 1 Of whom Burke believed "that they have sold nearly as many of Blackstone's 'Commentaries' in America as in England." ("Speech on Moving his Resolutions for Conciliation with the Colonies", Edmund Burke: Selected Writings and Speeches, ed. Peter J. Stanlis, (New York, 1963), p.161).
- 2 H. Laski, Political Thought in England Locke to Bentham, (London, 1920), p.45.
- 3 Commentaries, I, pp. 325-26.

If on the other hand we throw into the opposite scale, (what perhaps the immoderate reduction of the antient prerogative may have rendered in some degree necessary), the vast acquisition of force, arising from the riot-act, and the annual expedience of a standing army; and the vast acquisition of personal attachment, . . . we shall find that the crown has, gradually and imperceptibly, gained almost as much in influence as it has apparently lost in prerogative.¹

As to why this perspicacity does not show through in his thoughts on the ministry, consider the context. Blackstone, a legal theorist, is concerned with the whole body of English common law. He treats of government insofar as the law impinges upon it. The whole bias of his work (and probably of his thinking) is in favour of those social relations which have been concretized and against those ephemeral shifting links which vary with the personalities involved, the power they have or can obtain, and internal and external circumstances. Perhaps those of his ideas here treated indicate the inadequacy of the legal-institutional approach in assessing 'reality' at a given point in time; they do not however, prove him blind. He might well have said of the government of England as Montesquieu said of the liberty of England, "it is not my business to examine whether the English actually enjoy this liberty or not. Sufficient it is for my purpose to observe that it is established by their laws; and I inquire no further."²

Before taking leave of Blackstone, a partial summary and evaluation ought to be made. Influenced by the concepts of the mixed constitution and especially of the separation of powers, he envisages a system in which the executive and legislative powers, as they are realized in

1 Commentaries, IV, p.434.

2 Montesquieu, Laws, I, p.162.

the government of Britain, are independent of each other though there *are* several points of linkage. Insofar as he treats of those who occupy a position between the executive and the legislature he sees them as the instruments of the king; individually created by him and individually responsible to him. While this is quite far from what will later be labelled a 'cabinet' it should be noted that it is primarily a question of emphasis; there are some elements in Blackstone's thought which suggest an embryonic theory of responsible government.

A corollary which Blackstone draws from the independent executive implied by the separation of powers concept is that the legislature may not check the king directly or personally but only through the means which he employs to realize his aims: i.e. his ministers. This is reinforced by the much older legal dictum that the monarch can neither do nor think a wrong. As a consequence any 'wrong' which does occur must be attributed to his 'evil and pernicious' ministers. The implications of both of these notions have the same result: to place the king beyond the direct reach of the legislature and to force his ministers to stand as surrogate 'villains'. This in turn creates for the ministers a legal, though not a political, responsibility to the legislature. They are responsible in that they can be banished, imprisoned, fined, or incur perpetual disability though the power they exercise is derivative.

Paradoxically, that very concept of the separation of powers which leads him to suggest the legal responsibility of ministers also

dictates to him "thus far and no further". He cannot advocate the political responsibility of ministers to the legislature as this would destroy the function and independence of that executive which Montesquieu had taught him to regard as an integral part of government.

This Rubicon he never crossed.

III

EDMUND BURKE, 1729-1797

Who would not sing for Lycidas? he knew
Himself to sing, and build the lofty rhyme

(John Milton Lycidas)

A. The Origin of Burke's Concept of the Cabinet

It has often been noted that Burke was among the first to draw the distinction between 'party' and 'faction'. Less often noted are the implications which this distinction had in eighteenth century Britain and in some of the many concepts of responsible government.

Burke's concept of the cabinet is very largely the political extension of his thoughts on the role which 'party' plays, or rather ought to play in a government which purports to be free. Burke's cabinet is, in a sense, his ideal party envisaged in the context of success rather than in that of struggle. It is party, not as a group of men striving for power, but as a group of men who have obtained power in the Britain of George III. The point relevant to this paper is that in projecting his idea of party Burke is led to a view of the ministry which differs in several major respects from that envisaged by Blackstone.

As early as 1763 Burke indicates that his acceptance of the view that the creation of ministers is solely dependent upon the will of the king, is rather less than wholehearted. Referring to the reactions

of some of Lord Bute's friends to certain ministerial changes, he writes:

They affect to say it is no matter by whom the places are fill'd, it is sufficient to show that the K___ can fill them with whom he pleases and change them as often as he pleases. There is something of truth in this, but at the same time one trembles to think of the consequences of this maxim push'd too far on one side, or too violently resisted on another . . .

By 1770, when his pamphlet Thoughts on the Cause of the Present Discontents, a milestone in his constitutional thought, was published, this dictum has degenerated from potentially dangerous to actually pernicious.

These are considerations which in my opinion enforce the necessity of having some better reason, in a free country, and a free Parliament, for supporting the ministers of the crown, than the short one, That the king has thought proper to appoint them. There is something very courtly in this, but it is a principle pregnant with all sorts of mischief, in a constitution like ours, to turn the views of active men from the country to the court. ²

The major factors in this transition seem to have been the influence of the Rockingham Whigs, and the course that politics took during the sixties . His relationship with Lord Rockingham and his followers does not appear to have been as one-sided as has, at times, been assumed. It is true that Burke, because of his intellectual pre-eminence, his personal qualities, and his relationship with the Marquess himself, exerted a singular influence on the group as a whole,

- 1 "Letter to Mrs. Elizabeth Montagu", dated (by the editors) 25 April 1763, The Correspondence of Edmund Burke, ed. T.W. Copeland, (Cambridge, 1958), vol. I, p.170. Unless otherwise indicated, all references to Burke's Correspondence will be to this edition.
- 2 Thoughts on the Cause of the Present Discontents, The Works of the Right Honorable Edmund Burke, (Boston, 1899), vol. I, p.474. Unless otherwise indicated, all references to Burke's Works will be to this, the 1899 Little, Brown, and Company edition.

yet he, in turn, was influenced by them. It was in a reciprocal relationship; if he did not derive his major political ideas from them,¹ they did at least confirm his thoughts in the direction they were taking. Personal and ideological factors met and intertwined. As Morley says :

"It was the character of the party, almost as much as their principles, that secured Burke's zeal and attachment; their decorum, their constancy, their aversion to all cabals for private objects, their indifference to office, except as an instrument of power and a means of carrying out the policy of their convictions."²

A second major factor was the political events of the sixties. As the king's attempt to reintroduce personal rule became clearer, and the dissatisfaction of the American colonists grew, at least partially because of the lack of a clear cut policy in London, Burke was driven to oppose a system which had neither the virtues of freedom nor the efficiency of autocracy. In a retrospective mood he writes :

- 1 It may indeed be argued that he did, especially in the light of his uncertainty manifested in the 1763 letter quoted above. Aside from this, however, there is little or no evidence that Burke was 'converted' by the Rockingham group. The general tone of his writings on his relationship with them is that his accession to them was a meeting of minds working down similar paths rather than the result of a sudden revelation. A 17 68 letter to his lifelong friend, Richard Shackleton, reads:
 "There is nothing to alter the position of our party; which is, (or rather keeps itself) at some distance from the Court. I think we act on a right principle; as far as any thing can approach to what is exactly right, in so strange a time as this; It is a pleasure to act with men who mean fairly, and who carry on publick business with, at least, a considerable mixture of publick principle, and with attention to honest fame". (1 May 1768, Correspondence, I, p. 351).
- 2 John Morley, Burke, in English Men of Letters, (London, 1911), p. 64.

As to myself, and the part I have taken in my time, I apprehend, there was very little choice. Things soon fell into two very distinct Systems. The principle upon which this Empire was to be govern'd made a discrimination of the most marked nature. I cannot think that I have been in the wrong so far as the Publick was concern'd, and as to my own annihilation by it with regards to all the Objects of men in publick life, it is of too small importance to spend many words upon it.¹

Largely because of his opposition to George III's system of personal rule, Burke was driven to formulate a position which purported to be composed of traditional Whig principles, which could definitely claim kinship with them, and yet was subtly different. His ideas were 'reactionary' in the strict sense of the term; he was responding to the stimulus of George III's ambition.

B. The Initial Statement

In writing Present Discontents, Burke's major aims are two: to attack the king's system of personal rule, and to defend the principles of the Rockingham Whigs. In one of a series of letters written while he was working on the pamphlet, he states:

I see, I feel, the necessity of justifying to our friends and to the world, the refusal, which is inevitable, of what will be thought very advantageous Offers. This can only be done by shewing the ground ~~upon~~ which the Party stands; and how different its constitution, as well as the persons who compose it are from the Bedfords, and Grenvilles, and other knots, who are combined for no publick purpose; but only as a means o f furthering with joint strength, their private and individual advantage. ²

This, however, is not his sole, nor, if the next quotation be interpreted literally, his primary purpose : "it will be a matter very proper for the consideration of your Lordship and your friends,

1 "Letter to Richard Schackleton", 25 May 1779, Correspondence, IV, p. 80

2 "To the Marquess of Rockingham", 29 October 1769, Correspondence, II, p.101

whether a thing of this Nature should appear at all. It is in the first place a formal attack upon that Object which has been nearest and dearest to the Court since the beginning of the reign -. . ."¹

In pursuit of his first aim, Burke does not directly attack the king's actions;² rather he develops the theme that the pernicious system³ which has grown up is the result of the hidden influence of evil men. He quite deliberately exculpates the king from any personal guilt. Thus, writing of the advantages possessed by George III at his accession, he states: "these singular advantages inspired his Majesty only with a more ardent desire to preserve unimpaired the spirit of that national freedom, to which he owed a situation so full of glory."⁴

Others, however, viewed the situation in a different light :

They thought they now beheld an opportunity (by a certain sort of statesman never long undiscovered or unemployed) of drawing to themselves by the aggrandizement of a court faction, a degree of power which they could never hope to derive from natural influence or from honorable service; and which it was impossible they could hold with the least security, whilst the system of administration rested upon its former bottom. . . .⁵

- 1 "To the Marquess of Rockingham", post 6 November 1769, Correspondence, II, p. 108
Several weeks later a similar thought is expressed:
"It is now too late for the Pamphlet on the Court System, to appear before the Session is pretty well advanced In truth, if the thing were as well done as the Cause deserves, and as I could wish, still some Doubt might be entertained of the propriety of declaring against the System of the Court unless that declaration could secure the People". ("To the Marquess of Rockingham", 18 December 1769, Correspondence, II, p. 122).
- 2 Under the circumstances, to have done so would have been impolitic, at best.
- 3 It should be noted that 'system' as Burke used it, is somewhat ambiguous. At times he used it in the modern sense of denoting a quasi-permanent impersonal mode of organization, and at others as signifying a distinct political grouping. It is used above in this latter sense.
- 4 Present Discontents, Works I, p. 450
- 5 ibid. p. 450-51.

In the light of the letters quoted above,¹ it is apparent that Burke was less than sincere when he wrote of his Majesty being inspired only 'to preserve unimpaired the spirit of that national freedom'. He did not however see the cause of the present discontents in the activity of any single man, be he George III or Lord Bute:

We should have been tried with it, [i.e. the court system] if the Earl of Bute had never existed; and it will want neither a contriving head nor active members, when the Earl of Bute exists no longer. It is not, therefore, to rail at Lord Bute, but firmly to embody against this court party and its practices, which can afford us any prospect of relief in our present condition.²

The court party, the immediate cause of the troubles besetting the kingdom, is in itself a symptom of a far graver ill for "every good political institution must have a preventive operation as well as a remedial. It ought to have a natural tendency to exclude bad men from government, and not to trust for the safety of the state to subsequent punishment alone;"³

On the immediate plane, the worst of the evil effects of the court party's ambition has been to re-cast the relationship of the monarch to the legislature. Referring to Sentiments of an Honest Man, a pro-court pamphlet, he writes:

- 1 To which may be added an earlier letter in which he writes:
"His Majesty never was in better spirits; He has got a ministry weak and dependent; and what is better, willing to remain so."
("To the Marquess of Rockingham", 1 August 1767, Correspondence, I, p.316).
- 2 Present Discontents, Works, I, p.468.
- 3 ibid. p.473.

In this piece appeared the first dawning of the new system; there appeared the idea (then only in speculation) of separating the court from the administration; of carrying everything from national connection to personal regards; and of forming a regular party for that purpose, under the name of king's men.¹

The machinations of the now established party have resulted in the establishment of a new scheme of government: "the whole system, comprehending the exterior and interior administrations, is commonly called, in the technical language of the court, double cabinet; in French or English, as you choose to pronounce it."²

Here then is that evil, of which the court party is merely a symptom, which has caused the present discontents:

It is this unnatural infusion of a system of favoritism into a government which in a great part of its constitution is popular, that has raised the present ferment in the nation. . . . This is the fountain of all those bitter waters of which, through an hundred conduits, we have drunk until we are ready to burst. The discretionary power of the crown in the formation of ministry, abused by bad or weak men, has given rise to a system which, without directly violating the letter of any law, operates against the spirit of the whole constitution.

Burke goes on to explain, and in explaining why a system of favoritism in the formation of ministry is antipathetic to the spirit of the

1 Present Discontents, Works, I, p.454.

A few pages later he writes of the policy of the new system: "The time was come, to restore royalty to its original splendor And it was constantly in the mouths of all the runners of the court, that nothing could preserve the balance of the constitution from being overturned . . . but to free the sovereign effectually from that ministerial tyranny under which the royal dignity had been oppressed in the person of his Majesty's grandfather." (ibid. p.455).

2 ibid. p.466.

3 ibid. p.469.

British constitution, suggests a view of the monarch--minister--legislature relationship which is but remotely related to the concept which Blackstone had expounded half a decade earlier:

A plan of favoritism for our executory government is essentially at variance with the plan of our legislature. One great end undoubtedly of a mixed government like ours, composed of monarchy, and of controls, on the part of the higher people and the lower, is, that the prince shall not be able to violate the laws. This is useful indeed and fundamental. But this, even at first view, is no more than a negative advantage; an armor merely defensive. It is therefore next in order, and equal in importance, that the discretionary powers which are necessarily vested in the monarch, whether for the execution of the laws, or for the nomination to magistracy and office, or for conducting the affairs of peace and war, or for ordering the revenue, should all be exercised upon public principles and national grounds, and not on the likings or prejudices, the intrigues or policies, of a court.¹

C. Expansion and Implications

As mentioned earlier Present Discontents was written not only to attack arbitrary rule but to defend the principles of the Rockingham Whigs. These principles, however, are quite frequently left implied. To attempt to sketch the ideas Burke held by outlining those he did not is of limited value because in most of the issues there was more than one alternative. It would be to assert that all non-A is B. It may be true, it is true if the set is composed only of A and B, but where there are more than two elements such an assertion would be fallacious.

1 Present Discontents, Works I, pp. 469-70. *Italics in the original.*

Thus far, then, Burke's opposition to the court system would not in itself justify an attempt to make him the first to envisage the 'modern' cabinet. A case can be made, however, for the assertion that Burke sees the need for a system which will incorporate at least three of the elements which were to become considered essential qualities in a cabinet :

- that the latter body ought to have some degree of political, (as distinct from legal) responsibility to the legislature;
- that it ought to be a collective entity and ought to act as such, rather than as a group of individuals singly responsible to the king;
- that it ought to be the effective head of the executive and not simply the means by which the monarch implements his will.

The cabinet as politically responsible

In Burke's philosophy the exercise of power must have a raison d'être ; that it has inhered in a particular institution or person for a long period of time does not, in itself, provide its justification. He writes of the claim of the East India company 'to exclude their fellow-subjects from the commerce of half the globe':

But, granting all this, they must grant me, in my turn, that all political power which is set over men, and that all privilege claimed or exercised in exclusion of them . . . ought to be some way or other exercised ultimately for their benefit.

If this is true with regard to every species of political dominion and every description of commercial privilege: . . . then such rights, or privileges, or whatever else you choose to call them, are all in the strictest sense a trust: and it is of the very essence of every trust to be rendered accountable, and even totally to cease, when it substantially varies from the purpose for which alone it could have a lawful existence. ¹

1 Speech on Mr. Fox's East India Bill, Works, II, p. 439

Though this quotation is drawn from a work written thirteen years after the publication of Present Discontents, the same thought, though in a compressed form, can be found in the latter. In Burke's eyes, "the king is the representative of the people; so are the lords; so are the judges. They are all trustees for the people, as well as the commons; because no power is given for the sole sake of the holder;".¹

If those possessing power must be capable of being held responsible, and the cabinet wields power, then it also must be capable of being held responsible.

But that form of government, which, neither in its direct institutions, nor in their immediate tendency, has contrived to throw its affairs into the most trustworthy hands, but has left its whole executory system to be disposed of agreeably to the uncontrolled pleasure of any one man . . . is a plan of polity defective not only in that member, but consequentially erroneous in every part of it Nothing, indeed, will appear more certain, on any tolerable consideration of this matter, than that every sort of government ought to have its administration correspondent to its legislature The people of a free commonwealth, who have taken such care that their laws should be the result of a general consent, cannot be so senseless as to suffer their executory system to be composed of persons on whom they have no dependence, and whom no proofs of the public love and confidence have recommended to those powers, upon the use of which the very being of the state depends."²

An objection may be raised here. Few have ever maintained that the king's ministers have the right to act arbitrarily;

1. Present Discontents, Works, I, p.492.

2 ibid. p. 471.

Blackstone envisaged them as legally responsible for their actions. Thus far, it might be argued, Burke's statements are simply a more emphatic formulation of the Blackstonian position.

Burke certainly agrees with Blackstone that ministers are subject to the ultimate restraint of the law.¹ He goes further, however, indeed he goes far enough that one feels justified in describing the system of government Burke envisaged as a system of responsible government.

Legal accountability alone is insufficient.

The laws reach but a very little way. Constitute government how you please, infinitely the greater part of it must depend upon the exercise of the powers which are left at large to the prudence and uprightness of ministers of state. Even the use and potency of the laws depends upon them.²

It is because the laws are insufficient that : "every good political institution must have a preventive operation as well as a remedial. It ought to have a natural tendency to exclude bad men from government, and not to trust for the safety of the state to subsequent punishment alone;"³ The potentially evil acts of ministers must be thwarted by rendering the agents subjective to a political control :

1 Burke writes : "Impeachment, that great guardian of the purity of the constitution, is in danger of being lost, even to the idea of it." (Present Discontents, Works, I, p. 495).

