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GEOFFREY HARTNELL

The Problem of Command in the Australian Defence Force Environment

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The Problem of Command in the Australian Defence Force Environment

GEOFFREY HARTNELL

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Air Vice Marshal Geoffrey Hartnell studied the merits and problems of different national defence organisations for over twenty years, endeavouring to evolve structures of authority embodying the soundest principles for effective command of armed forces. His research was historically based on British practice, and extended by close personal experience of operational co-operation with American and British forces in the 1940s, 50s and 60s. In his many postings at senior levels he developed expertise in joint service planning and command of operations, serving on the Joint Planning Committee and holding the positions of Director General of Plans and Policy, Department of Air, Canberra, and Head, Australian Joint Services Staff in London. This manuscript was completed, but not fully revised, before his death in 1982, and is published by the Strategic and Defence Studies Centre in the hope that it might stimulate wider discussion of the problems of command in the defence of Australia.

Robert O'Neill

Canberra Papers on Strategy and Defence are a series of monograph publications which arise out of the work of the Strategic and Defence Studies Centre, Research School of Pacific Studies, Australian National University. Previous Canberra Papers have covered topics such as the relationship of the superpowers, arms control at both the superpower and South-east Asian regional level, regional strategic relationships and major aspects of Australian defence policy. For a complete list refer to the last pages of this volume.

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1. Parliament Controls But Who Commands?

The armed services of a country normally comprise the most powerful concentration of physical force in the community. They have the potential to be used for good or ill. In the British tradition they have come to be associated with a high degree of discipline and a dedication to the protection of the community. But such a state of affairs should not be taken for granted. There are many nations in the world today where the ruling hierarchy or government of the day is actually dependent for its existence on the physical support of the armed forces. In all these countries, the armed forces are, for all practical purposes, 'parliamentary armies'. In the British world armies before Cromwell were, in effect, royal armies. Under Cromwell they became parliamentary armies. With the Restoration of the monarchy, however, the first signs of 'checks and balances' on the use of the army began to appear. Essentially these checks and balances hinge around the interplay between the command of the armed forces, on the one hand, and their control, on the other.

It has become common practice, unfortunately, for people associated with the armed services to speak, glibly, of 'command and control'. The distinction between the two is rarely explained. But what exactly is command? How does it differ from control? If the two are identifiably different, what is the relationship between the two?

Lack of clear distinction between the two terms is not of recent origin. In 1898, for example, a group of eminent people such as Alfred Deakin, Edmund Barton, Sir John Forrest and many others, gathered together to discuss the problem of command of the armed forces. In effect, they devoted almost the entire debate to the problem of control.

It is important to compare the meanings of the two words. 'Command', according to the Oxford dictionary, means 'To order with Authority'. Although the Oxford dictionary is of relatively recent origin, the concept of 'command' has existed for centuries and always seems to have been associated with 'ordering with authority'. The Oxford dictionary, for example, attributes the meaning, in 1561, 'to have at one's call or disposal' and, in 1591, 'To exact, compel (respect etc.)'. The meaning given to the word 'control' on the other hand is 'To check or verify and hence to regulate'.

In modern warfare many of the command functions at the operating level involve a particular relationship between man and

machine. For this reason, the motor vehicle provides a simple analogy to explain the basic difference between the two functions.

Over the years society has become aware of the good and bad aspects of the motor vehicle. This has resulted in the development of laws and regulations to ensure the safe use of the vehicle. Laws have been created, for example, which determine such things as speed limits; the side of the road to be used; the existence of safety devices such as brakes, windscreen wipers, headlights, safety belts etc., to name but a few. All these laws have one thing in common. They are designed to check, verify and hence to regulate the life of society in its association with the motor vehicle. The creation of these laws and regulations is the function of the Parliament, through the government of the day.

Within these 'control' measures, the human driver is required to operate. When he seats himself behind the driving wheel he begins a series of 'command' processes which he, and he alone, can execute. Each time the driver makes a decision on the operation of the vehicle, either consciously or unconsciously, it results in him issuing a 'command' to some part of the vehicle. When the driver and the vehicle enter the highway these command processes become particularly important. The driver is then required to exercise judgement, make decisions and hence to 'order' or 'command' the vehicle to act as he, and he alone, decides. Two aspects of this sequence are important. The first is that the 'command' function is the final part of the sequence. The second is that, on occasion, the 'command' issued by the driver may be wrong. He may, for example, decide to overtake another vehicle because he judges it safe to do so. He issues a 'command' to the vehicle to accelerate by depressing the accelerator. Perhaps he does not depress it far enough or, alternatively, he does not associate it with another 'command' to the vehicle to change gear. The result can lead to a dangerous situation, even death.