2 ibid. p. 470.

3 ibid. p. 473 cited above, p. 30

It had always, until of late, been held the first duty of Parliament, to refuse to support government, until power was in the hands of persons who were acceptable to the people, or while factions predominated in court in which the nation had no confidence. . . . Formerly this power of control was what kept ministers in awe of Parliaments, and Parliaments in reverence with the people. If the use of this control on the system and persons of administration is gone, everything is lost, Parliament and all".¹

In one of the last sections of the pamphlet, Burke returns to this theme of the descending chain of political accountability which should link the governors with the governed. Writing of the advantages of a ministry chosen on national grounds (as opposed to one based on private influence), he states :

Such men will serve their sovereign with affection and fidelity; because *his* choice of them, upon such principles, is a compliment to their virtue. They will be able to serve him effectually; because they will add the weight of the country to the force of the executory power This, with allowances for human frailty, may probably be the general character of a ministry, which thinks itself accountable to the House of Commons; when the House of Commons thinks itself accountable to its constituents. If other ideas should prevail, things must remain in their present confusion; until they are hurried into all the rage of civil violence; or until they sink into the dead repose of despotism".²

This was no last page rhetoric. Fourteen years later Burke was again to stress the Commons' role in controlling the ministry. Extending the idea of ministerial accountability he makes explicit what had been left implied in Present Discontents : that in cases of conflict

¹ Present Discontents, Works, I, p. 472.

² ibid. p. 537.

between ministry and Commons, the former must yield.

A House of Commons respected by its ministers is essential to his Majesty's service; it is fit that they should yield to Parliament, and not that Parliament should be new-modelled until it is fitted to their purposes. If our authority is to be held up only when we coincide in opinion with his Majesty's advisers . . . the House of Commons will sink into a mere appendage of administration¹

He explicitly recognizes the government minister's dual function.

He is his Majesty's servant but he is also the servant of the public, and in the final analysis the obligations incurred in the latter capacity must predominate. The body by whom he is to be reminded of his duty is that body to which he is accountable for his actions.

Should he persist in his waywardness he forfeits his claim to power.

Whenever we, [i.e. members of the Commons] shall see it expedient to offer our advice concerning his Majesty's servants, who are those of the public, we confidently hope that the personal favor of any minister, or any set of ministers, will not be more dear to his Majesty than the credit and character of a House of Commons.²

The cabinet as a collective entity

In this area Burke's ideas differ from those of Blackstone in that he envisages the cabinet as comprising a united body of men acting in a collective capacity and not simply as a number of individual ministers singly responsible to the king. It is here that the relationship between his concepts of party and of cabinet is most clearly evidenced. If government is to carry out its proper tasks unity in administration is

1 A Representation to His Majesty Moved in the House of Commons, (June 14, 1784) Works, II, p. 555

2 ibid. p.552

necessary. It can be realized if politicians refuse to accept isolation as a condition of power, agree to take office only as a group, and insist on maintaining their political principles.

Every honorable connection will avow it is their first purpose, to pursue every just method to put the men who hold their opinions into such a condition as may enable them to carry their common plans into execution, with all the power and authority of the state. As this power is attached to certain situations, it is their duty to contend for these situations. Without a proscription of others, they are bound to give to their own party the preference in all things; and by no means, for private considerations, to accept any offers of power in which the whole body is not included; nor to suffer themselves to be led, or to be controlled, or to be overbalanced, in office or in council, by those who contradict the very fundamental principles on which their party is formed, and even those upon which every fair connection must stand. Such a generous contention for power, on such manly and honorable maxims, will easily be distinguished from the mean and interested struggle for place and emolument. ¹

This concept of the cabinet as a united, cohesive body is put forth as an alternative, indeed the only alternative if the cause of the present discontents is to be eliminated, to what Burke considered to be the operative theory of the court cabal.

This cabal, has, with great success, propagated a doctrine which serves for a color to those acts of treachery; The doctrine is this: that all political connections are, in their nature, factious, and as such ought to be dissipated or destroyed; and that the rule for forming administrations is mere personal ability, rated by the judgment of this cabal upon it, and taken by draughts from every division and denomination of public men. ²

1 Present Discontents, Works, I, pp. 530-31.

He had presented much the same thought in a 1769 work:

"It is however false, that the idea of an united administration carries with it that of a proscription of any other party. It does indeed imply the necessity of having the great strongholds of government in well united hands, in order to secure the predominance of right and uniform principles; of having the capital offices of deliberation and execution of those who can deliberate with mutual confidence, and who will execute what is resolved with firmness and fidelity." (Observations on a Late Publication Intituled "The Present State of the Nation", Works, I, p. 419.)

2 Present Discontents, Works, I, p. 525.

A consequence of this doctrine has been the destruction of that unity in administration which Burke deemed requisite to the proper functioning of government. Unity is essential if there is to be a clear-cut chain of responsibility. Earlier in the pamphlet he had attacked this technique of the court party :

They contrive to form in the outward administration two parties at the least; which, whilst they are tearing one another to pieces, are both competitors for the favor and protection of the cabal; and, by their emulation, contribute to throw¹ everything more and more into the hands of the interior managers.

His assertion of the role which party ought to play is his answer to this repugnant doctrine.

Yet to Burke, this ideal of a united, coherent, principled administration which feels itself answerable for its actions to the Commons, is in itself futile unless the latter body regains its independence from the court's ubiquitous influence and its dependence upon the people. In a passage in which he writes of the relationship which should exist between the Commons and its constituents, there are strong overtones of a concept of responsible government:

When, through the medium of this just connection with their constituents, the genuine dignity of the House of Commons is restored, It will begin to think of its old office of CONTROL. It will not suffer that last of evils to predominate in the country ; men without popular confidence, public opinion, ~~natural~~ connection, or mutual trust, invested with all the powers of government. When they have learned this lesson themselves, they will be willing and able to teach the court, that it is the true interest of the prince to have but one administration; and that one composed of those who recommend themselves to their sovereign through the opinion of their country, and not by their obsequiousness to a favorite.²

1 Present Discontents, Works I, pp. 461 - 62

2 ibid. pp. 536-37

It is worth noting in passing, that, as a derivative of the concept of the cabinet as a collective entity, there is a strong suggestion of something which approaches the later convention of cabinet solidarity which, Burke seems to feel, ought to be present; that no matter what the scope of internal dissensions, the ministry ought to present a united front to Parliament and public. He writes :

A minister of state will sometimes keep himself totally estranged from all his colleagues; will differ from them in their councils, will privately traverse, and publicly oppose, their measures. He will, however, continue in his employment. Instead of suffering any mark of displeasure, he will be distinguished by an unbounded profession of court rewards and caresses; because he does what is expected, and all that is expected, from men in office. He helps to keep some form of administration in being, and keeps it at the same time as weak and divided as possible.¹

Twelve years later, during the negotiations which led to the formation of the second Rockingham ministry, Burke re-affirmed, though in terms considerably less general, his belief in the necessity of a single, united administration.

I never was more pleased with anything than your resolution of forming a Cabinet on a New System; I mean the Cabinet you propose for your own particular advice and support It is on that Cabinet you must rely for the utter destruction of the Cabinet that has destroyed everything else; and which is equally mischievous [sic] in the highest as in the lowest hands. Stand firm on your ground - But one Ministry. - I trust and hope that your Lordship will not let one, even but one branch of the State - neither army, Navy, Finance, Church, Law or any thing else, out of your hands, or those which you can entirely rely on. Otherwise depend upon it, all things will run to confusion and Jobb, as hitherto they have done.²

That his insistence on the necessity of a united cabinet is couched in personal and partisan language does not invalidate the point that

1 Present Discontents, Works I, p. 462

2 "Letter to the Marquess of Rockingham," 22 March 1782, Correspondence, IV, pp. 422-23.

on a more general level he believed that it was a necessary prerequisite to good government. The letter quoted above cannot be accepted as simply a statement of partisan ambition (though it is partially that) unless one is also prepared to accept that Burke was willing to risk total defeat of the party's ambitions on the expectation of winning total victory; or that he was almost totally devoid of any sense of political strategy.

Neither is probable; the party had been out of power for sixteen years, it was not in the best of positions to take a 'hard line'. In fact, as it turned out, Rockingham could not maintain the position for which Burke had pleaded; eventually he had to accept Lord Shelbourne as part of his administration.

Secondly, Burke several times indicates a high sense of the art of strategy.¹ Rockingham's insistence on a united ministry was one of the major stumbling-blocks in the negotiations. Had Burke's primary aim been the obtaining of power by his party, he would hardly have insisted so strongly on a united cabinet, for such 'obstinence' lessened the probability of the party being asked to take power.

Thus it seems reasonable to assert that Burke's reluctance to see non-party men in ministerial positions was based, (at least partially) on some deeper principle than mere partisan ambition or greed.

1 For example, in a later part of a letter quoted earlier, (page 29) Burke expresses his fear that the publication of Present Discontents may result in the political fortunes of the party suffering a setback. As it is a 'formal attack' on the court system an accession of strength can hardly be expected from that quarter, and "Besides I am very far from confident, that the doctrines avowed in this piece (though as clear to me as first principles) will be considered well founded; or that they will be at all popular. If so, we lose upon every side". (Letter to the Marquess of Rockingham, post 6 November 1759, Correspondence, II, p.109).

The passages quoted earlier suggest that that principle was that only a united, principled cabinet could be relied upon to resist court influence more staunchly than its predecessors and to act responsibly and effectually.

The cabinet as the effective head of the executive.

In this area as well, Burke's ideas are rather distant from Blackstone's. True, cabinet members are still seen as the advisers of the monarch, operating through the legal power of the Crown, but increasingly it is their other function, as servants of the public which preponderates. Unlike Blackstone, Burke places comparatively little emphasis on the purely formal relationship of minister to monarch.

While there is no trace in Burke's writings of the notion that the cabinet is or ought to be omnipotent,¹ there can be little

- 1 There are in fact some indications that in some areas its power (or at least the power of its most important member) should be circumscribed. Referring to the civil list which he hoped was about to be reformed, he writes:
 "It will not, in my opinion, be safe to permit an entirely arbitrary discretion even in the First Lord of the Treasury himself; it will not be safe to leave with him a power of diverting the public money from its proper objects, of paying it in an irregular course, or of inverting perhaps the order of time, dictated by the proportion of value, which ought to regulate his application of payment to service".
Speech on Presenting to the House of Commons A Plan for the Better Security of the Independence of Parliament, and the Economical Reformation of the Civil and other Establishments, (1780) Works, II, p. 350.
 Further, the potential power of the cabinet is qualified by what may be described as a straightforward exposition of a residual powers concept. "The king's negative to bills is one of the most indisputed of the royal prerogatives; and it extends to all cases whatsoever. . . . But it is not the propriety of the exercise which is in question. The exercise itself is wisely forborne. Its repose may be the preservation of its existence; and its existence may be the means of saving the Constitution itself, on an occasion worthy of bringing it forth". (Letter to the Sheriffs of Bristol On the Affairs of America, Works, II, pp.225-26) (1777).

doubt that he sees that it ought to be the effective head of the executive. This conclusion seems inescapable for these reasons:

First, it is implied by the two characteristics thus far attributed to the Burkean cabinet. To plead that ministers ought to be politically responsible to the Commons for their actions, and that the cabinet ought to be a united body in order to allow its members to 'carry their common plans into execution' is nonsensical if the power of that body is negligible or secondary. It is not merely self-contradictory, it is to achieve new heights in the realm of the futile unless the power of the cabinet is dominant in the executive branch of government.

Secondly, it is not necessary to rely on this argument from inference. Burke's own words are sufficiently clear. In Present Discontents his formulation of the position is predominantly negative, though, as is obvious from some of the passages quoted earlier¹ he indicates, time and again, that the power wielded (or which ought to be wielded) by the cabinet is of a primary order. The 'negative' quality of his thoughts in this area should not be surprising for most of the pertinent statements in the pamphlet are explicit criticisms of the court system.

One of Burke's major objections to the activities of the cabal was that its members have succeeded not only in corrupting government but in rendering it ineffectual as well. In a section dealing with the effects of the court system on Britain's relations with other powers, he writes:

1 See especially those quoted on pages 32, 35, 38 and 40.

If by any chance, the ministers who stand before the curtain possess or affect any spirit, it makes little or no impression. Foreign courts and ministers, who were among the first to discover and to profit by this invention of the double cabinet, attend very little to their remonstrances. They know that those shadows of ministers have nothing to do in the ultimate disposal of things.¹

The result has been that:

British policy is brought into derision in those nations, that a while ago trembled at the power of our arms, whilst they looked up with confidence to the equity, firmness, and candor, which shone in all our negotiations Such has been the aspect of our foreign politics, under the influence of a double cabinet.²

The effects of the court system on the internal condition of Britain have been equally bad:

Everything partakes of the original disorder. Anarchy predominates without freedom, and servitude without submission or subordination. These are the consequences inevitable to our public peace, from the scheme of rendering the executory government at once odious and feeble; of freeing administration from the constitutional and salutary control of Parliament, and inventing for it a new control, unknown to the constitution, an interior cabinet; which brings the whole body of government into confusion and contempt.³

It is worth noting that there is no suggestion that the power of administration ought to be diminished; on the contrary, its impotence is decried. What is suggested is that the cause of its impotence, the court cabal, be disbanded and that ministry be re-established with its proper,

1 Present Discontents, Works, I, p.480.

2 ibid. p.481.

3 ibid. p.484.

The same thought appears in his correspondence. Chastizing the ministry of the day for the lack of any policy, he writes: "you see that the King's speech says little of the past, and nothing at all of the future. Having no plan of conduct but the chapter of accidents; and no wishes, but to hold their employments as long and as lucratively as they can, they commit themselves for nothing." ("Letter to Charles O'Hara," 21 May 1770, Correspondence, II, p.137).

its constitutional guardian, Parliament.

While there are grounds for asserting that Burke reached the position that the cabinet ought to be the effective head of the executive branch by the time Present Discontents was published, he was to achieve a clearer formulation ten years later in his Speech on Economical Reform. Of his seven 'fundamental rules' which are to be the criteria of the reform, two would seem to deal primarily (if still indirectly) with the role of the ministry.

Fourthly, That all such offices ought to be abolished as obstruct the prospect of the general superintendent of finance, which destroy his superintendency, which disable him from foreseeing and providing for charges as they may occur, from preventing expense in its origin, checking it in its progress, or securing its application to proper purposes. A minister, under whom expenses can be made without his knowledge, can never say¹ what it is that he can spend, or what it is that he can save.

Also:

Seventhly, That all subordinate treasuries, as the nurseries of mismanagement . . . ought to be dissolved. They have a tendency to perplex and distract the public accounts, and to excite a suspicion of government even beyond the extent of their abuse.²

1 Speech on Economical Reform, Works II, p.287.
It is perhaps interesting to note that this view of the minister as the superintendent of his department confirms a characteristic attributed earlier to the Burkean cabinet, i.e. that the ministry must be, at least to a degree, politically responsible to the House. Were it still envisaged solely as the instrument, or the aggregation of instruments, of the monarch neither of these rules would, in any way, further the securing of the 'independence of Parliament'. They would simply make oppression by the court more efficient. Such a consequence would be in direct opposition to Burke's stated, primary purpose: "but what, I confess, was uppermost with me . . . was the reduction of that corrupt influence which is itself the perennial spring of all prodigality and all disorder," (ibid. p.287).

2 Speech on Economical Reform, Works II, p.287.

Further, the cabinet is not only to be concerned with the means but with the ends of government activity as well. It is seen, or rather the head of the cabinet, is seen as possessing a policy function. While this has been implied in some of the passages quoted earlier ¹ it is nowhere made as explicit as in the following quotation. Speaking of his desire to reassign 'the military branch (of the artillery) to the army, and the naval to the Admiralty', he states :

Thus, by following the course of Nature, and not the purposes of politics, or the accumulated patchwork of occasional accommodation, this vast, expensive department may be methodized, its service proportioned to its necessities, and its payments subjected to the inspection of the superior minister of finance, who is to judge of it on the result of the total collective exigencies of the state. This last is a reigning principle through my whole plan; and it is a principle which I hope may hereafter be applied to other plans. ²

Presumably the 'superior minister of finance' referred to is the First Lord of the Treasury, the prototype of the position of Prime Minister.

D. Qualifications

While there are several characteristics of the Burkean cabinet which will come to be considered essential attributes of a British ministry, it would be inaccurate to describe Burke as the first theorist to conceptualize the 'modern' cabinet. His concept is transitional; it contains elements of the old as well

1 For example, he writes of "the capital offices of deliberation and execution". (Observations on The Present State of the Nation, Works, I, p. 419). Cited above p. 38 footnote 1.

2 Economical Reform, Works, II, p. 316.

as of the new.

Janus

Burke's arguments are usually cast in terms which indicate a desire to return to a former mode of behaviour rather than to create a new. Present Discontents is, in a sense, his first appeal to the old Whigs. It is George III's system which is the dangerous innovation not Burke's theory.

Consequently he is led to an interpretation with which few historians today would agree. Thus, referring to the court party's opposition to the system which grew up after the Glorious Revolution (i.e. the Whig-Crown connection as he interprets it), he writes :

This method of governing, by men of great^{natural} interest or great acquired consideration, was viewed in a very invidious light by the true lovers of absolute monarchy. It is the nature of despotism to abhor power held by any means but its own momentary pleasure;¹

The members of the court cabal, these 'true lovers of absolute monarchy' were thus led to institute a new mode of governing :

The first part of the reformed plan was to draw a line which should separate the court from the ministry By this operation, two systems of administration were to be formed; one which should be in the real secret and confidence; the other merely ostensible to perform the official and executory duties of government. The latter

1 Present Discontents, Works, I, p. 446

were alone to be responsible; whilst the real advisers, who enjoyed all the power, were effectually removed from all danger. ¹

In Burke's eyes this constitutes a radical innovation for :

It must be remembered, that since the revolution until the period we are speaking of, the influence of the crown had always been employed in supporting the ministers of state, and in carrying on the public business according to their opinions. ²

It should be noted that this system in which 'the influence of the crown had been always employed in supporting the ministers of state, and in carrying on the public business according to their opinions' was, by and large, a projection into the past of what Burke desired to see in the present. Few today seem to find the position tenable.

William continued in his belief that the ministers were responsible to him and not to Parliament. He exercised direct control over the government himself, attending all of the sessions of the cabinet, making ministerial appointments and determining the final position to be taken by the ministry as a body. ³

J. P. Mackintosh expresses the same idea. Of William III he writes :

A man of great determination and capacity, with a quite definite policy of his own, he took the major decisions throughout his reign. The best known example being his negotiation and settlement of the two Partition Treaties without the knowledge of Parliament or of any of the British ministers." ⁴

1 Present Discontents, Works, I, p. 447-48.

2 ibid. p. 460.

It is worth remarking in passing that the system is not criticized merely because it is an innovation but because it is an evil innovation: "the machinery of this system is perplexed in its movements, and false in its principle." (loc. cit.).

3 B.E.Carter, The Office of Prime Minister, (London, 1956), p.18.

4 J. P. Mackintosh, The British Cabinet, (University of Toronto Press, 1962), p. 39.

Of the personality of Queen Anne he writes :

"Queen Anne had the traditional attitude that she would frankly state her wishes and expect both support and freedom in her choice of public servants".¹ The actual position of cabinet vis-à-vis the queen during her reign was rather different from the interpretation given to it by Burke : "Unknown to law, it rested on no sure foundation of party support in the country or in Parliament and its authority was simply a reflection of such trust as the living monarch chose to repose in its members."²

Carter expresses a similar interpretation :

Queen Anne's attitude towards the ministers was no different from that of her predecessors. She considered them as her personal servants and on occasion she made selections which did not reflect the majority view of the House of Commons.³

According to Mackintosh the system under the first Hanoverians was still rather unlike the interpretation given to it by Burke :

The king also decided what items were to be submitted to the Select Lords. There was clearly no right to give collective advice and in the 1730's no obligation on the Crown to adopt recommendations that were not acceptable. Many matters were settled by the King acting with his German councillors or the one Secretary who accompanied him to Hanover".⁴

- 1 J. P. Mackintosh, The British Cabinet, (University of Toronto Press, 1962) p. 45 .
- 2 ibid. p.47 .
- 3 B.E.Carter, The Office of the Prime Minister, p. 19 .
- 4 J.P. Mackintosh, The British Cabinet, p. 50 .

Burke's admiration of the system which he thought had existed in the past seems to have been genuine. It may of course be argued that he appealed to the past simply because it was expedient to do so; that the backward looking aspect of his thought was developed simply because it was a means of 'legitimizing' a desire to change to a people unaccustomed to accepting change for its own sake; that this aspect served to camouflage what essentially was to be a radically new constitutional development.

There is, however, no evidence to support this contention. Such evidence as there is suggests that Burke sincerely believed that the hypothetical former system had really existed, and had been more satisfactory. It seems to have been the source from which he drew his inspiration.

First, had Burke been consciously using the past to mask a new system of his own, one might expect to find some overtones to it in his correspondence; after all, throughout his political career he never operated in isolation. There are, however, no such overtones. On the contrary, he consistently implies or states his belief in the superiority of the former system. In a letter to his longtime friend, Charles O'Hara, he writes:

Without some extraordinary change, then I am satisfied, that the Court may assume as uncontrolled a power in this Country as the King of Sweden has done in his, I know that this has been said ever since the Crown has got its great influence

in Parliament. But it was not said truly, whilst the people preferred one man to another; it was not said truly, while a new Ministry supposed a new parliament; It was not said truly, whilst it required art, address, and influence to secure a Majority. Whether or no things were prepared for this in the last Reign, I cannot justly say; but this sort of power was then either not¹ fully discovered, or nobody chose to venture upon it.

Secondly, the whole tenor of Present Discontents suggests that Burke's admiration of the 'former' system was genuine. Insofar as it can be detected the relevant sections do not ring false, as do those in which he excuses George III.

Obviously neither of these points, in combination or isolation, is conclusive. They are, however, sufficiently indicative to suggest that the general presumption must lie in favour of Burke's sincerity.

Probably the most important consequence of this 'backward looking' note, and the sincerity with which it may be assumed Burke accepted it, is that the king is seen as retaining a considerable degree of power. Further, this is envisaged not as a lamentable necessity but as a positive benefit. By no means can Burke's sovereign be equated with Bagehot's dignified and relatively powerless monarch.

Burke's primary motivation in opposing the court system seems to have been his fear of the undue extension of the

1 "Letter to Charles O'Hara", 30 September 1772,
Correspondence, II, pp.356-57.

powers of the crown operating through and on an irresponsible, isolated administration. His solution, to the extent that he proposes one, is to return to what he considered the traditional Whig system 'of governing by men of great interest or great acquired consideration', modified, however, by the role which parties are to play. However, in justifying the ways of Whigs to men he cannot but justify the retention of those powers which the monarchs preceding George III possessed, and these were, in Burke's mind, by no means negligible.

Though the formulation of policy may be the preserve of the cabinet, the king retains an important voice in the composition of that body. The Commons is seen as possessing a final veto over the cabinet's structure,¹ but within the wide range of acceptability to the House, the selection of ministers is largely left in the hands of the king.²

Referring to an address to the king which he felt was about to be made, the burden of which was that Pitt ought to retain power, Burke writes :

- 1 In a passage quoted earlier (page 36) he writes: "It had always, until of late, been held the first duty of Parliament to refuse to support government, until power was in the hands of persons who were acceptable to the people, or while factions predominated in court in which the nation had no confidence" (Present Discontents, Works, I, p.472).
- 2 It is worth noting in passing that this range of acceptability was considerably greater in Burke's day than in the latter half of the nineteenth century. The primary cause seems to have been the multiplicity and fluidity of parties which made the obtaining of a reliable majority in the Commons something of a specie mirabili. One of the primary conventions in the British form of responsible government, that those who control a majority in the House normally must be called upon to take office, could hardly grow and operate in circumstances where the obtaining, and equally important, the retaining of such a majority was rare.

I should contend as much as anyone, perhaps more, for the constitutional propriety of the king's submitting, in every part of his executive government, to the advice of parliament. But this, like every other principle, can bear a practical superstructure of only a certain weight. If the two Houses, without any sort of reason, . . . should attempt to arrogate to themselves, under the name of Advice, the whole power and authority of the crown, the monarchy would be an useless incumbrance on the country, if it were not able to make a stand against such attempts.¹

The shifting emphasis

Burke himself, towards the end of his life, softened some of the harder lines of the concept of the cabinet presented in his earlier writings. He never denied his earlier thoughts; rather he emphasised elements or tendencies which had originally been muted.

Were one to base oneself completely on Present Discontents a strong case might be made for Burke as the 'father of the modern cabinet', whatever that might mean. Such an encapsulation however, would be inadequate. To assume that because he does not, in that pamphlet, assign the king specific powers, he must have desired to see him powerless, and then to develop a dichotomy between his earlier and later writings is fallacious.

In Present Discontents he nowhere suggests that he wishes the

1 "Letter to William Windham Esq." January 24, 1789, Correspondence of The Right Honourable Edmund Burke, ed. Charles William, Earl Fitzwilliam, and Sir Richard Bourke, Rivington edition, (London, 1844), III, p.97.

monarchy to be completely emasculated. On the contrary, the entire backward looking aspect of his thought suggests that he was assuming that the monarch should retain some power; though he desired that it not exceed that which he thought the king's predecessors had possessed.

While much of this 'backing and filling' was undoubtedly due to the impact which the French Revolution, the great moral crisis of his life, had upon him, it would be rather facile to attribute everything to this one event. At least partly due to Burke's efforts, changes had taken place within the British system of government which went some way toward precluding a renewed attempt to institute personal, monarchial rule. There is some justification for him writing, referring to himself in the third person :

"Mr. Burke thought, with a majority of the House of Commons, that the influence of the crown at one time was too great; but after his Majesty had, by a gracious message, and several subsequent acts of Parliament, reduced it to a standard which satisfied Mr. Fox himself, and, apparently at least, contented whoever wished to go farthest in that reduction, is Mr. Burke to allow that it would be right for us to proceed to indefinite lengths upon that subject? that it would therefore be justifiable in a people owing allegiance to a monarchy, and professing to maintain it, not to reduce, but wholly to take away all prerogative and all influence whatsoever? One would think that such a thing as a medium had never been heard of in the moral world." ¹

Though it does seem strange to find the author of

1 Appeal from the New to the Old Whigs, (1791), Works, IV, pp.104-05

Present Discontents his Majesty's most loyal subject after 1790, there is no real contradiction in his principles. As the defender of the 'good' institutionalized in the British constitution, Burke had, in 1770, seen danger arising from the claims of an o'erweening king; after 1790 it was from a different approach that evil threatened.

Burke himself implies the underlying consistency of his disparate behaviour in 1770 and in 1790. Referring to the democratic, aristocratic and monarchical elements of the constitution, he writes:

He who thinks that the British Constitution ought to consist of the three members, of three very different natures, of which it does actually consist, and thinks it his duty to preserve each of those members in its proper place and with its proper proportion of power, must (as each shall happen to be attacked) vindicate the three several ¹ parts on the several principles peculiarly belonging to them.

This is made more explicit when, referring to the speeches he made to his constituents seventeen years earlier, he writes:

He spoke, not like the partisan of one particular member of our Constitution, but as a person strongly, and on principle, attached to them all. He thought these great and essential members ought to be preserved, and preserved each in its place, - . . . ²

One of the consequences of attempting to 'preserve each in its place' is, at least in relation to the ideas presented in Present Discontents, Economical Reform, and A Representation to His Majesty, to strengthen the position of the king vis-à-vis the legislature. Though Burke nowhere

1 Appeal to the Old Whigs, Works, IV, p.93.

2 ibid. p.99.

indicates a desire to see the cabinet as a body belonging solely to the king, nor to see it as a body in which the king's is the dominant voice in policy and/or composition, he does suggest, in the letter to Windham quoted above,¹ that the monarch must retain some power. Were it otherwise the monarchy would be 'an useless incumbrance on the country'.

It is because of the presence of these elements that Burke's concept of the cabinet must be regarded as transitional. It should be noted however, that it is a transitional concept in which three essential characteristics of the nineteenth century cabinet are already deeply etched.

From an examination of Burke's ideas of that body over his lifetime it is evident that his system is still quite distant from that of Bagehot. It is equally true, and perhaps more surprising, that his thoughts are even more remotely removed from those of Blackstone, his contemporary.

E. Burke and the Separation of Powers

No treatment, however partial, of Burke's constitutional ideas would be complete without some reference to the separation of powers theory. If it is true that a system in which a cabinet, controlling the major share of executive functions and the preponderance of legislative functions through its usual possession of the support

1 supra p. 53

of the majority of the legislature's members, constitutes a fusion of powers, Burke's ideas, which tend strongly toward this concept, must run contrary to that theory which has been alleged to be the greatest contribution of the man who has been called the master of Burke.

F.T.H. Fletcher refers to Burke as Montesquieu's "greatest and most enlightened disciple".¹ He was not however, merely a follower but a first-rate thinker in his own right.

He was a student of the great French moderate insofar as:

- he also realized the futility, not to say the danger, of seeing politics and the political institutions of men through the prism of an a priori rationalist schema prescinded from circumstance : "government . . . ought to conform to the exigencies of the time, and the temper and character of the people with whom it is concerned, and not always to attempt violently to bend the people to their theories of subjection."²
- The thoughts of the two men are similar in that both regard history not simply as a chronicle of past events but as a pressure on the present, partially shaping the future; that

1 F.T.H. Fletcher in Montesquieu and English Politics (1750-1800), (London, 1939) p. 12.

2 Letter to the Sheriffs of Bristol, On the Affairs of America, (1777), Works, II, p. 230.

the present is not a tabula rasa; that its choices are limited by what has passed before: "such mighty changes in manners, during so many ages, always must produce a considerable change in laws, and in the forms as well as the powers of all governments."¹

- He followed Montesquieu in asserting that the end of the British constitution is the establishment of liberty.

The distinguishing part of our Constitution is its liberty. To preserve that liberty inviolate seems the particular duty and proper trust of a member of the House of Commons. But the liberty, the only liberty, I mean is a liberty connected with order: that not only exists along with order and virtue, but which cannot exist at all without them.²

His particular notion of liberty is very close to Montesquieu's view that "liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will."³

None of the above necessarily implies any adherence to a separation of powers theory. Burke generally regarded such 'political blueprints' with a somewhat jaundiced eye because he believed that they tend to leave out of consideration too many factors; conventions, the heritage of the past, manners, which are relevant to politics. In Burke's eyes political problems are too complex, demanding too many a fine adjustment to be solved through such a mechanical contrivance. They

1 An Essay Towards an Abridgment of the English History, (1757), Works, VII, p.312.

2 Speech at His Arrival at Bristol, (1774), Works, II, p.87.

3 Montesquieu, Laws, I, p.150.

The above sketch is far from being an exhaustive list of the similar elements in the thoughts of the two men; it is hoped that it covers the major points relevant to this area.

demand consideration of the agents as well as of the framework, real or hypothetical, within which those agents act.

It is however unlucky for the publick that this indifference to the main lines of the duty of a Member of Parliament should be so prevalent among the Electors. For, almost all small services to individuals and even to corporations, depend so much on the pleasure of the Crown, that the Members are, as it were, driven headlong into dependence, by those, whom the constitution and (one would at first imagine) the very nature of things had contrived to keep independent of a Court influence. This alone is sufficient to shew how much a constitution in Fact, differs from a constitution on Paper.¹

In spite, however, of this presumption against 'legal gadgetry' as insufficient there are traces of something akin to a separation of powers concept scattered throughout Burke's works, traces which become increasingly evident as his life drew to a close. It is not however, the theory which Montesquieu had presented.

The concept which emerges from Burke's writings is much closer to that Blackstonian mélange of a separation of powers theory and a mixed constitution notion discussed in an earlier chapter. In Burke's thought however, the emphasis is reversed; the stress is laid on the mixed constitution aspect rather than (as in Blackstone) on the separation of powers. The latter concept probably reinforces the realization of the need to balance the constituent elements but the point is that in Burke's thought it is less a question of guaranteeing the separation of the executive, legislative, and judicial powers of government than of balancing the claims of the monarchical, democratic,

1 "Letter to Richard Champion", 26 June 1777, Correspondence, III, p. 356

and aristocratic socio-political forces.

It is quite true that in Burke's thought 'monarchy' is often closely associated with 'executive' but it never seems to be fully identified with it. The legal powers of the executive may be vested in the Crown but the executive is more than simply the sum of its legal powers.

The laws reach but a very little way. Constitute government how you please, infinitely the greater part of it must depend upon the exercise of the powers which are left at large to the prudence and uprightness of ministers of state Without them, your commonwealth is no better than a scheme upon paper; and not a living, active, effective, constitution¹

In the executive as a whole, the claims of the constituent elements of the mixed constitution must be balanced. The monarch has a share in the executive but he is not the sole executive in anything more than a purely legal sense.

As mentioned earlier the traces of this concept of a balance of types are more clearly evident in Burke's later writings. In his Reflections on the Revolution in France he writes:

Have they never heard of a monarchy directed by laws, controlled and balanced by the great hereditary wealth and hereditary dignity of a nation, and both again controlled by a judicious check from the reason and feeling of the people at large, acting by a suitable and permanent organ? Is it, then, impossible that a man may be found who, without criminal ill intention or pitiable absurdity, shall prefer such a mixed and tempered government to either of the extremes, -. . .²

A clearer exposition of his thoughts in this area is to be found in a 1791 work, his Appeal From the New to the Old Whigs. Writing of himself (in the third person) as a defender of the British constitution, he states :

1 Present Discontents, Works, I, p. 470, cited above p. 35.

2 Reflections on the Revolution in France, Works, III, (1790) pp.395-96.

He cannot assert the democratic part on the principles on which the monarchy is supported, nor can he support monarchy on the principles of democracy, nor can he maintain aristocracy on the grounds of the one or of the other or of both. All these he must support on grounds that are totally different, though practically they may be, and happily with us they are, brought into one harmonious body. ¹

Later, in rebutting an argument which had been used against him, that if his fear of the British monarchy's influence could justify its reform in the United Kingdom, fear of the French monarchy's absolutism could justify its abolition in France, he writes:

But the principle of Mr. Burke's proceeding ought to lead him to a very different conclusion,-- . . . - that a monarchy is a thing perfectly susceptible of reform, perfectly susceptible of a balance of power, and that, when reformed and balanced, for a great country it is the best of all governments. ²

It is worth noting here that it was the monarchy which in Burke's eyes had been 'reformed and balanced', it was not the executive power, per se that was so treated. So also was it the monarchical principle which he defended against an 'usurping' democratic principle; he did not here defend the claims of the executive branch from a presumptuous attack by the legislature.

The whole scheme of our mixed Constitution is to prevent any one of its principles from being carried as far as, taken by itself, and theoretically, it would go To avoid the perfections of extreme,

1. Appeal to the Old Whigs, Works, IV, p. 93

2 ibid. p. 106.

all its several parts are so constituted as not alone to answer their several ends, but also each to limit and control the others; insomuch that, take which of the principles you please, you will find its operation checked and stopped at a certain point.¹

While these statements are rather more rigid than those which occur in his earlier writings, much the same theory, though it is

1 Appeal to the Old Whigs, Works IV, pp. 207-08

I cannot agree entirely with F.T.H.Fletcher's interpretation of Burke's later writings. Referring to the separation of powers concept he writes: "Burke in his earlier writings smiled upon it; but the events of 1789 caused him to swing sharply over to the right. Burke's apprehension was caused by what he believed amounted to the uniting of all three powers in a single body — the Assembly." (F.T.H.Fletcher, Montesquieu and English Politics (1750-1800), p.139).

It is agreed that Burke certainly opposed the 'uniting of all three powers in a single body'. He writes:

"To cut off all appearance of connection between the crown and public justice, and to bring the whole under implicit obedience to the dictators in Paris, the old independent judicature of the Parliaments, . . . was^{as} abolished." (Reflections on the Revolution, Works, III, p.393).

From my reading of Burke however, it would seem that, insofar as his 'apprehension' was based on a concept of limited government, it found its source in his reaction to the destruction of what had been potentially a mixed and balanced state rather than in his fear of the dangers arising from a violation of the separation of powers.