By what authority does a driver command a vehicle? It is by a 'control' measure known as licensing. This determines the qualification of any person given the authority to 'command' a vehicle. Fundamentally, it is designed to reduce the risk of a driver making dangerous decisions when in command of a vehicle.

This leads to two important principles. The first is that a major factor in determining whether or not to give the necessary authority to a driver is an assessment of the discipline the driver exercises over himself and the vehicle. The second is that if the driver exercises his authority in an undisciplined way so that he drives dangerously, he can be so charged. Any consideration of disciplinary action, such as the removal of his authority to drive,

is not taken by Parliament or by any authority responsible to Parliament, but by another arm of government, the judiciary. To reach such a decision, the magistrate or judge concerned must rely on the evidence and judgement of experts. Under no circumstances should political influence be exercised in reaching such a decision.

In the case of the armed forces there is a body of men and women who are required to be prepared for and, if necessary, actually engage in combat. History has taught us that such armed forces, particularly armies, can be used not for the protection but for the suppression of the community in which they are raised.

To avoid misuse of the armed forces the representatives of the people, the Parliament, determine what safeguards should be introduced to 'control' the activities of the armed forces, particularly in times of peace. One such measure, for example, is the retention, by Parliament, of complete control over the expenditure of funds by the armed services.

At a particular time in the life of an individual in the armed forces, viz. at the time of commissioning, there is a notable change in his status. He then receives a 'licence' to command. This act of commissioning, in effect, gives an individual the authority to operate forces comprising men and machines raised with funds authorised by the Parliament. The commissioning document takes the form of a notification that the recipient is an officer in one of the armed forces of the Commonwealth. It contains an order to carry out the duties of an officer in any branch to which he may be promoted, appointed or transferred. The commissioning document comes from the Commander in Chief but is countersigned by an appropriate Minister of State. This dual signature is a reflection of the symbolic relationship between the Crown and the Parliament in the matter of command. Once commissioned, an officer's use of his 'licence' lies within the command system and outside the field of executive government.

Once commissioned, officers command operating entities. In their operation of these entities they must be constantly exercising their judgement and, within the limits placed upon them by the 'control' measures authorised by Parliament to ensure their legality, they must issue commands that must be every bit as effective as the 'commands' a driver issues to his vehicle. In the case of the army, in particular, the operating entities tend to be labour intensive and make up a 'human' machine. When in combat, argument from any element of the operating entity can be tolerated no more than in the motor vehicle. Just as an argumentative or unresponsive accelerator can spell death to a driver in a difficult situation so can an argument from one element

of an operating entity, in combat. Thus, to back up the authority of the commissioned officer to command there is a need for a form of discipline which does not need to apply to the civilian community.

This military discipline is an essential supplement to the command function. It is distinct from the complementary problem of control. Although poorly understood outside the armed forces it is this discipline which has always distinguished an efficient and reliable army from a bad one. Valerius Maximus is recorded as saying that there was no bond so lasting as that of military discipline, that pre-eminent adornment and buttress of Roman power, in whose bosom reposed the serene and tranquil blessing of peace. Also attributed to Roman times was the view that 'It is rather by the obedient attitude than by the putting forth of officer's orders that a military situation is kept in a healthy condition; and that army will be bravest in time of crisis which is the quietest before the crisis'.

In modern times the influence of Parliament on military discipline is effected by a control measure in the form of an Act of Parliament which is commonly known as the 'disciplinary code'. A vital element of the disciplinary code upon which much of the rest of the code depends is the section which makes it an offence to disobey a lawful command. On active service, until relatively recently, disobedience of a lawful command was punishable by death.

The term 'lawful command' should be noted carefully. When a command is issued by someone authorised to do so, he must always be sure that such a command is not issued contrary to law. Otherwise the command is not lawful and cannot be enforced. The problem of distinguishing between a lawful and an unlawful command, particularly in combat, introduces complications which are a constant source of debate. If the recipient of a command, for example, finds out after he has obeyed it, that it was not lawful, where does he stand in law? Such problems are a separate study in themselves and beyond the scope of this study. In practice, the training of commanders reduces the extent of this problem to a minimum. For the command system to be effective, however, it must be in constant working order. It must, in fact, be combat ready at all times and at all levels of command, from the highest to the lowest.

Because party political requirements must not be permitted to inhibit the effective use of the lawful command, it follows that no person, not specifically authorised to do so, can issue a lawful

command to a member of the armed forces. The only civilian so authorised in Australia, at present, is the Governor-General.