His decial of the Assembly was based upon his aversion to the dominance of the democratic principle which had destroyed the balance of types, rather than upon his fear of the uniting of all three powers per se. The Assembly is attacked for establishing an absolute democracy rather than for breaking down the barriers which ought to exist among the executive, legislative, and judicial powers of government. Referring to the ancient writers who had been concerned with the forms of government, Burke writes:

"I cannot help concurring with their opinion, that an absolute democracy no more than . . . absolute monarchy is to be reckoned among the legitmate forms of government." (ibid. pp. 396-97).

often left implied and, when explicitly stated, is applied in a different direction, appears in Present Discontents.

A plan of favoritism for our executory is essentially at variance with the plan of our legislature. One great end undoubtedly of a mixed government like ours, composed of monarchy and of controls, on the part of the higher people and the lower, is, that the prince shall not be able to violate the laws. This is useful indeed and fundamental. But this, even at first view, is no more than a negative advantage; an armor merely defensive. It is therefore next in order, and equal in importance, that the discretionary powers which are necessarily vested in the monarch, whether for the execution of the laws, or for the nomination to magistracy and office, or for conducting the affairs of peace and war, or for ordering the revenue, should all be exercised upon public principles and national grounds, and not on the likings or prejudices, the intrigues or policies, of a court.¹

The first four lines of this quotation are much more susceptible to the interpretation that Burke sees the constitution primarily as a balance of types rather than as a separation of powers.

The 'controls' seem to be the means by which the balance among the monarchical, aristocratic, and democratic elements can be maintained; not the constitutional checks and balances by which the separation of executive, legislative and judicial powers from one another is guaranteed.

The 'discretionary powers' of the executive referred to in the latter section may be legally vested in the monarch but that does not mean that they can be disposed of as he sees fit.

1 Present Discontents, Works, I, p. 469-70. Quoted above, p. 32.
Italics in the original.

The claims of the other elements of the state must not be denied. These powers must be exercised 'upon public principles and national grounds'.

It would appear that Burke saw as the cause of those discontents, not an attempt by the executive power to invade the domain of the legislative, but the attempt of the monarchy, or those claiming to act in the name of the monarchy, to exercise more than its proper share of the executive. It was the undue extension of the monarchical element's share of the executive rather than the usurpation of legislative functions by the executive power which was the root of the trouble. It had upset that rarely harmonious and always delicate balance of the claims of the constituent types of the mixed constitution within those executive positions which comprised the cabinet.

It seems evident that to accuse Burke of inconsistency in advocating, at different times, what was almost a fusion of powers, and later, a separation of powers is rather to miss the mark for Burke did not accept the separation of powers concept as Montesquieu had presented it. The emphasis in Burke's thought is placed upon the notion of a mixed constitution. It should be noted however, that Montesquieu's theory of a separation of powers probably contributed to Burke's concept of a balance of types which operates within the context of a mixed government. One might argue that in supporting the balance first from one side and then from another, Burke went too

far in one or the other direction, but this is a value judgment, not the illumination of an inconsistency. The quarter of the attack had shifted.

In any event, it is from Burke's attempt to restore the balance he thought he saw in the past that the cabinet is released from being regarded, in theory, as solely a council belonging to the king. Not even at the height of his defense of the claims of monarchy did he deny, implicitly or explicitly, his earlier position that the cabinet, a united body of men acting as the effective head of administration, owed a primary, political responsibility to the legislature.

IV

THOMAS BABINGTON MACAULAY, 1800-1859

Writing and talk do not prove me.
 I carry the plenum of proof and everything else in my face,
 With the hush of my lips I wholly confound the skeptic.

(Walt Whitman Song of Myself)

Though Thomas Babington Macaulay is most often remembered as an historian, he was, in his day, a politician of considerable stature. He held a seat in the Commons for some seventeen¹ years, during which time he occupied two, if not three ministerial posts.² It is not therefore surprising to find passages in his writings which, though very often scattered and *unsystematic*, indicate that he was thoroughly aware of the changes which had taken place in the relationships of monarch, ministry, and legislature. It is no overstatement to assert that the Bagehotian analysis of the cabinet was very largely foreshadowed in Macaulay's observations. Indeed it is not impossible that Bagehot drew his inspiration from the works

- 1 During the periods 1830-1834; 1839-1847; re-elected in 1852, he became Lord Macaulay in 1857.
- 2 In the latter part of 1832 he was appointed Secretary to that board of control which oversaw the operations of the East India Company, which post he held until the summer of 1834. During this period "he led the life of a junior Minister." (Arthur Bryant, Macaulay, (New York, 1933), pp. 34-35.) From 1839 to 1841 he held the cabinet post of Secretary-at-War; during 1846-1847 he was Paymaster General.

of the great Whig historian.

A The Initial Statement

The clearest exposition of Macaulay's thoughts on the cabinet is to be found in one of his latest and probably greatest works, his History of England From The Accession of James The Second.¹ There are, however many passages in his earlier writings which make it clear that the ideas expressed in the above work do not greatly diverge from those he had held a quarter of a century earlier.

In one of his earliest serious works, his 1828 Essay on Hallam's Constitutional History he suggests a concept of the cabinet which is already well developed. 'He assumes the political responsibility of the ministry to be almost axiomatic of the English polity of his day. Referring to the habit of the parliaments during the reign of Charles I of passing bills of attainder on those whom it could not otherwise punish, he writes :

At present, indeed, we should think it extremely pernicious to take such a course, even with a worse minister than Strafford, if a worse could exist; for, at present, Parliament has only to withhold its support from a Cabinet to produce an immediate change of hands.²

In a later passage he again implies the view that the relationship of a government minister to the legislature is one in which the former is continuously dependent upon the latter.

1 "The first two volumes were published in November 1848; the third and fourth in December, 1855. On December 14, 1859, he wrote in his diary 'Finished at last the session of 1699-1700'. He died on December 28. After his death Lady Trevelyan published the fifth volume." (Introductory Note to the History of England, The History of England From the Accession of James The Second, (Boston and New York, 1901), I, p. liii).

2 Lord Macaulay on Hallam's Constitutional History of England appended to Henry Hallam's The Constitutional History of England, (London, undated), p. 890.

But in fact it would have been impossible, since the Revolution to punish any Minister for the general course of his policy, with the slightest semblance of justice; for since that time no Minister has been able to pursue any general course of policy without the approbation of the Parliament. ¹

Further, within the legislature it is the Commons which appears to be the dominant body :

The power of the House of Commons, in particular, has been steadily on the increase. By the practice of granting supplies for short terms, and appropriating them to particular services, it has rendered its approbation as necessary in practice to all the measures of the executive government, as it is in theory to a legislative act. ²

Macaulay saw the composition of the cabinet as being if not completely determined by the will of the legislature, at least subject to its veto. He believed that this had been one of the most important consequences of the Glorious Revolution. Writing of the state of Parliament at the beginning of the eighteenth century, he states :

In England, . . . the Parliament was infinitely more powerful than it had ever been. Not only was its legislative authority fully established; but its right to interfere, by advice almost equivalent to command, in every department of the executive government, was recognised. The appointment of ministers, the relations with foreign powers, the conduct of a war or a negotiation, depended less on the pleasure of the Prince than on that of the two Houses. ³

1 Essay on Hallam, p. 927.

2 loc. cit.

3 Essay on Hallam, p. 897.

Accordingly, Macaulay saw the power remaining in the hands of the monarch as severely diminished. That legislative veto which the separation of powers theory deemed essential was barely, if at all, discernible. Contesting Hallam's view that the decline of the king's veto on legislation was repugnant to the constitution, he writes :

We are surprised, we confess, that Mr. Hallam should attach so much importance to a prerogative which probably will never be exercised again, and which can scarcely, in any conceivable case, be exercised for a salutary purpose.¹

B. The Framework

Macaulay saw the cabinet as operating within a system in which the monarchy had become, to use Bagehot's distinction, increasingly more dignified and less efficient. It was a system in which the actual sovereign was the legislature in which the lower house was dominant.

The monarchy

Macaulay believed that the long conflict between the monarch and the legislature had, in 1688, culminated in the establishment of the predominance of the latter. However, the early post-revolutionary monarchs still retained, in his interpretation, considerable power. Yet when he treats of the contemporary situation² consistently the theme is that the power of

1 Essay on Hallam, p. 903.

2 And he did so comparatively infrequently. In most of his relevant writings the present is used simply to highlight the past.

the nineteenth century monarch is less than that which had been wielded even by those 'sovereigns' whose power was admittedly secondary to that exercised by the legislature.

As is evident from the last passage quoted Macaulay did not believe that a monarch could, in 1828, justifiably exercise a veto on legislation. Ultimately he was to assert that the monarch had become almost completely institutionalized. In his History of England he writes of the changes which have occurred in the sovereign's role as an administrator. Referring to James II's decision to retain personal control of maritime affairs, he states:

This arrangement, which would now be thought by men of all parties unconstitutional in the highest degree, was then generally applauded even by people who were not inclined to see his conduct in a favorable light. How completely the relation in which the King stood to his Parliament and to his ministers had been altered by the Revolution was not at first¹ understood even by the most enlightened statesmen.

In contrast to the presently established system:

It was universally supposed that the government would, as in time past, be conducted by functionaries independent of each other, and that William would exercise a general superintendence over them all. It was also fully expected that a prince of William's capacity and experience would transact much important business without having recourse to any adviser.²

The prerogative of refusing assent to a bill he believed to be almost non-existent. While he did not deny that an assertion of

1 History of England, III, p.13.

2 loc. cit.

personal initiative by the monarch could occur, he believed, as he had in 1828, that were such an assertion to take the form of a refusal to assent to a bill which had passed both houses, it would create an extremely dangerous constitutional crisis.

A prince of the House of Brunswick is guided, as to the use of every royal prerogative, by the advice of a responsible ministry; and this ministry must be taken from the party which predominates in the two Houses, or, at least, in the Lower House. It is hardly possible to conceive circumstances in which a sovereign so situated can refuse to assent to a bill which has been approved by both branches of the legislature. Such a refusal would necessarily imply one of two things, that the sovereign acted in opposition to the advice of the ministry, or that the ministry was at issue, on a question of vital importance, with a majority both of the Commons and of the Lords. On either supposition the country would be in a most critical state, in a state which, if long continued, must end in a revolution.¹

Macaulay's statement that the monarch in his day 'is guided, as to the use of every royal prerogative, by the advice of a responsible ministry', is the most general exposition of a position which he had, in several respects, reached many years earlier. Insofar as he does not qualify it, it may represent a 'hardening' of that position, it does not, however, contradict the trend of his earlier thoughts.

Apart from his almost total disavowal of the operative existence of the monarch's personal veto, he suggests in another of his early writings that the ability of the monarch to exercise

1 History of England, IV, p. 291

the prerogative of dissolution on his own initiative is quite limited; and that the implementation of it is *potentially* dangerous. In an 1835 article which appeared in the Edinburgh Review in which he reviewed a new edition of Sir James Mackintosh's History of the Revolution in England in 1688 he writes of the post-revolutionary distribution of power :

No combination of the King and the Lords has ever been able to effect any thing against the Lower House, backed by its constituents. Three or four times, indeed, the sovereign has been able to break the force of an opposition by dissolving the Parliament. But if that experiment should fail, if the people should be of the same mind with their representatives, he would clearly have no course left but to yield, to abdicate, or to fight.¹

Though Macaulay generally envisaged the British monarch as constitutionally limited in the exercise of his powers he did not regard him as merely a figurehead. He suggests rather that the sovereign may exert a political influence though he does not specify how or under what circumstances.

It may be doubted whether any real polity that ever existed corresponded to the pure idea of that polity. According to the pure idea of constitutional royalty, the prince reigns, and does not govern; and constitutional royalty, as it now exists in England, comes nearer than in any other country to the pure idea. Yet it would be a great error to imagine, even now, that our princes merely reign and never govern.²

1 Sir James Mackintosh, 1835, Critical, Historical and Miscellaneous Essays, (Boston, undated,) vol.3, p. 325

2 History Of England, IV, p.122

Macaulay had evidently felt some sixteen years earlier that the personal influence of the monarch was politically significant. In a speech delivered at Edinburgh he had implied his belief in the importance of monarchical influence when he said: "whether royal favor, never more needed and never better deserved, will enable the government to surmount the the difficulties with which it has to deal, I cannot presume to judge." ¹

The legislature

As mentioned earlier Macaulay believed that, in his day, the legislature was the dominant body in the state. He saw it as exercising executive as well as legislative functions.

During the contest which the Parliament carried on against the Stuarts, it had only to check and complain. It has since had to govern. As an attacking body, it could select its points of attack, and it naturally chose those on which it was likely to receive public support. As a ruling body, it has neither the same liberty of choice, nor the same interest to gratify the people. With the power of an executive government, it has drawn to itself some of the vices, and all ² the unpopularity of an executive government.

He did not, however, see the legislature as composed of two equal bodies. In his eyes the House of Commons had become the paramount body: "but while the influence of the House of Commons in the Government was becoming paramount, the influence of

1 The Edinburgh Election of 1839, Miscellanies, (Boston and New York, 1901), I, pp.187-88.

2 Essay on Hallam, p. 930

the people over the House of Commons was declining."¹

Twenty-six years later his opinion of the distribution of power among the components of government had not changed :

The history of England during the hundred and seventy years which have elapsed since the House of Commons became the most powerful body in the state, her immense and still growing prosperity . . . sufficiently prove the excellence of her institutions.²

The House of Lords, in Macaulay's thoughts, seem to have served primarily as a check upon the lower house. He did not however believe that it had the power to finally thwart the will of the Commons if (a) the latter body were backed by the country and (b) it considered the matter sufficiently important: " no combination of the King and the Lords has ever been able to effect anything against the Lower House, backed by its constituents."³ However, he did believe⁴ that the Lords could at least temporarily check the desires of the Commons. In a passage which says as much about Macaulay's thoughts on property as it does about his view of the functions of the Lords, he writes:

Indeed, one of the principal uses of the Upper House is to defend the vested rights of property in cases in which those rights are unpopular, and are attacked on grounds which to short-sighted politicians seem valid. An assembly composed of men almost all of whom have inherited opulence, and who are not under the necessity of paying court to constituent bodies, will not easily be hurried by passion or seduced by sophistry into robbery.⁵

1 Horace Walpole, Essays, (1833), 3, p. 169.

2 William Pitt (1859) Miscellanies, II, p. 122.

3 History of England, IV, p.122, cited above p. 72.

4 At least toward the end of his life, after he had become Lord Macaulay.

5 History of England, V. p. 310.

Macaulay believed that the House of Commons, in addition to the role it played in legislating, exercised two other functions; an 'elective'¹ and a checking function. The former is clearly evident in a passage in which he recognises the dependence of the cabinet on the majority party in the Commons. He writes, of the situation after the 1688 Revolution :

From that time the House of Commons has been predominant in the State. The Cabinet has really been, from that time, a committee nominated by the Crown out of the prevailing party in Parliament. Though the minority in the Commons are constantly proposing to condemn executive measures . . . these propositions are scarcely ever carried; and, if a proposition of this kind is carried against the Government, a change of Ministry almost necessarily follows.²

Of the checking function of the Commons, he writes:

The House of Commons gave infinitely more trouble to the Ministers of Charles the Second than to any Ministers of later times; for, in the time of Charles the Second, the House was checking Ministers in whom it did not confide. Now that its ascendancy is fully established, it either confides in Ministers or turns them out. This is undoubtedly a far better state of things than that which Temple wished to introduce The worst House of Commons that has sat since the Revolution was a far more efficient check on misgovernment than his fifteen independent counsellors would have been.³

Yet Macaulay did not believe the dominance of the House of Commons per se to be a totally unmixed blessing. In his interpretation it had been, at one time, as potentially tyrannical as any

1 As, some years later, Bagehot was to describe the part played by the Commons in the selection of a Ministry.

2 Sir William Temple, (1638), Essays, 4, pp. 76-79

3 ibid. p. 79.

The reference in the latter part of the passage is to a plan put forward by Temple in 1679 which would have converted the Privy Council from an honorary into an actual advisory council.

Stuart. He writes, of the character of the Commons in 1700:

In truth, the House was despotic, and was fast contracting the vices of a despot. It was proud of its antipathy to courtiers; and it was calling into existence a new set of courtiers who would flatter all its weaknesses, who would prophesy to it smooth things, and who would assuredly be, in no respect, less greedy, less faithless, or less abject than the sycophants who bow in the ante-chambers of kings.¹

As Burke had stressed the concept that the ministry ought to be politically responsible to the legislature, so Macaulay stressed the notion that the body to which the ministry is responsible ought to be responsible to the public opinion of the nation. This, in his eyes, was the significance of the 1832 Reform Act.

A theme which runs through his speeches of that time is that the Commons must re-establish the relationship which had existed, in the days before the lower house became paramount, between the general feeling of the people and their representatives.

The House of Commons is, in the language of Mr. Burke, a check not on the people, but for the people. While that check is efficient, there is no reason to fear that the King or the nobles will oppress the people. But if that check requires checking, how is it to be checked?²

The relationship must be re-established for ultimately the government of Britain is dependent upon public opinion: "the law has no eyes: the law has no hands: the law is nothing, nothing but a piece of paper printed by the King's printer, . . . till public opinion breathes the breath of life into the dead letter."³

1 History of England, V, pp.514-15.

2 Parliamentary Reform I, (March 2,1831), Miscellanies, I, p.10.

3 Parliamentary Reform IV, (October 10,1831), Miscellanies, I, p.59.

For Macaulay, the greatness of the 1832 Reform Act consisted in this; it had established a guard on the guardians. It was this dependence on public opinion¹ which chiefly distinguished the Commons of the nineteenth century from that corrupt House in which Sir Robert Walpole had practiced his art.

During the century which followed the Restoration, the House of Commons was in that situation in which assemblies must be managed by corruption, or cannot be managed at all. It was not held in awe as in the sixteenth century, by the throne. It was not held in awe as in the nineteenth century, by the opinion of the people. Its constitution was oligarchical. Its deliberations were secret. Its power . . . was immense. The Government had every conceivable motive to offer bribes.²

Twenty years later he reiterated his belief in the salutary nature of the control which public opinion exercised over the House of Commons:

There has been no direct buying of votes within the memory of the present generation. The House of Commons is now supreme in the state, but is accountable to the nation. Even those members who are not chosen by large constituent bodies are kept in awe by public opinion. Everything is printed: everything is discussed: every material word uttered in debate is read by a million of people on the morrow.³

1 Macaulay never defined precisely what he meant by this term. The impression gained from a reading of his works is that it represented for him the judgment of the people as formulated and expressed by those who, because of their property or intelligence, had (or, prior to 1832, ought to have) a voice in the election of the people's representatives.