The subject of leadership must also be mentioned, if only to avoid confusion. Leadership is the vital quality which wins wars. It should be a natural characteristic of all men who are vested with command. Some men have this quality developed so highly that they rarely have to stress the legal backing of vestment with command. In the extreme, but opposite case, a man who relies almost exclusively on his legal command status because his leadership qualities are so poorly developed, is better not placed in command of men. Even those with the highest qualities of leadership can never be sure that some circumstances may not arise under conditions of extreme crisis when either they will be obliged to recognise the lawful nature of a command from a superior or else be forced to emphasise the lawful nature of the command they wish to impose. In many ways this type of situation, i.e. one associated with crises which can involve major differences of opinion and principle, are more likely to occur at the highest level of command. At this level the chain of command must be clear beyond any doubt. In particular, there must be an ultimate command authority. As command and discipline are inextricably woven together, the ultimate command authority must also be the main and final source of appeal in matters of discipline. If this authority cannot be Parliament, where should it be located and how should this authority mesh with the Parliament and the control the Parliament must exercise over the armed forces?

It is with this problem that these papers are mainly concerned.

2. Evolution of the Westminster System of Command

The definition of 'command' implies a source of authority. In the military sense (using the word 'military' in its collective sense to include any armed service) and in the English-speaking world, this early source of authority was the Sovereign who, by virtue of the many aspects of the royal prerogative, could appoint someone to command and invest him with the necessary authority.

This investment by the Sovereign was carried out by 'patent' or 'letters patent'. These are used relatively infrequently now and are a method of endowing authority which is not commonly understood. The Oxford dictionary defines the word 'patent' as being 'An open letter, or document, usually from the Sovereign or person in authority, issued for various purposes; now especially to grant for a statutory term to a person or persons the sole right to make, use or sell some invention'. The dictionary also states: 'Richard II was the first to confer the peerage by letters patent. The letters patent were written upon open sheets of parchment, with the Great Seal pendant at the bottom. In fact lawful substitutes for the Great Seal were also used'. The letters were usually addressed by the Sovereign to all subjects of the realm.

Early English armies consisted of a mass of free landowners, known as the general levy, to serve for two months each year for the purpose of repelling invasion. Under the feudal system the kingdom was divided into some sixty thousand 'knights fees' which carried with them the obligation of forty days service a year, at home or abroad. This force was known as the feudal levy. As this proved to be unsatisfactory for foreign warfare, mercenaries were raised by powerful barons. The general levy, although inefficient, continued to exist and the question of its control was a principle cause of the war between Charles I and the Parliament. The bitter feeling when the king billeted his soldiers on the people and imposed martial law in peace, culminated in the Petition of Rights.

Soon after Cromwell's death the general levy, or militia, as it had become known, was reorganised by the Statutes of 1662 which asserted the royal prerogative but transferred the chief powers to the Lieutenants of the counties who retained them until they were reviewed in the Crown in 1871.

Meanwhile, a standing army approximately eighty thousand strong and built by Cromwell, remained in existence until the Restoration when Charles II was forced to agree to the abandonment of the bulk of the standing army, retaining only five thousand men to act as a bodyguard or household brigade, and sanctioned by Parliament. This grew in size but it was only after the succession

of William III that, under the operation of the 'Bill of Rights' the keeping of a standing army was placed on a legal footing. The Act concerned opens with the words 'Whereas the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against the law'. At the same time the authority to punish certain offences, previously enforced by the Articles of War emanating from the Sovereign, was incorporated in the first Mutiny Act of 1689, to last for six months only. Subsequently the Act was renewed annually until its incorporation in the Army Discipline Act of 1879 which was replaced by the Army Act of 1881.

Thus, by the beginning of the nineteenth century, the power to create an army and also to decide the power its commanders should receive in the discipline of the army, lay with the Parliament. The Sovereign retained the prerogative, however, and the supreme command of the army. This emphasises a simple distinction which plagued the British Parliament for the whole of the nineteenth century. It remains a distinction which many people find difficult to comprehend. This distinction is between 'control' on the one hand and 'command' on the other. The Oxford dictionary defines the word 'control' as 'To check or verify and hence to regulate'. The ability of the Parliament to define the limits of any authority of a 'commander' of the army was clear. The authority of the Parliament to actually issue a lawful command to the army, however, was not so clear.

Approval, by Parliament, of an appointment to command the British army on a regular basis, was first established in 1793. Enthusiasm for the office was not great. In 1798 General Burgoyne suggested the need for the office in the House of Commons, only to receive the reply through the Secretary at War that 'whenever the country needed the services of such an officer he should be appointed; but that in a time of profound peace they (the Government) were not prepared to admit that a Commander in Chief was necessary'.

Although established in 1793 the office cannot be said to have received the formal sanction of Parliament until 1812 when, for the first time, a sum to meet its expenses was voted by the House of Commons.

Distinct from such an arrangement, however, in 1793 Lord Amherst was placed on the staff as General Commanding in Chief having under him the Adjutant and Quartermaster Generals. They formed the basis of the Horse Guards but the powers of the Commander in Chief were not defined and conflicted with those

long exercised by the Secretary at War. This resulted in a prolonged struggle between the two offices.

The leading military figure of the first half of the nineteenth century was undoubtedly the Duke of Wellington. He held chief command in the Peninsular War in 1809 after the failure of Sir John Moore's campaign and subsequently led the forces in the defeat of Napoleon at Waterloo in 1815.

In 1827 the Duke of Wellington was appointed Commander in Chief by Patent. His authority thus came from the Sovereign and not from Parliament. His powers were confined to the United Kingdom. He was also Master General of the Ordnance. Both positions made him a member of the Cabinet. Although he did not hold these appointments continuously during the next twenty-five years he did hold them regularly. In 1842 he was made Commander in Chief, by Patent, for life. He died in 1852, aged 83.

Although Britain had been at peace with her European neighbours since 1815 war clouds were developing on the eastern horizon in 1853 just after Wellington's death. In March 1854 Britain and France declared war against Russia over the latter's actions in Turkey resulting in the Crimean War which ended with the formal signing of a treaty in Paris in March 1856. Despite the victory over Russia the Crimean War highlighted the deficiencies in British military administrative support arrangements, which resulted in extreme hardships and difficulties for the army in the field.

The problems of the Crimean War resulted in changes in the organisation in the War Office and the Board of Ordnance. These changes were probably the starting point in a chain of inquiries into the operation of the War Office which continued for almost fifty years. They ended, in 1904, with a system of higher command which, in principle, has remained in existence ever since. The principles of command resulting from those fifty years of debate have also been adopted by most English-speaking countries. There is one notable exception: Australia. To be able to place the Australian system in perspective, however, it is important to follow the fifty years of debate through some of its more important highlights.

Prior to the Crimean War there was an intricate system operating which embodied the following parts:

- (a) The Secretary of State for War and the Colonies had the direction of general military policy.
- (b) The Secretary at War (a Secretary to the Queen but not a Secretary of State) had charge of the finance

- and represented the army and the Commander in Chief in Parliament.
- (c) The Commander in Chief had, under the Sovereign, absolute control over the army and administered its patronage. No defined relationship existed between the Commander in Chief and the Secretary at War.
 - (d) The Secretary of State for the Home Department was at the head of the militia (the old general levy) and the yeomanry who were raised by the counties under the Lords Lieutenants.
 - (e) The Treasury had charge of the Commissariat.
 - (f) The Master General of the Ordnance had charge of the Ordnance department generally but particularly the supply of army and navy stores. The Royal Artillery and the Royal Engineers were under his command.

Under this system the Secretary of State for War and the Colonies was located at the Colonial Office. He had a general but vague control which was limited, in practice, to times of war. He had no responsibility for any management of the army in the United Kingdom which was considered separately from the Colonial armies for whom he had responsibility through the various Governors in the Colonies.

The Secretary at War had his office in the Horse Guards building, in Whitehall. It was opposite but separate from the War Office. He superintended the financial operations of the standing army concerning personnel but had no control over the Artillery, Engineers or logistic supply of the army. Possibly because the relationship between the Commander in Chief and the Secretary at War was so ill-defined it is not clear what happened to this relationship on the death of the Duke of Wellington. It seems probable that the relationship was not satisfactory because it did not persist. Lord Hardinge was appointed, not as Commander in Chief by Patent, but was merely known as Commander of the Forces. There is some indication that the power of the Secretary at War might have increased, in practical terms, during this period.

The Master General and Board of Ordnance were bound to provide material support for the army as required by the Secretary at War and to provide adequate artillery and engineer support as demanded by the Commander in Chief.

A separate medical department existed, responsible to the Commander in Chief for discipline and the Secretary at War for matters of finance.

The Commissariat department was a semi-military branch of the army with its headquarters in the Treasury.

In 1852 the Secretary of State for the Home Department lost control over the militia on their transfer to the Secretary at War.

In addition to this spread of authority there were, also, numerous minor departments maintaining a more or less distinctly separate existence.