2 Horace Walpole, Essays, 3, pp.168-69.

3 History of England, III, p.565.

C. The Cabinet

Description

Macaulay believed that the cabinet had replaced the monarch as the chief executive. Referring to the former, he writes: "it at length drew to itself the chief executive power, and has now been regarded, during several generations, as an essential part of our polity."¹

The clearest exposition of his concept is to be found in his History of England.

The Ministry is, in fact, a committee of leading members of the two Houses. It is nominated by the Crown: but it consists exclusively of statesmen whose opinions on the pressing questions of the time agree, in the main, with the opinions of the majority of the House of Commons.²

The three characteristics which are but partially evident in the Burkean view of the cabinet — political responsibility, solidarity, and possession of the major voice in executive decisions — are clearly evident in Macaulay's concept:

Among the members of this committee are distributed the great departments of the administration. Each Minister conducts the ordinary business of his own office without reference to his colleagues. But the most important business of every office, and especially such business as is likely to be the subject of discussion in Parliament, is brought under the consideration of the whole Ministry. In Parliament the Ministers are ^{to} act as one man on all questions relating to the executive government. If one of them

1 History of England, I, p.208.

2 ibid. IV, p.542.

dissents from the rest on a question too important to admit of compromise, it is his duty to retire. While the Ministers retain the confidence of the parliamentary majority, that majority supports them against opposition, and rejects every motion which reflects on them or is likely to embarrass them. If they forfeit that confidence, . . . the remedy is simple. It is not necessary that the Commons should take on themselves the business of administration They have merely to declare that they have ceased to trust the Ministry, and to ask for a Ministry which they can trust.¹

Macaulay, however, did not see the cabinet simply as an executive council whose measures must passively await the concurrence of the majority of the lower house. If the cabinet is continuously dependent upon the Commons it also exercises a continuous influence over the latter; he saw it as, in a sense, the steering committee of the legislature and consequently as an initiator of legislative action. The cabinet which Macaulay believed to have been established can best be described in Bagehot's terms as — "a combining committee — a hyphen which joins, a buckle which fastens, the legislative part of the State to the executive part of the State".²

A few distinguished persons, agreeing in their general opinions, are the confidential advisers at once of the sovereign and of the Estates of the Realm. In the closet they speak with the authority of men who stand high in the estimation of the representatives of the people. In Parliament they speak with the authority of men versed in great affairs and acquainted with all the secrets of the state.³

1 History of England, IV, p. 542

2 Walter Bagehot, The English Constitution. The Works and Life of Walter Bagehot, Barrington edition, (London, 1918), V, p. 168.

3 History of England, IV, p. 543

Though these passages are drawn from one of Macaulay's last works they by no means represent any sudden evolution in his thought. Reference has already been made to the 1828 essay¹ in which he clearly recognized the dependence of the cabinet upon the legislature, and to his 1838 article² in which the cabinet is seen as originating in the legislature. Elsewhere in the latter work he indirectly suggests those characteristics of the cabinet which he was to later expound in his History of England :

But in a Cabinet of thirty members what chance could there be of finding unity, secrecy, expedition, any of those qualities which such a body ought to possess? If, indeed, the members of such a Cabinet were closely bound together by interest, if they all had a deep stake in the permanence of the Administration . . . the thirty might perhaps act as a smaller number would act, though more slowly, more awkwardly, and with more risk of improper disclosures.³

Cabinet and party

In view of the fact that Macaulay was an inveterate Whig who "saw the seventeenth century from the standpoint of Whig ideals and emotions",⁴ it is seemingly paradoxical to note that he devoted little attention to the role of parties in what he referred to as 'parliamentary government'. There is much in his writings on the historical behaviour (as seen through the eyes of a partisan) of the Whigs and Tories but relatively little on party per se.

1 Essay on Hallam, cited above, p. 67.

2 Sir William Temple, cited above, p. 75.

3 Sir William Temple, Essays, 4, pp. 65-66.

4 A. Bryant, Macaulay, p. 108.

Yet it is not really surprising; first because Macaulay was perhaps too intimately involved in party politics to completely withdraw himself from their influence, and secondly, because he, unlike Burke, did not arrive at his concept of the cabinet via a concept of party.

As was mentioned in an earlier chapter, Burke's view of the cabinet was largely the extension of his view of the role which parties ought to play. Public duty "demands and requires, that what is right should not only be made known, but made prevalent; that what is evil should not only be detected but defeated".¹ In order to fulfill this duty men must have power. Yet the nature of power and of man demands two things. First, insofar as ^{the} former is a trust for the benefit of its objects as well as of its subjects, those who wield it must be accountable for the manner in which they exercise it. Secondly, men, individually, are weak. Power can only be obtained if they act in unison. Consequently they must strive jointly for those positions in the state in which power resides, and, when these positions shall have been obtained, fulfill their functions as a cohesive group who are responsible for their actions rather than as a motley collection of frail, irresponsible individuals.

Macaulay, however, while never denying this, placed the emphasis of his thought elsewhere. His concept of the cabinet is the child of the Commons rather than the progeny of party. It is, in a sense, the projection of an institution rather than of an injunction. His

1 Edmund Burke, Present Discontents, Works I, p. 471

concept of the cabinet originates in his belief in the historic ascendancy of the Commons as an institution rather than in a concept of party as it ought to operate in the specific British context.

The above should not be taken to imply that Macaulay was unaware of the role of party. He quite early recognized that men must act in concert if they are to accomplish their goals. In an 1827 article in which he defended parliamentary coalitions, he writes:

To condemn coalitions in the abstract, is manifestly absurd: Since in a popular government, no good can be done without concert, and no concert can be obtained without compromise. Those who will not stoop to compliances which the condition of human nature renders necessary, are fitter to be hermits than to be statesmen.¹

Yet there are overtones in another of Macaulay's early works of a view of the member of the Commons which would seem to preclude the assigning of any very important function to political parties. Contrasting the unity which ought to exist among cabinet ministers with the independence which ought to be found among members of Parliament, he writes :

The House of Commons is a checking body; and therefore it is desirable that it should, to a great extent, consist of men of independent fortune, who receive nothing and expect nothing from the Government. . . . We can hardly conceive

1 The Present Administration, 1827, Essays, Appendix to vol. 6, p. 409. One wonders if Macaulay is not here marching to the distant drum of Burke who wrote of the Whigs of Queen Anne's time :
 "They believed that no men could act with effect, who did not act in concert; that no men could act in concert, who did not act with confidence; that no men could act with confidence, who were not bound together by common opinions, common affections, and common interests." (Present Discontents, Works 1, p. 529).

a greater curse to the country than an Administration, the members of which should be as perfectly independent of each other, and as little under the necessity of making mutual concessions, as the representatives of London and Devonshire in the House of Commons are and ought to be.¹

In his History of England however, he clearly recognizes the vital relationship which exists between party and ministry:

Sometimes the state of parties is such that no set of men who can be brought together possess the full confidence and steady support of a majority of the House of Commons. When this is the case, there must be a weak Ministry; and there will probably be a rapid succession of weak Ministries. At such times the House of Commons never fails to get into a state which no person friendly to representative government can contemplate without uneasiness . . .²

It is worth noting in passing that, while the views that 'the M.P. must be independent' and 'the party must have discipline' may be ultimately irreconcilable, as they are realized they are susceptible to a division; both admit of degrees. Macaulay's position seems to have been that, while admitting that parties are necessary, and must have some discipline if they are to fulfill their functions, they need not have such a degree of cohesion as to render the individual member of the Commons merely an automaton.

If the two views are conceived of as opposed poles, the point on a line linking them which Macaulay would have regarded as the optimum would be considerably closer to 'the independence of the member'

1 Sir William Temple, (1838), Essays, 4, pp.66-67.

2 History of England, IV, p.543.

The same idea of the dependence of the ministry upon party is manifested in that very work in which he suggests that the M.P.s must be independent of each other. See above, p.75.

than to 'party discipline'.¹ His ideal party bears a close resemblance to an intimate clique of men, all belonging to the same very powerful club, who are drawn together because they hold similar opinions, and in which such cohesiveness as does exist is the result of personal ties with one another rather than of devotion to an ideal, or coercion.

We are inclined to think that the use and abuse of party cannot be better illustrated than by a parallel between . . . the Rockinghams and the Bedfords. The Rockingham party was, in our view, exactly what a party should be. It consisted of men bound together by common opinions, by common objects, by mutual esteem. That they desired to obtain, by honest and constitutional means, the direction of affairs they openly avowed. But, though often invited to accept the honours and emoluments of office, they steadily refused to do so on any conditions inconsistent with their principles. The Bedford party, as a party, had . . . , no principle whatever. Rigby and Sandwich wanted public money, and thought that they should fetch a higher price jointly than singly.²

- 1 The stress on the independence of the M.P. seems to be directly related to the ancient view of the Commons as a check on misgovernment. If the Commons is to fulfill this function, the majority of its members can hardly be viewed as pledged to support the government 'come hell or high water'. The only intermediary position which can be taken up with any semblance of consistency is that which was current in the nineteenth century in which the majority is regarded as pre-disposed but not pledged to support the administration. In our own day we seem to have made a new theoretical jump (first suggested by Bagehot though not in a fully developed form) by associating the 'governing' function of the Commons with the majority and the 'checking' function with her Majesty's loyal opposition. On this point see Sir Ivor Jennings' Cabinet Government, third edition, (Cambridge, 1961), pp. 472-489.
- 2 The Earl of Chatham, (1844) Essays, 6, pp. 73-74. It is worth noting in passing, that Macaulay, while recognizing the necessity of party conflict, came very close to suggesting that it must be kept within bounds; that the efficient functioning of the system is dependent on a basic 'agreement to disagree' and a willingness to abide by the rules of the game. Referring to the cooling of political passions in the first half of the eighteenth century, which manifested itself in the 'moderation' which attended Walpole's fall, he writes: "And from that time it has been the practice, a practice not strictly according to the theory of our Constitution, but still most salutary, to consider the loss of office, . . . as punishments sufficient for errors in the administration not imputable to corruption. Nothing, we believe, has contributed more than this lenity to raise the character of public men. Ambition is of itself a game sufficiently hazardous . . . without adding property, life, and liberty to the stake."
(Essay on Hallam, op. cit. p. 926).

Cabinet and civil service

Macaulay recognized that a non-partisan civil service occupied an important place in a 'system of parliamentary government'. He found the origin of the civil service in the exclusion of 'subordinate functionaries' from the House of Commons. In his eyes the service not only provided the reservoir of information on which the policy makers could base their decisions, and the means by which these decisions could be implemented, but served as an instructor for new ministers. In reference to the attempted exclusion (in 1692) of 'subordinate functionaries' from Parliament, he writes:

They are now excluded; and the consequence is that the state possesses a valuable body of servants who remain unchanged while cabinet after cabinet is formed and dissolved, who instruct minister after minister in his duties, and with whom it is the most sacred point of honor to give true information, sincere advice, and strenuous assistance to their superior for the time being. ¹

Perhaps the most important function which Macaulay believed the civil service fulfilled was the provision of coherence in government. Because of it, the daily activity of government could go on undisturbed amid the ebb and flow of party politics.

To the experience, the ability, and the fidelity of this class of men is to be attributed the care and safety with which the direction of affairs has been many times, within our memory, transferred from Tories to Whigs and from Whigs to Tories. But no such class would have existed if persons who received salaries from the Crown had been suffered to sit without restriction in the House of Commons. ²

1 History Of England, IV, p. 446.

2 ibid. p. 446-47.

D Macaulay, Burke, and Present Discontents

An entire chapter might be devoted to tracing the influence of Burke's thought on Macaulay; some indications already have been given. What is apparent is that there was a definite influence exerted. Traces of it may be found ranging from the margin notations which Macaulay appended to his readings,¹ to a striking similarity which appears when Burke's interpretation of the differences between the English and the French revolutions is compared to Macaulay's evaluation of the differences between the English civil war and the 1789 revolution.² This section, however, will deal only with the influence which Present Discontents, the primary source of Burke's thoughts on the cabinet, may have exerted on Macaulay.

Evidently, from quite an early date, Macaulay was familiar with Burke's pamphlet. In the former's 1828 Essay on Hallam, he writes:

How soon faction again began to ferment is well known. In the Letters of Junius, in Burke's Thoughts on the Cause of the Discontents, (sic) and in many other writings of less merit, the violent

- 1 Arthur Bryant writes of Macaulay: "And if he had strong dislikes, he at least knew what he liked and never failed to praise it. 'Admirable — the greatest man since Milton,' he notes, after re-reading Burke." (Macaulay, p. 141)
- 2 "The civil war in England had been undertaken to defend and restore, the republicans of France set themselves to destroy. In England, the principles of the common law had never been disturbed, and most even of its forms had been held sacred. In France, the law and the ministers had been swept away together." (Essay on Hallam, p. 911).

dissentions which speedily convulsed the country are imputed to the system of favouritism which George III introduced, to the influence of Bute, or to the profligacy of those who called themselves the King's friends. ¹

He disagreed however, with the central point of Burke's analysis.

Macaulay believed that Burke had been too intimately bound up in the situation to analyze it adequately.

In the political as in the natural body, a sensation is often referred to a part widely different from that in which it really resides. A man whose leg is cut off fancies that he feels a pain in his toe. And in the same manner the people . . . sincerely attributed their discontent to grievances which had been effectually lopped off. They imagined that the prerogative was too strong for the Constitution, that the principles of the Revolution were abandoned, Every impartial man must now acknowledge that these charges were groundless.

1 Essay on Hallam, p.928.

2 ibid. p.929.

It should be noted that Macaulay did not disagree completely with Burke's analysis; in fact, he called upon the latter to bear witness to the validity of his own interpretation. Macaulay, fighting the battle which was to culminate in the 1832 Reform Act, believed that the real cause of those 'past discontents' had been the system of representation which had allowed the Commons to become almost independent of the people. By inference the discord of the eighteenth century became an argument for electoral reform in the nineteenth. After quoting a passage from Burke in which the latter had protested the court's attempt to separate the Commons from its constituents, he writes:

"These sentences contain, in fact, the whole explanation of the mystery. The conflict of the seventeenth century was maintained by the Parliament against the Crown. The conflict which commenced in the middle of the eighteenth century, which still remains undecided, and in which our children and our grandchildren will probably be called to act or to suffer, is between a large portion of the people on the one side, and the Crown and the Parliament united on the other." (loc. cit.).

By 1844 however, Macaulay had revised his interpretation .

Burke, far from suffering from an imaginary sore toe, had become the master diagnostician. Referring to the 'king's men' at the time of the first Rockingham ministry, Macaulay writes :

The character of this faction has been drawn by Burke with even more than his usual force and vivacity. Those who know how strongly, through his whole life, his judgment was biassed by his passions, may not unnaturally suspect that he has left us rather a caricature than a likeness; and yet there is scarcely, in the whole portrait, a single touch of which the fidelity is not proved by facts of unquestionable authenticity. ¹

He accepted the analysis contained in Present Discontents with but one alteration. Unlike Burke, Macaulay did not feel bound to maintain the facade of George III's 'innocence'. In Macaulay's eyes the 'patriot king' had been the real leader of the faction which had borne his name.

The King, in 1765, was no longer the ignorant and inexperienced boy who had, in 1760, been managed by his mother and his Groom of the Stole He had very decided opinions both of men and things. Nothing could be more natural than that he should have high notions of his own prerogatives, should be impatient of opposition, and should wish all public men to be . . . dependent on himself alone; ²

1 The Earl of Chatham, Essays, vol.6, p. 79.

2 ibid. p. 80.

In contrast, not to say opposition, to his 1828 interpretation he suggested that it had been George III's attempt to re-establish personal rule which brought into existence the 'king's men' :

Nor could anything be more natural than that . . . he should find instruments fit for his purposes.

Thus sprang into existence . . . a reptile species of politicians never before and never since known. . . . These men disclaimed all political ties, except those which bound them to the throne. They were willing to coalesce with any party, to abandon any party, to undermine any party, to assault any party at a moment's notice. To them, all administrations, and all oppositions were the same.¹

In these lines Macaulay has deliberately recast Burke's attack on the 'king's men'.

There is no evidence that Macaulay ever again altered his acceptance of the views presented in Present Discontents. On the contrary, in an 1859 article his interpretation of the early years of George III's reign, though not his interpretation of the personality of the monarch, seems to bear traces of Burke's analysis:

Grenville, Rockingham, Chatham, . . . agreed in thinking that the Prince . . . was one of the most insincere of mankind. His confidence

1 The Earl of Chatham, Essays, 6, p. 80.

was reposed, they said . . . in secret advisers who stole up the back stairs into his closet. In parliament, his ministers . . . were perpetually, at his instigation, assailed on the flank or in the rear by a vile band of mercenaries who called themselves his friends.

Thus, there can be little doubt that Burke's great pamphlet, a milestone in the development of his own constitutional thought, exerted a significant influence on the nineteenth century Whig historian.

2 William Pitt, (1859) Miscellanies, II, pp. 133-34.

V

WALTER BAGEHOT, 1826 - 1877

Never to allow gradually the traffic to smother
With noise and fog the flowering of the spirit.

(Stephen Spender I Think Continually of
Those Who Were Truly Great.)

A Introduction

Walter Bagehot is usually credited with having formulated¹ the 'classic' concept of the cabinet. With his sense of the ironic he probably would have found such a description amusing; his estimation of it was considerably more modest. In his eyes, it was essentially a description of the workings of the ever changing constitution as it had functioned as a specified point in time; "it describes the English Constitution as it stood in the years 1865 and 1866. . . and since that time there have been many changes, some of spirit and some of detail."²

1 The date usually assigned to the emergence of his concept is 1865, the year in which what was to be the first chapter of The English Constitution appeared as an essay in the Economist, or 1867, the publication date of The English Constitution. Earlier traces of his interpretation may be found in his 1852 Letters On The French Coup d'Etat Of 1851 especially Letters V and VII; Intellectual Conservatism, 1856; The Character of Sir Robert Peel, 1856; and The American Constitution at the Present Crisis. Causes of the Civil War in America, 1861.

2 Introduction to the Second Edition of The English Constitution, 1872, The Works and Life of Walter Bagehot, Barrington edition, (London, 1918) vol. V, p.116. All future references to the Works will be to this edition.