Under such arrangements any form of efficient operation was almost impossible and would probably account for the problems which developed in the war with Russia. During the war a number of reforms was instituted:

- (a) In 1854 the business of the Colonies was separated from that of war, for which the Secretary of State for War assumed control.
- (b) In 1855 the Secretary of State for War also assumed the responsibilities of the Secretary at War. Formal abolition of the office of Secretary at War took place in 1863.
- (c) In the same year (1855) the Commissariat was transferred from the Treasury to the War Department.
- (d) Next, the Board of Ordnance was abolished, after an existence of more than three centuries. Its military functions were vested in the Commander in Chief, who had reappeared, and its civil duties were assumed by the Secretary of State for War.
- (e) Finally the lesser departments, including the medical department, and the audit office were absorbed into the War Department.
- (f) The War Department henceforth became known as the War Office. The military control remained in the hands of the Commander in Chief but the Secretary of State became responsible to Parliament for all aspects of the War Office including the exercise of control by the Commander in Chief.

The authority of the Secretary of State for War, following the consolidation, came from a new Patent. This had a supplementary Patent, however, with a reservation of powers in the following terms:

Excepting always so far as relates to and concerns the military command and discipline of our Army and Land Forces, as likewise to the appointments to and promotions

in the same, and so far as by our Royal Commission the military command and discipline thereof shall have been or shall from time to time be committed to, vested in, or regulated by our Commander in Chief of our Forces, or our General Commanding our Forces in Chief for the time being.

The office of Commander in Chief was now held by Lord Hardinge but his appointment was not by Patent as had been the case with the Duke of Wellington, but by advice from the Secretary of State for War. In May 1855, for example, he conveyed 'Her Majesty's pleasure, that he (Lord Hardinge) should forthwith assume the Command of the Royal Artillery and Royal Engineers, and in all respects conduct the military duties of these corps'. The Secretary of State added to his advice a readiness to transmit a 'letter of service' should Lord Hardinge so desire.

By 1859 the office of Secretary of State for War had been held, first by Lord Panmure then by General Peel and finally by Mr Herbert. By this time also the office of Commander in Chief was held by the Duke of Cambridge.

When the new Patent was issued to General Peel the phrase 'as likewise to the appointments and promotions in the same' had inadvertently been omitted from the supplementary Patent. Although this omission was rectified in the Patent to Mr Herbert the incident seems to have stimulated some research into the respective powers and relative positions of the Commander in Chief and the Secretary of State for War.

A Select Committee, appointed to inquire into the effects of the reorganisation in 1855, reported in 1860 and included the following statement:

The Secretaries of State hold their seals by patent, during the pleasure of the Crown. They exercise their powers interchangeably, although, for convenience, particular departments are assigned to each of them. They are the channels which convey the Royal pleasure throughout the body politic, both at home and abroad. The countersignature of one of them is necessary to give effect to the sign manual. Every commission in the Army is so countersigned. The patronage of the Crown, both in Church and State, is administered under this safeguard. To every public document signed by the Sovereign, the signature of a Secretary of State is appended; and thus, while the Sovereign can do no wrong, the responsible advisor of every act is ascertained; and the Minister must answer for what the Crown had done.

The report of the Select Committee to Parliament considers at length the relationship between the Commander in Chief and the Secretary of State for War. The predominant theme of this report concerns the reality, in practice, of the supplementary Patent. This is exemplified by the following extracts from the report:

Notwithstanding the reservations in the patent, His Royal Highness the Commander in Chief admits the supreme control of the Secretary of State over the Army. Mr Herbert (the Secretary of State), in the presence of His Royal Highness, reiterated before your Committee an opinion previously expressed by him in the House of Commons, that the Commander in Chief is an officer 'subordinate' to the Secretary of State for War . . . Mr Herbert is then pressed to state how he reconciles the powers which he exercises, with regard even to discipline and the movements of the Army, with the reservations in the patent. The answer is remarkable; "I do not think that it is possible to reconcile them strictly; but, in fact, whatever you may put into a formal patent, the Minister who holds the purse strings of the Army, and who represents it in the House of Commons, will always have the power in his hands".

The Committee then asks two questions:

- (a) Is this sound constitutional doctrine? The Committee implies its endorsement of an opinion expressed by Lord Grenville in a letter to Earl Grey in 1812, that

. . . I do not see how we can consent that the new reign, by our advice, should be established on the same footing as the former, that of keeping the military administration distinct and independent of the Civil Government. It is a bad principle, even under an absolute monarchy; it is totally incompatible with the principles of a limited crown.

- (b) Is there danger in this doctrine? May not the Army thus cease to be Royal, and become a Parliamentary Army? Again the Committee refers to Lord Grey, to the effect:

. . . but that power over the Army should be exercised by a responsible servant of the Crown

appears to me to be an absolute essential principle of our Constitution . . . The truth is, that the House of Commons always has exercised, and always ought to exercise, a great control over the administration of the Army. It cannot be called on to provide for the expense of the Army without inquiring in what manner the money granted is applied.

The Committee then asked the Secretary of State for War

. . . whether there was not a divided authority between the Secretary of State and the Commander in Chief on matters of discipline, under the patent, he denied the existence of any such division. In case of difference of opinion, the Commander in Chief, he says, must yield . . .

The Committee then states:

This supplementary patent of 1855 constantly presents itself . . . Your Committee are of the opinion that the maintenance in some form of rules which shall regulate the authority of the Secretary of State, and define the extent of the departmental functions of the Commander in Chief, is advisable . . . It appears from the evidence of Mr Herbert, that in his opinion some regulation is necessary, as pointing out to the Secretary of State the necessity of not invading the province of the officer who has the military command of the army entrusted to him.

Towards the end of the report the Committee poses one last and 'great' question:

How is the Army to be governed? Earl Grey recommends a Board, with a Cabinet Minister at its head, but not the Secretary of State . . . This Board would be a new experiment. It undoes all that has been done. It throws aside all the advantages of growing experience and improved practice, which the last five years have not failed to afford. Instead of concentrating responsibility, it redistributes it. The machinery of Boards is known to be cumbrous and uncertain in its operation. It only works well when the head of the Board acts as if he alone were responsible. A Board, therefore, would be a retrograde measure which your Committee cannot recommend.

The system which resulted from the 1860 report had consolidated to the extent that it had drawn together, under one

Secretary of State, a number of elements concerned with the operation of the army which, until then, had been distributed among a number of Secretaries of State. The organisation under the Secretary of State for War, however, was still fragmented.

It is not difficult to conclude, from the report of the 1860 inquiry that while the arrangements it recommended were an improvement on the situation prevailing in 1855 they were hardly conducive to real efficiency. This was probably the reason for the formation in 1869 of a committee under Lord Northbrook to consider the existing establishments and the distribution of their business.

Based on the recommendations of the Northbrook Committee three Orders in Council were issued in 1870 setting out the duties of the heads of three main branches under the Secretary of State for War. These were broadly as follows:

- (a) The Commander in Chief as head of the Military Department was charged with the discipline, distribution, recruiting and training of the army with the collection and record of strategical information, with the selection of 'proper persons' for appointments to commissions, other personnel matters and with 'the duty of rendering such advice and assistance on military affairs as may be required of him by the Secretary of State for War'.
- (b) The Surveyor General of the Ordnance, as head of the Supply or Ordnance Department was responsible for the provision, holding and issuing to the army and reserve forces food, forage, fuel, light clothes and accoutrements, and munitions of war; exercising strict control over the expenditure of such supplies, preparing estimates for these services and rendering such other advice and assistance as may be required of him by the Secretary of State for War.
- (c) The Financial Secretary, as head of the Financial Department had the duties of preparing the annual estimate for the pay of the army and the reserve forces incorporating into the general estimate for army services the estimates of other departments; financially reviewing the expenditure proposed in such estimates, advising the Secretary of State on all questions of pay and pensions, and rendering such other advice and assistance as may be required of him.
- (d) There were, in addition, a number of miscellaneous departments outside the three main departments. These were grouped together and called the Central Department which, according to the Secretary of State for War, at the time, was 'a sort of bureau of the Secretary of State'.

Sixteen years later, in 1886, a Departmental committee composed of members of Parliament and businessmen was appointed to inquire into the organisation and administration of the Manufacturing Departments of the army. This committee reported in 1887, recommending a head of the Ordnance Factories and an inspector of warlike stores. The latter was to be directly under the Surveyor General.

In the same year a Royal Commission was appointed to inquire into the manner in which warlike stores were brought into service. This Commission also reported in 1887 and included in its report the relations of the Secretary of State with the Ordnance Department. It recommended the reestablishment of the office of Master General of the Ordnance.

The recommendations of the Departmental committee and the Royal Commission were not adopted but prompted great administrative changes which were introduced in February 1888 by an Order in Council, as follows:

- (a) The office of Surveyor General of the Ordnance was abolished and the duty of obtaining, holding and issuing to the army all supplies and munitions of war and with exercising control over the expenditure of supplies was transferred to the Commander in Chief who was also charged with the preparation of the whole of the annual estimates for Army Services.
- (b) Control of the Manufacturing Departments of the army, and of all contracts for Army Services was transferred to the Financial Secretary. He also became responsible for 'primarily reviewing the expenditure proposed to be provided in the estimates, compiling the estimates for Parliament'; and generally for advising the Secretary of State upon all questions of army expenditure.