In spite of Bagehot's own words, however, to discuss his analysis of the cabinet in such a manner as to suggest that it was merely the description of an institution would be inaccurate. There are, in fact, three aspects of Bagehot's thought which are worthy of mention: first, his thought contains a description of the functioning of cabinet government as he saw it institutionalized in the British system; secondly, it possesses an insight-laden interpretation of the social bases of government,¹ specifically British government; thirdly, there is an aspect of his thought which can best be described as proselytical. Bagehot not only described the cabinet as he believed it to operate but pronounced the system of which it forms the mainspring, good.

The focus of this paper is on the first aspect. Some attempt however, will be made to deal, at least superficially, with the latter two.

B The Cabinet

The British cabinet system: one solution

Though Bagehot - "was too good an essayist"² ever to deal formally with such pompous terms he seems to have regarded 'society' and

1 "To treat The English Constitution as a guidebook to the workings of the constitution is to miss the most original and valuable aspect of it, namely Bagehot's description of the social structure and climate which produced the constitutional system of Victoria's day and enabled it to function." (Alastair Buchan, The Spare Chancellor the Life of Walter Bagehot, (London, 1959), p. 160).

2 Crane Brinton, English Political Thought in the 19th Century, (New York, 1962), p. 181.

'government' as the necessary consequents of the 'human condition'. Society is so primary a need that "the first duty of society is the preservation of society."¹ Fortunately it has already been brought into existence;"by the sound work of old-fashioned generations - by the singular painstaking of the slumberers in churchyards - by dull care - by stupid industry, a certain social fabric somehow exists;"²

The means by which the continuous preservation of society is accomplished is government. The form of the latter is very definitely subordinate to its function; in fact, in cases of extreme danger, almost any type of government will suffice: "to keep up this system we must sacrifice everything. Parliament, liberty, leading articles, essays, eloquence, - all are good, but they are secondary; at all hazards, and if we can, mankind must be kept alive."³

One of the primary problems of government, to which the British system of cabinet government provides one solution, is the acquisition and exercise of power. As a nation in which the social fabric is established, the two facets of the problem are resolved by, respectively, the dignified and the efficient branches of government.

1 Letters on The French Coup d'Etat of 1851, Letter II, The Morality of the Coup d'Etat, Works I, p. 84.

2 loc. cit.

3 loc. cit.

The dignified parts of Government are those which bring it force - which attract its motive power. The efficient parts only employ that power. The comely parts of a Government may not do anything definite that a simpler polity would not do better; but they are the preliminaries, the needful prerequisites of all work. They raise the army, though they do not win the battle.¹

The dignified elements are able to perform this function of attracting recognition as the embodiments of authority because they appeal to the emotions, the sentiments, rather than to the reason, the intellect, of men; and in the vast majority of men it is easier to stimulate the former than the latter.

It is very natural, therefore, that the most useful parts of the structure of government should by no means be those which excite the most reverence. The elements which excite the most easy reverence will be the theatrical elements - those which appeal to the senses, which claim to be embodiments of far more than human origin.²

The predominantly dignified elements of the British system are, of course, the monarchy and the House of Lords. The predominantly efficient branches are the cabinet and the lower house.

1 The English Constitution, Works, V, p.162.

It is worth noting that Bagehot did not restrict the application of this analytical framework to Britain. He applied it (though he had much less justification for so doing) to federal government, specifically to that of the United States.

"All Federal Government is, in truth, a case in which what I have called the dignified elements of government do not coincide with the serviceable elements. At the beginning of every league the separate States are the old Governments which attract and keep the love and loyalty of the people; the Federal Government is a useful thing, but new and unattractive. It must concede much to the State Governments, for it is indebted to them for motive power: they are the Governments which the people voluntarily obey." (*ibid.* p.316).

2 *ibid.* p.164.

The cabinet : description

Bagehot, like Macaulay, sees the cabinet as essentially the managing committee of the Commons. It is that body in whose hands the virtual sovereign has placed, with several reservations, the day to day direction of its activities.

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers The connecting link is the Cabinet. By that new word we mean a committee of the legislative body selected to be the executive body.¹

Or, very briefly, the cabinet is ". . . a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation."²

The dominant position of the prime minister within the cabinet is clearly recognized. First, Bagehot refers to him as the British 'first magistrate' and implies that the power he wields is comparable to that which resides in the American Presidency; " we have in England an elective first magistrate as truly as the Americans have an elective first magistrate."³ Secondly, within fixed limits the prime minister is seen as possessing the right to choose his cabinet colleagues. Referring to the prime minister he writes :

1 The English Constitution, Works, V, p. 166.

2 ibid. p. 168.

3 ibid. p. 167.

The leading Minister so selected has to choose his associates, but he only chooses among a charmed circle. The position of most men in Parliament forbids their being invited to the Cabinet; the position of a few men ensures their being invited.¹

Thirdly, it is the premier, and not necessarily the majority of his colleagues, who ultimately exercises the Crown's right to dissolve Parliament; "the Queen can hardly now refuse a defeated Minister the chance of a dissolution, any more than she can dissolve in the time of an undefeated one, and without his consent."²

The cabinet and the House of Commons

With several important reservations Bagehot sees the relationship existing between the cabinet and the Commons as analogous to that which is to be found between the board of managers of an enterprise and its owners. The former can, within broad limits, direct the activities of the enterprise with the proviso that they consider themselves continuously accountable to the owners.

Of the five functions³ which he attributes to the House of Commons, the dominant branch of the legislature, the 'elective' occupies the central position; "the legislature chosen, in name, to make laws, in fact finds its principal business in making and

1 The English Constitution, Works, V, p. 167.

2 ibid. p. 331.

3 To elect the nation's rulers; to express the mind of the English people; to inform the Crown of grievances and complaints; to teach; to legislate.

...keeping an executive."¹ The term 'elective' is used in a very broad sense. The lower house does not formally elect the cabinet but rather predetermines to a greater or lesser degree, its selection. Referring to the Commons, Bagehot writes : "it chooses for this, its main committee, the men in whom it has most [sic] confidence. It does not . . . choose them directly; but it is nearly omnipotent in choosing them indirectly."²

Yet if the influence of the Commons is 'nearly omnipotent' in the selection of cabinet ministers, its influence in the selection of the prime minister lies somewhere in that slight but brilliant area between 'nearly omnipotent' and 'omnipotent'. As one ascends to the pinnacle of power the voice of the lower house becomes louder and more insistent.

But, as a rule, the nominal Prime Minister is chosen by the legislature, and the real Prime Minister for most purposes - the leader of the House of Commons - almost without exception is so. There is nearly always some one man plainly selected by the voice of the predominant party in the predominant house of the legislature to head that party, and consequently to rule the nation.³

The relationship which exists between an established cabinet and the lower house is at least as intimate as that linking the nascent

1 The English Constitution, Works, V, p. 167.
Elsewhere he writes: "The main function of the House of Commons is one which we know quite well, though our common constitutional speech does not recognize it. The House of Commons is an electoral chamber; it is the assembly which chooses our president." (The English Constitution, p. 251).

2 ibid. p. 166.

3 ibid. p. 167.

cabinet and the Commons. The latter not only 'elects' the prime minister and his associates but maintains them in power and, if need be, and subject to a final plea which the ministry can lodge with the electorate, dismisses them.

It is because of the continuous nature of the Commons' elective function that it differs in this respect from the American Electoral College. The Commons "does not, like the Electoral College . . . separate when it has elected its ruler; it watches, legislates, seats and unseats ministries, from day to day. Accordingly it is a real electoral body."¹

Apart from the continuous quality of the Commons' power to 'seat and unseat ministries' it has three other characteristics. It is proximate, dangerous, and passive.

The Commons' power of dismissal is proximate in that the ministry can appeal the former's verdict:

But a Cabinet . . . is a committee with a power which no assembly would - unless for historical accidents and after happy experience - have been persuaded to entrust to any committee. ~~But~~ it can dissolve the assembly which appointed it; it is a committee with a suspensive veto - Though appointed by one Parliament, it can appeal if it chooses to the next.²

It is dangerous insofar as those who would dismiss the ministry may, after the electorate has decided, find themselves dismissed.

'Judge not (rashly) lest ye be judged'.

Further, the Commons' power of dismissal is, in a sense, passive in that, like all restraints, it is exercised in reaction. In most cases it does not direct the ministry to formulate a specific

1 The English Constitution, Works, V, p. 176.

2 ibid. p. 169

policy, though it may dictate that plan 'X' is unacceptable. In a word, the power of dismissal sets the broad bounds within which the ministry may operate.

Within these borders, the opinion of the Commons, or more precisely, the *ministers'* opinion of the opinion of the Commons, will influence, will at times determine, what action is to be taken. Ordinarily, however, the initiative lies with the cabinet. Of the relationship between the prime minister and the Commons, Bagehot writes:

They guide him and he leads them. He is to them what they are to the nation. He only goes where he believes they will go after him. But he has to take the lead; he must choose his direction, and begin the journey.¹

This role as the initiator of the activities of the House is not restricted to the prime minister. As a 'managing committee', the cabinet as an entity must do just that. Referring to the Commons, he writes:

The task of managing it (the Commons) falls upon the Cabinet Every member of the Cabinet in the Commons has to 'attend the House'; to contribute by his votes, if not by his voice, to the management of the House. . . .²

The function of the ministry as 'manager of the House' is highlighted in Bagehot's treatment of the financial responsibility of the cabinet.

1 The English Constitution, Works, V. p. 252.

2 ibid. pp. 249 - 50.

Bagehot argued that the initiative in financial matters must rest with the ministry for two reasons. First, the changed nature of the lower house demanded it :

The House of Commons - now that it is the true sovereign, and appoints the real executive - has long ceased to be the checking, sparing, economical body it once was. It is now ¹more apt to spend money than the Minister of the day.¹

Consequently some form of restraint is necessary if the Commons (or portions thereof) is to be prevented from buying the favour of the electorate through useless expenditures; "that check is the responsibility of the Cabinet for the national finance. If any one could propose a tax, they might let the House spend it as it would, and wash their hands of the matter;" ² Secondly, the control of financial matters by the cabinet, and its consequent responsibility are implied, in the British context, by the very fact that it is the executive:

In truth, when a Cabinet is made the sole executive, it follows it must have sole^h financial charge, for all action costs money, all policy depends on money, and it is in adjusting the relative goodness of action and policies that the executive is employed. ³

Before leaving this section it is worth noting how the emphasis of Bagehot's thought differs from that of Macaulay.

In the latter's view, the cabinet was largely the projection of the

1 The English Constitution, Works, V. p. 255.

2 ibid. p. 256.

3 loc. cit.

dominance of the Commons. He believed that the lower house had become after 1688 the real locus of power in the state. After that date the legislature had, in a sense, engulfed the executive. A cabinet was necessary because an assembly of several hundred was incapable of carrying out the day to day activities of government. Ultimately, however, the ruler was considered to be the Commons.

In Bagehot's thought, the initiative is clearly passing to the cabinet. It is now the tail which wags the dog. In a sense, the virtual sovereign, - the Commons, is becoming the formal sovereign, without ever having been legally recognized in either capacity.

The cabinet and the House of Lords.

Bagehot interpreted the relationship of the cabinet to the Lords in the light of his belief that the nature of the position which the House of Lords occupied within the British constitution was predominantly dignified rather than efficient. As mentioned earlier he saw the function of the dignified elements as enlisting authority rather than exercising power. Consequently, now that a system of government is established, the House of Lords is seen as belonging to those branches which are somewhat peripheral to the day to day activities of the governors.

While the support of the Lords is useful to the cabinet it is not strictly vital. A ministry can and will function without it.

And in no case has an adverse vote by the Lords the same decisive effect as a vote of the Commons; the Lower House is the ruling and the choosing House, and if a Government really possesses that, it thoroughly possesses nine-tenths of what it requires. The support of the Lords is an aid and a luxury; that of the Commons is a strict and indispensable necessary.¹

The domination of the House of Lords was achieved, he believed, by what he refers to as the 'safety valve'; that is, the executive's power to create new peers.

The head of the executive can overcome the resistance of the second chamber by choosing new members . . . if he do not [sic] find a majority, he can make a majority. It enables the popular will - the will of which the executive is the exponent, the will of which it is the appointee - to carry out within the Constitution desires and conceptions which one branch of the Constitution dislikes and resists.²

Because the means by which the cabinet can ultimately

1 Introduction to the Second Edition, Works, V, pp.157-58.

2 The English Constitution, Works, V, p.522.
Bagehot believed that there were two modes of exercising this power. First, the ordinary filling of such vacancies as naturally occur. Through this technique the prime minister can, if he retains power long enough, gradually alter the composition of the upper house in such a manner as to render improbable the occurrence of a clash between the cabinet and the Lords. The second mode is the mass creation of peers for the sole purpose of overcoming the resistance of the upper house. He hesitates to assign completely this power to the cabinet or its leader. In contrast to the first method: "the catastrophic creation of peers for the purpose of swamping the Upper House is utterly different. If an able and impartial exterior king is at hand, this power is best in that king. It is a power only to be used on great occasions, when the object is immense, and the party strife unmitigated." (*ibid.* p.353)

He leaves little doubt however, that if the object is sufficiently 'immense', (as the 1832 Reform Bill had been) and the efficient branches are sufficiently firm, the will of the cabinet must ultimately prevail.

enforce its will is so 'catastrophic', and is not totally within the grasp of the ministry, he believed that the peers could, paradoxically, afford to demonstrate some degree of independence in minor matters. It is however the independence of weakness rather than of strength. Yet in spite of its contingent nature Bagehot saw this power as useful in that it could be used to prevent minor abuses of power. Referring to the possibility of the cabinet imposing 'minor measures on the nation which the nation did not like' he writes:

If, therefore, a tribunal of revision can be found in which the executive, though powerful, is less powerful, the Government will be the better; the retarding chamber will impede minor instances of Parliamentary tyranny, though it will not prevent or much impede revolution.¹

A further aspect of the cabinet - upper house relationship which demonstrates the peripheral quality of the Lords' relations with the actual governors is the role of the peers in the composition of the cabinet. Bagehot sees the presence of peers in the cabinet, like the ability of the latter to rely on a majority in the upper chamber, as useful though secondary. The primary raison d'être for the presence of the peers, apart from the social status which they possess, is that their parent chamber provides a platform from which the cabinet

1 The English Constitution, Works, V. p. 236.

as an entity may expound its views and programs.

It is all but necessary that certain members of the Cabinet should be exempt from its toil. . . . But it is also necessary that they should have the power of explaining their views to the nation; of being heard as other people are heard....The House of Lords,. . . attains this object; it gives them a voice, it gives them . . . position. The leisured members of the Cabinet speak in the Lords with authority and power .¹

The cabinet and the monarchy

Before sketching Bagehot's view of the relationship between the cabinet and the monarchy, some attempt must be made to clarify just what his thoughts were on the latter. This is necessary for two reasons. First, because of Bagehot's writing style, his love for a nice turn of phrase, his desire to interest as well as instruct, he often, perhaps too often, summarized his thoughts in a stylistically pleasing manner² which however precluded those finer shadings and important reservations which, if one reads carefully enough, are to be found in his works.

Secondly, the author of what is perhaps the standard work on the British cabinet, Sir Ivor Jennings, suggests that Bagehot's interpretation of the monarchy was erroneous: "most writers have been led astray on the subject of the monarchy, for instance, by Bagehot's exposition. The material now available makes it

1 The English Constitution, Works, V, p.250.

2 Very often the paragraph "To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights - the right to be consulted, the right to encourage, the right to warn. And a king of great sense and sagacity would want no others." (*ibid.* p.212). seems to be taken to be the sum and total of Bagehot's thoughts on the monarchy.

evident that Bagehot's analysis was in many respects faulty."¹ Consequently Bagehot's thoughts on the monarchy will be treated in some detail because there is some doubt as to what they actually were, and because they necessarily influence his interpretation of the relationship of the cabinet to the monarchy.

If Professor Jennings is suggesting that (a) Bagehot was unaware that the sovereign 'may have considerable influence' on the decisions of the government, and/or (b) that the view of the monarchy quoted in the footnote closely resembles that of Bagehot, then, with all due respect for Professor Jennings' many attainments, it must be maintained that a close reading of Bagehot's works suggests that Sir Ivor's interpretation is not wholly adequate.

Bagehot could not have been unaware of the influence which a monarch may wield, though for obvious reasons he could not have known

1 Sir Ivor Jennings, Cabinet Government, third edition, (Cambridge, 1961), p. 10. This point is later expanded: "It would be wrong, however, to underestimate the influence of the monarch in British politics. The documents now available show that the Whig view of the monarchy (footnote) which prevailed in the middle of the last century and which was expounded by Bagehot was not wholly in accordance with the facts. The Sovereign must, in the last resort, accept the decision of the Government, but he may have considerable influence on those decisions." (*ibid.* p. 328). The footnote reads:

"In a pamphlet published by 'Verax' in 1878 - a document which had a certain success in its day - it was said: 'The Crown we only know as the ceremonial device on the Great Seal by which the nation's resolves are determined, and the moment we are forced to know it in any other capacity danger commences for one party, though hardly for both': quoted, Quarterly Review, CLVIII, p.28." (*loc. cit.*)

the full extent of Victoria's participation in politics, or he would not have written:

On the duties of the Queen during an administration we have an invaluable fragment from her own hand. In 1851 Louis Napoleon had his coup d'état: in 1852 Lord John Russell had his —he expelled Lord Palmerston. By a most instructive breach of etiquette he read in the House a royal memorandum on the duties of his rival. It is as follows:

'The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in ^{his} case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure that it be not arbitrarily altered or modified by the Minister. Such an act she must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that Minister. She expects to be kept informed of what passes between him and Foreign Ministers before important decisions are taken based upon that intercourse; to receive the foreign despatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off.'

In addition to the control over particular Ministers, and especially over the Foreign Minister, the Queen has a certain control over the Cabinet. The first Minister, . . . transmits to her authentic information of all the most important decisions, together with, . . . the more important votes in Parliament. He is bound to take care that she knows everything . . . as to the passing politics of the nation. She has by rigid usage a right to complain if she does not know of every great act of her Ministry, not only before it is done, but while there is yet time ¹ to consider it —while it is still possible that it may not be done.

1 The English Constitution, Works, V, pp.211-12.

Bagehot goes on to suggest that the monarch's length of 'tenure' may be translated into political influence: "in the course of a long reign a sagacious king would acquire an experience with which few Ministers could contend." (*ibid.* p.212). He explains: "the king would indeed have the advantage which a permanent under-secretary has over his superior the Parliamentary secretary —that of having shared in the proceedings of the previous Parliamentary secretaries." (*ibid.* p.212). Moreover the social status of the king may give him a peculiar advantage: "No doubt a Parliamentary secretary always can, and sometimes does, silence his subordinate by the tacit might of his superior dignity But . . . he cannot so deal with his king. The social force of admitted

Nor could have Bagehot have envisaged the sovereign as the cipher suggested by the 'Verax' quotation or he would not have written: "the benefits of a good monarch are almost invaluable, but the evils of a bad monarch are almost irreparable."¹ He was aware that the prerogative powers of the sovereign, though weaker in comparison with those which had been exercised in the eighteenth century, were still extensive. In his 1872 Introduction to the Second Edition he writes:

I said in this book that it would very much surprise people if they were only told how many things the Queen could do without consulting Parliament, and it certainly has so proved, for when the Queen abolished Purchase in the Army by an act of prerogative (after the Lords had rejected the bill for doing so), there was great and general astonishment.

But this is nothing to what the Queen can by law do without consulting Parliament.²

superiority . . . now not with him but against him. He has no longer to regard the deferential hints of an acknowledged inferior, but to answer the arguments of a superior . . ."
(ibid. p. 213).

Bagehot suggests not only that this may occur but that it has occurred :

"But even under our present Constitution a monarch like George III., with high abilities, would possess the greatest influence. It is known to all Europe that in Belgium King Leopold has exercised immense power by the use of such means. . . .

It is known too, . . . that Prince Albert really did gain great power in precisely the same way. . . . If his life had been prolonged twenty years, his name would have been known to Europe as that of Leopold is known." (ibid. p. 214).

1. ibid. p. 221.

2. Introduction to the Second Edition, Works, V, p.136.
The passages which indicate Bagehot's awareness that the monarch may possess substantial influence have been drawn exclusively from The English Constitution and its 1872 Introduction for these are the works in which it may be said Bagehot 'expounded' his concept of the monarchy. Traces of the same idea may however be found in The Prince Consort (1861) and The Prince Consort and Lord Palmerston (1876).

And yet the usual interpretation of Bagehot's concept of the monarchy is one in which the 'sovereign' has become totally emmeshed in the web of parliamentary usage and convention.

Enter now the 'prosyletical' aspect of Bagehot's thought. It is suggested that in discussing the British monarchy Bagehot was trying to do three things; describe, on the basis of such information as he possessed, its actual position; project a view of the ideal constitutional monarch; and at the same time assert that the whole institution is basically peripheral to cabinet government per se. In asserting the latter he continually approaches the equating of the established with the ideal. It is hardly surprising that the result is somewhat confused.

The English Constitution is in many respects a tract designed to convert the uncommitted to the British system of responsible government. Underlying much of the discussion is a plea to those new states capable of self government (primarily the evolving British colonies) to adopt the British system in essence if not in form.

Bagehot saw four approximate types of states: "there are but four important forms of government in the present state of the world — the Parliamentary, the Presidential, the Hereditary, and the Dictatorial, or Revolutionary."¹ In his view only the former two were acceptable forms of government for those emerging states

1 The English Constitution. Works, V, p.302

which possessed a level of 'civilization' roughly on a par with that which the western Europeans enjoyed, and of those two he believed the Presidential to be much inferior to the Parliamentary form. On the question of the 'portability' of the British system he writes:

A new country, if it is to be capable of a Cabinet government, if it is not to degrade itself to Presidential government, must create that Cabinet out of its native resources — must not rely on these Old World débris.¹

As a consequence much of his analysis is devoted to delineating in all their simplicity those elements which he considered to be the essentials of the system :

Let us strip Cabinet government of all its accessories, let us reduce it to its two necessary constituents — a representative assembly (a House of Commons) and a Cabinet appointed by that assembly — A great many people will imagine it to be impossible that a nation should thrive or even live with only these two simple elements. But it is upon that possibility that the general imitability of the English Government depends.²

Ultimately Bagehot concluded that the system was susceptible to imitation :

If hereditary royalty had been essential to Parliamentary government, we might well have despaired of that government. But accurate investigation shows that this royalty is not essential; that, upon an average, it is not even in a high degree useful. . . . We happily find that a new country need not fall back into the fatal division of powers incidental to a Presidential government; it may, if other conditions serve, obtain the ready, well-placed, identical sort of sovereignty which belongs to the English Constitution,³ under the unroyal form of Parliamentary government.

1 The English Constitution, Works, V. pp. 202-03.
It should be borne in mind that the American Civil War had deeply influenced his evaluation of Presidential government. In his eyes it had been a contributory cause of the struggle.

2 ibid. p.202.

3 ibid. pp.338-39.

His desire to vanquish the spectre of presidential government as it had been realized in the United States, appears to have led him, at times, to emphasize the power of the cabinet to the detriment of that power which, some of his statements suggest, he believed the sovereign to possess, yet even when he was most involved in putting the best face on cabinet government he never denied that the British monarch, as distinct from the generic parliamentary monarch, was a politically significant figure.

In addition to the influence he may exert through his experience and social status, Bagehot's British monarch is envisaged as playing a potentially important role in the formation of a cabinet. Normally he will not have much scope to exercise his initiative, usually there will be a recognized leader of the dominant party in the Commons whose claim to power is almost irresistible. There are, however, exceptional cases : "Bagehot recognized two situations where the Crown had a personal choice of Prime Minister, first where no one party commanded a clear majority, and secondly where the majority party possessed no recognized leader."¹ In reference to the first case Bagehot writes:

If the sovereign has a genius for discernment, the aid which he can give at such a crisis will be great. He will select for his Minister, the statesman upon whom the moderate party will ultimately fix their choice,² but for for whom at the outset it is blindly searching;

1 Norman St. John-Stevs, Walter Bagehot A Study of his Life and thought together with a selection from his political writings, (London, 1959), p. 70.

2 The English Constitution, Works V, p. 208.

Of the latter case, when the majority party has no recognized leader, the behaviour of his ideal monarch would be as follows:

If the constitutional monarch be a man of singular discernment, of unprejudiced disposition, and great political knowledge, he may pick out from the ranks of the divided party its very best leader, even at a time when the party, if left to itself, would not nominate him. ¹

However, unless the monarch possesses such 'singular discernment' as to pick the man whom the party will ultimately recognize as its leader, such an exercise of monarchical initiative would be potentially very dangerous. Bagehot believed that in the vast majority of cases the monarch would act for the best by not acting at all.

Bagehot ignores the influence which the sovereign may exercise in the selection of the prime minister's cabinet colleagues. He seems to have regarded their appointment as solely the result of the interaction of the will of the legislature and the will of the prime minister. He neither asserts nor denies that the monarch may be influential,² he simply does not appear to have considered the area.

During the life of an administration, apart from such personal influence as the sovereign may or may not possess, the relationship of the cabinet to the Crown is that of virtual governor to titular governor. Bagehot did not believe that the sovereign could, on his own initiative, refuse his assent to a bill which had

1 The English Constitution, Works, V, p. 206.

2 As Victoria certainly was. For an exposition of her activities in this area see Sir Ivor Jennings' Cabinet Government, pp.62-66.

been passed by the two houses. Referring to the old concept of the monarch as a distinct 'Estate of the Realm' he writes:

That authority could only be exercised by a monarch with a legislative veto. . . . But the Queen has no such veto. She must sign her death-warrant if the two Houses unanimously send it up to her. It is a fiction of the past to ascribe to her legislative power.¹

Perhaps the only significant area in which the monarch is seen as retaining some power is in the exercise of that instrument by which the cabinet is able to enforce its will on a recalcitrant upper house, i.e. the prerogative of creating new peers. As mentioned earlier Bagehot saw the ordinary mode of peer-creation, the filling of those vacancies created by the attrition of time, as resting in the hands of the chairman of the cabinet, the prime minister. In what he refers to as the 'catastrophic' mode, however, the monarch retains some voice in the matter. Though the cabinet can bring immense pressure to bear there is a possibility that the sovereign will be able to resist, at least temporarily. Bagehot writes of the danger of allowing this power to remain, where he obviously believed it resided in his day, in the hands of the monarch :

An ordinary hereditary sovereign - a William IV., or a George IV.- is unfit to exercise the peer-creating power when most wanted. A half-insane king, like George III., would be worse. He might use it by unaccountable impulse when not required, and refuse to use it out of sullen madness when required.²

1 The English Constitution, Works, V. p. 199.

2 ibid. p. 334.

Finally, as to the relationship of the cabinet to the monarch in obtaining a dissolution, the position of the cabinet's leader, the prime minister, is clearly paramount :

Accordingly this power has almost, if not quite, dropped out of the reality of our Constitution. Nothing, perhaps, would more surprise the English people than if the Queen by a coup d'état and on a sudden destroyed a Ministry firm in the allegiance and secure of a majority in Parliament. ¹

The cabinet and the civil service

An area of Bagehot's thought that is rarely touched upon is his perception of the intimate relationship which exists between the cabinet and the civil service. He saw the function of the individual ministers not, as Macaulay had, as the chief administrators of their respective departments, but rather as their protectors and goal-setters.

In Bagehot's eyes, the relationship of the minister to his department was by no means completely one-sided; the great government departments were not simply the passive instruments by which the sovereign committee implements its will. To a large extent the civil service was envisaged as a world unto itself which the executive controls only by means of the departmental under-secretaries, and he was fully aware of the influence which these men might wield.

To over-simplify Bagehot's view, the cabinet minister has both power and authority but his deputy minister has specialized

1 The English Constitution, Works, V. p. 329 .

knowledge and in the long run the influence of the latter may carry the day.

An Opposition, on coming into power, is often like a speculative merchant whose bills become due. Ministers have to make good their promises, and they find a difficulty in so doing. They have said the state of things is so and so, and if you give us the power we will do thus and thus. But when they come to handle the official documents, to converse with the permanent under-secretary - familiar with disagreeable facts, and though in manner most respectful, yet most imperturbable in opinion - very soon doubts intervene.¹

The deputy minister is seen as at once the link between the formulators of policy and those who implement it, the chief administrator of the department's daily business, the embodiment of the latter's traditions and interests, and the provider of continuity in the government's business. The clearest exposition of Bagehot's ideas in this area is to be found in one of his later works, Lombard Street, though traces of the same thought are present in The English Constitution. Comparing the administration of the Bank of England to that of a government department, he writes of the minister and parliamentary under-secretary of the latter :

But, in fact, they are assisted by a permanent Under-Secretary who manages the routine business, who is the depository of ~~the~~ the secrets of the office, who embodies its traditions, who is the hyphen between changing administrations. In consequence of this assistance, the continuous business of the department is, for the most part, managed sufficiently well, notwithstanding frequent changes in the heads of administration. And it is only by such assistance that such business could be so managed.²

1 The English Constitution, Works, V. p. 261.

2 Lombard Street A Description of the Money Market, Works, (1873), VI, pp. 137-38. Much the same thought is expressed in The English Constitution: "Recent experience seems, however, to show that in all great administrative departments there ought to be some one permanent responsible head through whom the changing Parliamentary chief always acts, from whom he learns everything, and to whom he communicates everything". (The English Constitution, Works, V, p. 314).

The above should not be taken to imply that Bagehot saw the deputy minister as the dominant figure. He did not envisage the minister as simply a political appointee under whom the department must try to go its own way. The minister is ultimately the head of his department. His are the power, the authority, and the major decisions.

As mentioned earlier, Bagehot saw the minister in addition to his role as a participant in the formulation of whatever national policies to which the cabinet may agree, as the protector of his department and the means by which new life is infused into the potentially moribund ways of the civil service. Of the former he writes:

The incessant tyranny of Parliament over the public offices is prevented . . . by the appointment of a Parliamentary head, connected by close ties with the present Ministry and the ruling party in Parliament. The Parliamentary head is a protecting machine, He and the friends he brings stand between the department and the busybodies and crotchets-makers of the House and the country.¹

His belief in the importance of the latter is evident from the following statement: "one of the most sure principles is, that success depends on a due mixture of special and non-special minds - of minds which attend to the means, and minds which attend to the end."² It is on these grounds that he argues that changes of administration are vital to the system and are not a manifestation of its imperfection.

As soon as we take the true view of Parliamentary office we shall perceive that, fairly, [sic] frequent change in the official is an advantage, not a mistake. If his function is to bring a representative [sic] of outside sense and outside animation in contact with the inside world, he ought often to be changed.³

1 The English Constitution, Works, V. p. 291.

2 ibid. p. 298.

3 ibid. p. 301.

The cabinet and party

If the origin of Burke's concept of the cabinet is party, and that of Macaulay's view is the dominance of the lower house, Bagehot's concept originates in a 'fusion' of the two. His cabinet is 'elected' by the Commons but the existence of parties is the presupposition on which that 'election' is based. Party, in Bagehot's thought, is central to his concept of the Commons. It is, in a sense, the Commons under one of its many aspects: "the moment, indeed, that we distinctly conceive that the House of Commons is mainly and above all things an elective assembly, we at once perceive that party is of its essence."¹

Bagehot's concept of party per se is that of the mid-nineteenth century. Naturally enough, it is much closer to Macaulay's view than to ours. Significant party activity qua party activity is seen primarily as commencing after the 'representatives of the people' have been elected; Bagehot probably would have regarded the concept of an extra-parliamentary party as anomalous.

Bagehot's 'party' is, in a sense, an intermediary² level in the transmittal of power and influence from the governed to the governors and in the transmittal of decisions from the latter to the former. It is however, more than simply a 'check point'. Because

1 The English Constitution, Works, V, p.259.

2 In an ascending scale 'party' would be the third level. The electorate (which even after 1867 was less than ten percent of the total population) would be the second.

his 'party' is an association of teachers, as well as politicians, in transmitting influence from below. the latter is refined and transmuted, while the decisions from above. which it passes on. are popularized and disseminated.

Party is envisaged as serving a similar function in the election of the executive; the cabinet is the selection of the select. Bagehot writes of the manner in which the prime minister, the British 'first magistrate', is chosen as a method of 'double election': " he is not elected directly by the people; he is elected by the representatives of the people. He is an example of 'double election'."¹

As party is, in his mind, an aspect of the Commons, the continuous dependence of a ministry on the latter implies its (or at least its chairman's) continuous dependence on the former :

Ordinarily a Parliamentary Premier cannot choose; he is brought in by a party; he is maintained in office by a party; and that party requires that as they aid him, he shall aid them; that as they give him the very best thing ² in the State, he shall give them the very next best things.

Because of this dependence of the ministry on the party, he saw British parties as imparting their own particular characteristics to government. Because English parties are moderate, English cabinets are moderate; indeed, the efficient functioning of cabinet government is premised on the moderation of parties :

1 The English Constitution, Works, V. p. 167.

2 Introduction to the Second Edition, Works, V. pp. 148-49.

Of all modes of enforcing moderation on a party, the best is to contrive that the members of that party shall be intrinsically moderate, careful, and almost shrinking men; and the next best to contrive that the leaders of that party, who have protested most in its behalf, shall be placed in the closest contact with the actual world. Our English system contains both contrivances; it makes party government permanent and possible in the sole way in which it can be so, by making it mild.¹

English government is good because it is government by party; but it is 'party' stopped well short of its logical extreme. English government is good because its rulers, its cabinets, the most select of all select committees, are composed of moderate men. This in turn is both a manifestation and a contributory cause of the moderation of its parties, the components of its sovereign assembly.

There are some indications that Bagehot was aware that the elegant, intricate, articulated structure of cabinet government was in danger of being 'short-circuited' by the growing power of the cabinet's chairman, the prime minister. As Bagehot has been criticized on precisely this point, this aspect of his thought demands some investigation.

It has been contended that his interpretation of the method by which the prime minister is selected as one of 'double election' was, at best, doubtful even in his own time; that in asserting that the premier was the choice of the British 'electoral college', the House of Commons, he failed to perceive that the choice of the prime minister was becoming increasingly that of the electors rather than that

1 The English Constitution, Works, V. p. 262.

of the members of Parliament.¹

To speak of the choice of the prime minister having been 'removed from the Commons' is perhaps putting the case a little too strongly for it implies an almost complete lack of power on the part of the parliamentary party and this, one feels certain, Professor St John-Stevas would be the first to recognize as an over-simplification. With this reservation the criticism is valid if it is restricted to The English Constitution. It is not, however, if one attempts to apply it to the totality of Bagehot's thought.

In an 1871 article Bagehot is manifestly aware of the changing role of the prime minister and the implications which the premier's growing power has for what he had asserted to be the chief function of the House of Commons :

Mr. Gladstone's speech at Greenwich marks a new era in English politics. . . . it marks the coming of the time when it will be one of the most important qualifications of a Prime Minister to exert a direct control over the masses - when the ability to reach them, not as his views may be filtered through an intermediate class of political teachers and writers, but directly by the

- 1 N. St John-Stevas writes:
 "Government by a club was a standing wonder, only comprehensible when one realized that the principle function of the members was to elect the chief magistrate. The truth of this analysis, even in Bagehot's time, is open to doubt." (Walter Bagehot a study of his life and thought p.87)
 He goes on to explain :
 "The first Reform Act started the change, completed by the second Reform Act, by which the choice of Prime Minister was removed from the Commons, and save in rare cases from the monarch, and given to the electorate. Peel's Tamworth Manifesto of 1834 was the first recognition of the change, and Gladstone's Midlothian campaign put it beyond doubt. Indeed, after the second Reform Act, English politics became a duel between Gladstone and Disraeli, later replaced by Salisbury, each of whom competed for the country's favour." (loc.cit.).

vitality of his own mind, will give a vast advantage in the political race to any statesman.¹

Bagehot himself was rather less than pleased by this prospect presumably because he feared that it might destroy the moderation of British parties.

As far as our own tastes go, we might prefer the sort of statesman who could only reach the nation through comparatively select audiences like Parliament, whose power is reserved for the higher regions of statesmanship, and who possesses none of the notes of the great popular orator.²

He clearly recognizes, however, that in spite of his own preferences an important modification is being introduced in the relationship of the cabinet's 'chairman' to the legislature. Referring to Gladstone he writes:

He has shown once more how easily he can get the ear of the electors themselves. . . . Parliament fully appreciates this reserve power in a Prime Minister, which secures him. . . a separate and private appeal to the people - an appeal not simply through the people's representatives . . . but by direct personal influence. Parliament may not like it - may think it even a dangerous power . . . but Parliament will recognise and respect it as a new store of political force. . . .³

Bagehot may be criticized for not modifying his analysis of the relationship among the prime minister, his cabinet colleagues, and the House of Commons, in the light of what he himself recognized to be an important new factor, but the totality of his thought cannot be said to lack perception of the new element.