Quite obviously there was a lack of confidence that these changes would be satisfactory. Soon after their introduction, another Royal Commission was appointed 'to inquire into the Civil and Professional Administration of the Naval and Military Departments, and the relation of those Departments to each other and to the Treasury, and to report what changes in the existing system would tend to efficiency and economy in the Public Service'. Their report, known as the Hartington report after Lord Hartington its chairman, is particularly important in the evolution of the War Office and the command arrangements for the British army. It was submitted in February 1890.

The first criticism in the Hartington report of the changes made in 1888 concerns the organisation under the Commander in Chief and their relationship with the Secretary of State.

While accepting that much progress had been made in the efficiency of the Army as a result of the reorganisation the Commission reported that

. . . it appears to us to involve an excessive centralisation of responsibility in the person of the Commander in Chief on whom the whole executive command administration and supply of the Army now devolve. He is, in fact, the only officer who has any direct responsibility to the Secretary of State.

We believe that such centralisation of power and responsibility in the office of the Commander in Chief must necessarily tend to weaken the sense of responsibility of the other heads of Departments, and thus to diminish their efficiency.

The 'other heads' to whom the Commission was referring were the Adjutant General, Quarter Master General, Military Secretary, Director of Artillery, Inspector General of Fortifications, and the Director of Military Intelligence.

In explanation of this point the Commission attached great importance to the fact that the Secretary of State could not consult any of the 'other heads' in a decision-making capacity as their responsibility to the Secretary of State was only through the Commander in Chief. The Commission reported:

. . . one of the immediate results of this defect is that wholesale recourse is had to committees . . . It is in fact by means of the agency of these committees that the attempt is made to supply the want of consultative power which characterises the administration of the War Office.

The Commission recognised the long and loyal service of the Duke of Cambridge as Commander in Chief and thought it unwise to change the system while he was in office. He did in fact hold this office from 1856 to 1895.

In recommending changes 'at the occurrence of a vacancy in the office of Commander in Chief, or at any favourable opportunity . . .' the Commission noted certain principles which should be observed:

- (a) Recognition of the responsibility to Parliament which rests on the Secretary of State.

- (b) Recognition of the importance of the consultative as distinct from the administrative and executive functions of the professional advisors of the Minister.
- (c) Establishment of direct responsibility to the Minister of officers charged with certain well defined duties.

To overcome the deficiencies and to meet the principles, the Commission recommended abandonment of the position of Commander in Chief and the creation of a Chief of the Staff to advise the Secretary of State on all matters of general military policy particularly the military defence of the Empire and contingency planning; to liaise with the First Naval Lord of the Admiralty; and to be the medium of contact with General Officers Commanding on questions of military policy.

The 'other officers' administering Departments at the War Office would then become directly responsible to the Secretary of State.

The Commission pointed out that:

. . . the present constitution of the office of the Commander in Chief involves a certain anomaly when the country is at war. In this case a Commander in Chief in the Field is at once appointed by the Cabinet and acts under the orders of the Secretary of State for War to whom, in accordance with the Queen's Regulations, he reports directly. The functions of the Commander in Chief thus appear to lapse to a considerable extent.

The Commission pointed out that the Commander in Chief was along with his many other duties, at that time, charged with the actual executive command and inspection of the troops in Great Britain. The Commission believed '. . . that these functions might with advantage be separately exercised'.

Following this lengthy examination of the role of the Commander in Chief, the Commission:

- (a) Outlined the duties of the Financial Secretary. These were to scrutinise expenditure in detail and generally '. . . to advise the Secretary of State on financial matters from a Parliamentary point of view'.
- (b) Recommended the establishment of a permanent War Office Council, under the presidency of the Secretary of State,

. . . of which the Parliamentary and Permanent Under Secretaries, and the Financial Secretary,

as well as the above principal military officers, would be members. One of the principal functions of this Council would be to secure the harmonious working of the several branches of the War Office in all cases in which they are collectively concerned.

We consider that . . . the proceedings and decisions of the War Office Council should be formally recorded.

As an observation on this recommendation concerning the Council it is impossible to avoid reflecting on the need '. . . to secure the harmonious working of the several branches of the War Office . . .' Did this mean that the internal workings of the War Office at that time were not harmonious? Evidence during subsequent years would indicate that they were not.

The report of the Hartington Commission was not unanimous in all respects. In particular Mr Campbell-Bannerman, who subsequently became the Secretary of State for War in 1892 and Prime Minister in 1905, submitted a long minority report in which he disagreed with the creation of a new Department of the Chief of the Staff although he endorsed strongly the creation of the Council.