1 Mr. Gladstone And The People, Works, IX, p.92 .

2 loc. cit.

3 ibid. p. 93 .

C Bagehot, Burke and Macaulay

Perhaps the most interesting aspect of Bagehot's relationship to Burke is its absence in that very area in which one might reasonably expect to find an influence exerted.

Bagehot was certainly not unfamiliar with Burke's thought.

He writes of the latter, foreshadowing Morley's interpretation :

Burke first taught the world at large that politics are made of time and place - that institutions are shifting things, to be tried and adjusted to the shifting conditions of a mutable world - that, in fact, politics are but a piece of business - to be determined in every case by the exact exigencies of that case; in plain English - by sense and circumstances.¹

In spite, however, of his own interest in the cabinet and the emphasis which Burke at times gave to it, Bagehot nowhere to the best of my knowledge, indicates that he attaches any particular importance to Burke's constitutional writings.

It might be argued that Bagehot simply had not read the latter, but investigation suggests that he had some contact with them. First, the basic sources were extant. By 1854 both the Rivington and Bohm editions of Burke's works were available. There is no good reason to assume that Bagehot was unfamiliar with both. Secondly, it is evident from the quotation above that Bagehot was clearly aware of what the nineteenth century considered to be the general lines of Burke's thought. Thirdly, there are in Bagehot's works a few scattered allusions to some

1 Letters on the French Coup d'Etat of 1851, Letter III. On the New Constitution of France and the Aptitude of the French Character for National Freedom, Works, I, p. 983.

of Burke's constitutional writings. In Letter V of his Letters on the French Coup d'Etat of 1851, Bagehot may be indirectly referring to Present Discontents when he writes: "in the time of Burke, certain gentlement had the expressive nickname of the King's friends, . . ."¹ In an 1860 essay he reveals his familiarity with Burke's Speech on Economical Reform when he quotes the latter's famous passage on 'the turnspit in the king's kitchen was a member of parliament'.²

In spite, however, of what would seem to be some degree of familiarity with Burke's constitutional writings, Bagehot, writing of the framers of the American constitution as having been led astray by the political philosophy of their day, states:

At that time no speculative philosopher perfectly comprehended that the essence of the English Constitution resided in the English Cabinet; that so far from the executive power being entirely distinct from the legislative power, the primary motive force, the supreme regulator of every thing, was precisely the same in both.³

One explanation⁴ as to why Bagehot virtually ignored Burke's constitutional thought can be found in the influence which Macaulay's writings had upon the former. It would be difficult to find two more divergent personalities than the gently ironic Bagehot whose fear of passion in politics was such that it was, in his eyes, almost immoral, and the Whig historian whose attachment to his cause was so great that he interpreted the past through the prism of Whiggism, yet such was the

1 Letter on the French Coup d'Etat of 1851, Letter V On the Constitution of the Prince - President, Works, I, p. 118.

2 History of the Unreformed Parliament, And its Lessons, (1860), Works, III, pp. 261-62.

3 The American Constitution at the Present Crisis, Causes of the Civil War in America, (1861), Works, III, p. 380.

4 It should be noted that I am not suggesting here that the influence of Macaulay is the explanation; rather that it is one explanation.

status of the latter's work that Bagehot seems to have accepted Macaulay's History, and the interpretation of the origin of 'parliamentary government' it contained, almost without hesitation : "the organisation of parties and the appointment of Cabinets by parties grew up in the manner Macaulay has described so well".¹

Further, Bagehot not only accepted Macaulay's interpretation of the historical origin of cabinet government, but his interpretation of its subsequent development as well. The assumptions as to the development of parliamentary government underlying Bagehot's analysis of the eighteenth century system of influence bear a close resemblance to Macaulay's view that cabinet government emerged shortly after the 1688 revolution, operated more or less successfully under the first Hanoverians, suffered a severe setback during the greater part of the reign of George III, and re-emerged triumphant towards the end of the eighteenth century. Bagehot writes :

The theory of the machinery is that the patronage of the Crown is to be used to purchase votes. But who is to use the patronage ? The theory assumes that it is to be used by the Minister of the day. According to it, the head of the party which is predominant in Parliament is to employ the patronage . . . for the purpose of confirming that predominance. But suppose that . . . the king . . . should say, 'This patronage is mine; . . . I will myself have at least some share. . . .' George III. actually did say this He dictated who should have that, and stipulated who should not have anything. This interference of the king must evidently in theory, and did certainly in fact, destroy the efficiency of the alleged expedient.²

1 The English Constitution, Works, V. p. 361 .

2 The History of the Unreformed Parliament and Its Lessons, Works, III, p.253 .

If Bagehot's interpretation of the historic origin and subsequent growth of 'parliamentary government' is based on Macaulay's History of England, (and it seems evident that it is at least partially so based) then quite clearly those of Burke's writings in which he appealed to the 'former system' to bear witness to the malignity of the present, would not have appeared to Bagehot to bear any particular significance. The ideas which Burke struck out as to what the cabinet ought to be and how it ought to function would have appeared to Bagehot not as an advance in the theoretical formulation of responsible government, but simply as a highly emotional statement of the obvious.

VI

CONCLUSION

A Perhaps the only conclusion which this writer can suggest is that, as yet, there can be none. The very facility with which Macaulay writes of 'parliamentary government', of the continuous nature of the dependence of the cabinet on the majority party in the Commons suggests that there may have been several writers whose thoughts were influential in the period between Burke and Macaulay.

It is always possible, of course, that the cabinet had simply developed to the stage where it could be more clearly perceived. If that were the case, however, it could not have been considered as a long - established institution. Macaulay would hardly have assumed *the* dependence of the Cabinet on the Commons to be almost axiomatic had he believed that the system had only been established within the previous fifty years.

B One of the most interesting ideas which this study suggests is that there are some grounds for asserting that the traditional view that the establishment of the cabinet as a body primarily responsible to and dependent upon a House of Commons ¹

1 as distinct from a body primarily responsible to and dependent upon the monarch.

which feels itself to be, actually or virtually, responsible to the nation, preceded its theoretical formulation may, in fact, be inaccurate. There are some grounds for asserting that the cabinet did not, like Topsy, 'just grow'; that there may have been a strong normative impulse influencing its development.

Few today would maintain that the ministries of the latter half of the eighteenth century ~~possessed~~ the characteristics which Burke deemed necessary to the proper functioning of British government, i.e. political responsibility, solidarity, and the possession of the major voice in administration.¹ The direct power and indirect influence of George III, the multiplicity and fluidity of parties, the independence of the Commons from the people, and its dependence upon the favours which the administration had at its disposal, the secrecy of parliamentary proceedings, the state of representation, all militated against the establishment of what is perhaps the most important body within that system which has been described as :

. . . the temporary entrusting of great powers to a small Cabinet or body of Ministers (who are members of one or other of the Houses of Parliament) who are formally appointed to office by and dismissible by the King, but who are politically responsible to the electorate, through the House of Commons, which is periodically elected on a wide popular franchise, and who are legally responsible under the law, and who are served by a corps of permanent civil servants.²

1 Though an examination of the nature of British ministries in the first half of the eighteenth century is, properly speaking, beyond the scope of this paper, the impression gained from my readings suggests that these qualities were rarely to be found in that period.

2 S.B. Chrimes, English Constitutional History, (London, New York, Toronto, 1953) p. 10.

The significance of Burke is not that he foresaw the establishment of responsible government; he did not. He was not a prophet whose vision spanned the centuries. Nor that he argued that the state of government in his day was unsatisfactory; a great number of people had had similar feelings and had proposed various reforms. The significance of Burke is that he argued the lines along which the system was to develop, and in so doing probably contributed to that development.

In the two decades after 1770 he argued that power ought to be considered a trust; that there ought to exist an unbroken line of accountability from the subjects to the objects of power; that the chief powers of government ought to be in the hands of a group of men who could trust each other and thus act together because of the similarity of their goals and principles; who could be trusted by the House of Commons because of their belief in their responsibility to the latter body and who could be penalized by being excluded from power were they to misuse their powers; that the House of Commons ought to consider itself dependent upon the ruled rather than upon the rulers.

C Burke not only argued that the kingdom ought to be governed along these lines but suggested that at one time it had been. It was observed earlier that the historical data with which Burke justified his view of what the ministry ought to be are inaccurate.

A fascinating speculative point is the influence which the error contained in Present Discontents may have had on Macaulay.

The Whig historian saw ministerial government as dating from the reign of William III :

The first English ministry was gradually formed; nor is it possible to say quite precisely when it began to exist. But, on the whole, the date from which the era of ministries may most properly be reckoned is the date of the meeting of the Parliament after the general election of 1695.¹

A recent authority writes on this point :

William gave posts to a group of young Whig leaders known as the Junto. Macaulay has hailed this as the first example of the modern cabinet because he held that the ministry owed its position to the existence of a Whig majority in the Commons²

He however disagrees with this interpretation : " even when the government strengthened its position at the election of 1708, it would be incorrect to represent this as a party ministry."³
By 1710 Queen Anne "was able to return to a ministry chosen by herself and backed by a loyal Parliament."⁴

Some allowance must be made for Macaulay's error in that his concept of what constituted a 'party ministry' is not identical with that of Professor Mackintosh. Even with this qualification, however, it must be admitted that much of Macaulay's view is a projection into the past. Among the factors leading to this projection it is suggested that Burke's interpretation may have played

1 T.B. Macaulay, History of England, V, pp.381-82 .

2 J.P.Mackintosh The British Cabinet, p.42 .

3 ibid. p.46 .

4 loc. cit.

an important role.

It would be facile in the extreme to suggest that the influence of Burke is the cause of Macaulay's projection; the briefest glance at the depth and extent of the research involved in the History Of England is enough to dispell that idea. His obvious desire to 'dish the Tories' of his day and all their ancestors in the process, (a desire not to be put down solely to Burke's influence) probably played as important a role as any other factor in the formation of his view of cabinet government as a late seventeenth century - early eighteenth century Whig invention. What is suggested, especially in the light of Macaulay's 'conversion' to the viewpoint presented in Present Discontents is that Burke's interpretation of the system of the 'old Whigs' probably served as a contributory cause in the formulation of the origin and nature of the cabinet.

Thus it would appear that Macaulay, while perhaps preventing a direct relationship between Burke and Bagehot, probably served as the transmitter of an indirect influence. Bagehot, in following Macaulay's interpretation of the origin of cabinet government, may have been unconsciously indebted to Burke.

At the risk of grossly over-simplifying the question, it might be said of the genealogy of the cabinet, that it was conceived through error, born of desire, and christened in hope.

D An interesting feature of the development of the theory of the cabinet as it emerges from this partial survey, is that, like the actual body, it is a system hammered out, as it were, from the inside. Burke, Macaulay, Bagehot, each was to a greater or lesser extent intimately involved in the government of his day. The former two held ministerial posts, the latter was the confidant of ministers. Unlike the founders of the American system, they were not attempting to implement any particular a priori political theory.

This of course, is not to say that there were no pre-suppositions made, obviously several very strong value judgments are involved in the notion that the rulers ought to be responsible for their actions to the ruled. It is interesting to note, however, that the rationalistic, dogmatic quality sometimes associated with political theorists is notable for its absence.

E Finally, there is one other point which ought to be noted though it is, properly speaking, but partially within the scope of this paper.

Some attempt has been made in the earlier chapters to sketch the role played by the separation of powers concept in the theoretical development of the cabinet. It is suggested here that this concept may still be exerting an indirect influence on the manner in which the cabinet is conceptualized today.

Paradoxical as it may seem, the last major theorist¹ of the British cabinet to have been deeply influenced by the eighteenth century notion of a separation of powers appears to have been Walter Bagehot. Precisely because he opposed it, it is evident that the concept exerted a strong, though negative, influence upon him. One consequence to Bagehot's reaction to the separation of powers theory - his concept of a fusion of powers - has been to establish a particular context within which the cabinet is conceptualized; this context tends to highlight some aspects of the cabinet and underemphasize others.

Perhaps because the 'fusion of powers' makes such a nice contrast to the 'separation of powers', one aspect of Bagehot's thought which appears to exert a not inconsiderable influence in our time, is the view that that body in which two of the powers of government are 'fused' originates, somehow or other, in the legislature; that the cabinet is 'legislative' in origin and 'executive' in function. In a word, it still appears to be widely accepted that the cabinet is the child of the Commons.

One result of this attitude is the preoccupation sometimes manifested with what might be termed a 'formal' aspect of responsible government, the relationship of the cabinet to the Commons, and the consequent lack of attention paid to an 'informal' facet of the system,

1 That is, within the period 1765-1867.

the relationship of cabinet to party.¹

In contrast to the view suggested in an earlier chapter, that the Burkean cabinet is very largely the projection of party, the heritage of the nineteenth century appears to suggest that the cabinet is the projection of the Commons.² So strong is the influence of that heritage that very often the cabinet - Commons relationship, which has changed mightily in the last hundred years, is analyzed within what might be termed the quasi-Bagehotian context, and found wanting. Thus the often expressed fear that the cabinet has become 'too powerful'; that it has acquired the qualities of a 'dictator'; that the imbalance of power between the cabinet and the Commons is or ought to be a cause for grave concern; that by decreasing the independence of the individual member of Parliament and lessening the 'real power' of the Commons as an entity, responsible government has been, is being, or will be, destroyed.

Within the context of the quasi-Bagehotian view of responsible government there is some justification for this fear that Cronus is in danger of being expelled. If the system is seen as one in which, by and large,

- 1 It must be noted that Bagehot was fully aware of the role of party in the selection of a ministry. However, his view of the former was, naturally enough, party as it existed in his day. Unfortunately that view is no longer adequate today. If in Bagehot's time party could fairly be regarded as an aspect of the Commons, in our time it appears to be much closer to the truth to regard the Commons as an aspect of party.
- 2 This interpretation of the origin of the cabinet is at least as true of Macaulay's concept as it is of Bagehot's thought.

power moves upward from the electorate to their representatives and upward again to the 'elect' of the elected, while responsibility, or the chain of accountability, extends downward from the cabinet to the Commons and then downward again in a double line to the electorate, there are several present day facts which do not fit the theory.

Within the last century one of the major changes¹ in the system is the vast increase which has taken place in the organization and discipline of political parties. This phenomenon has had at least two major theoretical consequences in the cabinet - Commons nexus.

First, the Commons' power of 'dismissal' has become, in normal circumstances², increasingly remote. It still exists³, but its exercise has become increasingly rare. Increasingly the Commons has become, not a checking body which the ministry, on pain of dismissal, must persuade of the efficacy of its policies, but a body which formally 'ratifies' decisions which have already been taken.

Secondly, the changed nature of party has made possible the 'lateral' introduction of cabinet ministers. Occasionally a man, eminent for one reason or another, is brought into the cabinet and then found a 'safe' seat in the Commons. In a logical (though not a chronological) ordering he is first a cabinet minister and secondly a member of Parliament.

1 There are, of course, many others, ranging from the cabinet's role in the positive state, to the continuous influence of a mass electorate, but limitations of space, time, and knowledge preclude their consideration.

2 That is, those in which one party has a clear majority.

3 It should be noted though, that this power probably still plays a significant role in influencing the opinions of the ministers as to what they may or may not do.

The point which, in the light of these historical studies, seems worthy of much careful consideration, is whether or not a greater emphasis on the party origin of the cabinet, as distinct from its origin in the Commons, would not provide a mode by which a more adequate formulation of responsible government might be achieved.¹

If the cabinet is envisaged as the projection of the most powerful members of the successful party² operating within the context of parliamentary institutions rather than as the executive committee of the Commons, some of the difficulties in the quasi-Bagehotian concept may be removed.

If the chain of accountability is considered as descending through the parties rather than through the Commons, then the strengthening of the 'informal' elements of the system - the increased scope of cabinet initiative, its greater power in the House of Commons, the transformation of 'party' from a group of elected members of Parliament into a vehicle for social expression which extends from the cabinet to the electorate, the increase in party discipline, - might be interpreted as a factor working towards the improved articulation of the system of responsible government rather than as a threat to its existence.

This mode of conceptualizing the cabinet would seem to suggest that the main struggle in the day to day activities of government, insofar as there is one, is not between the cabinet and the Commons, or that part of the latter which acts as the opposition, but between the

1 It must be noted that the point under discussion is where the emphasis is to be placed. It is not a question of conceptualizing the cabinet as either originating in the Commons or originating in party. At most, the two are susceptible to but a logical division.

2 In a system in which there are but two major parties.

cabinet and the party which supports it. It suggests that the scene of the struggle is not, in most cases, the floor of the House but the floor of the caucus of the party in power; that the cabinet's exercise of power is checked in two ways : first, by the publicity stimulated by those members of the less successful party who function in their formal aspect as her Majesty's loyal Opposition, and secondly (and what is in most cases perhaps the more important of the two) by the very men who are pledged to support the government. It suggests that the cabinet is checked by those who, precisely because they are not independent, precisely because they are committed to give their support, attempt to influence the policies of the cabinet in such a manner as to make possible their own political survival.

Within a concept of the cabinet in which the emphasis is on its party origin, the phenomenon of the lateral introduction of cabinet ministers would pose no problem for it could be interpreted as simply another act in the drama of the functioning of the party in power.

This method of attack, quite definitely, is not without problems of its own. If the cabinet - party relationship is emphasized to the point where Parliament becomes little more than the context within which party struggle occurs, what role is to be assigned to parliamentary usage and convention? What is the role of the extra-parliamentary party? What functions are to be assigned to the formal opposition? Is such a concept premised on a two-party system or might it not provide the framework within which the activities of minor parties, which have little or no chance of forming a cabinet, could be adequately interpreted? However, in spite of the many areas to be explored, the approach would seem to be worthy of

further investigation.

Finally, it must be stressed that I have not, in these last few pages, attempted to re-formulate a theory of responsible government. I have tried, rather, to suggest one mode by which such a reformulation might be approached by drawing attention to the nineteenth century bias which is sometimes found in our thoughts and by suggesting that a reversion to an eighteenth century idea may provide a more fruitful approach to the problem of comprehending cabinet government.

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