Mr Campbell-Bannerman's first objection was that the post was unnecessary. He could not see any standing threat to the United Kingdom, unlike its European neighbours, while Indian 'military policy' would be settled in India itself. Hence there was '. . . no room for "general military policy" in this larger and more ambitious sense of the phrase'. The new office might in fact tend to create work for itself which, in turn, would create a danger to the best interests of the country.

On the other hand, if the meaning of 'military policy' was to be confined to the 'humbler' problems of army administration then any difficulties in this regard would be far better dealt with and sounder advice tendered to the Minister by the experienced soldiers who are engaged day by day in the active administration of the army than by a body of officers, no matter how distinguished, who sit apart and cogitate on the subject.

The second objection was that by creating a Chief of the Staff there was the clear inference that the other advisers on the staff were not on an equal footing with him. They would therefore be obliged to consult him on all matters within their own sphere of responsibility which was the very problem which the Council was designed to avoid. It seemed to Mr Campbell-Bannerman that by

replacing the office of Commander in Chief the new office would soon display most of the disadvantages, and would lack some of the advantages of the old office.

Mr Richard Temple, another Commissioner, also included a minority report disagreeing with the abolition of the office of Commander in Chief. His objection was that such a move would virtually make the Secretary of State for War head of the army. He endorsed the idea of a Chief of Staff but considered he should be Chief of Staff to the Commander in Chief although he acknowledged that the relationship between such a Chief of Staff and military heads of Departments ' . . . might require some definition'.

Although most of the recommendations of the Hartington Commission were adopted, a notable exception was that for an office of Chief of the Staff. The office of Commander in Chief remained in existence. When it was announced in 1895 that the Duke of Cambridge was to retire there was a new order in Council to cover the role of Lord Wolseley who succeeded him. This order in Council was executed by a government under the leadership of Sir Henry Campbell-Bannerman who wrote the minority report in the Hartington Commission.

During the period 1895-1900 Lord Lansdowne was the Secretary of State for War and Lord Wolseley was the Commander in Chief. Their respective views of the office of Commander in Chief during that period are on record.

Lord Lansdowne's view is contained in a memorandum by him dated 8 May 1899, as follows:

A few days before the present Government took office in 1895, Sir Henry Campbell-Bannerman had announced that the retirement of His Royal Highness the Duke of Cambridge was to take place on the 1st October next, and he proceeded to give a general indication of the arrangements which were to follow His Royal Highness's relinquishment of office. Those arrangements were to be in accordance with the 'main principles' of the Hartington Commission, which, it will be remembered had advocated the abolition of the office of Commander in Chief, the distribution of his duties among the heads of the Military departments, and the appointment of a Chief of the Staff. The recommendations of the Hartington Commission had received considerable public support.

Under Sir Henry Campbell-Bannerman's scheme there was to be substituted for the appointment of 'Commander

in Chief', as it then existed, the appointment of a 'General Officer Commanding in Chief', with 'greatly modified functions', and holding office for five years under the ordinary rules.

The manner in which these arrangements were to be carried out formed the subject of considerable discussion. It was particularly desired that the Commander in Chief should be given a distinct preeminence with regard to the other members of the Army Board, and that he should be described as 'the principal advisor' of the Secretary of State. The old title of Commander in Chief was accordingly retained, and it was laid down in the Order in Council of 21st November, 1895 that he should be 'the principle adviser of the Secretary of State' on 'all military questions, and shall be charged with the general supervision of the Military Departments of the War Office'.

In order still further to secure to the Commander in Chief this power of 'general supervision', it was laid down in the details of office procedure, shortly afterwards published, that 'all important questions will be referred to the Commander in Chief before submission to the Secretary of State'.

These regulations reserved to the Commander in Chief a far larger measure of control and authority than was contemplated by the Hartington Commission, by the late Government, or by the advocates of decentralisation in the Press.

Lord Wolseley's view of the situation which resulted from the Order in Council, is recorded in the evidence he gave to the Royal Commission into the South African War, which was completed and submitted in 1904. This was as follows:

The duties that I conceived devolved upon the Commander in Chief were to supply the men required and, of course, with the men, as far as possible, to supply also whatever was required for those troops in the way of military stores, ammunition, etc., pointing out to you that as regards those provisions of stores and ammunition the constitution of the War Office at the time I was Commander in Chief took away from the officer who holds that position in the Army very much of the control of those affairs. As I suppose every one of the Commission is aware, when I was Commander in Chief the War Office was divided into four great departments - the Adjutant General,

the Quartermaster General, the Inspector General of Fortifications, and the Director General of Ordnance. Now, of all those four officers not one of them was an officer belonging to the Commander in Chief; they were all officers belonging, I might say, to the Secretary of State for War, and went to him and saw him without any sort of knowledge whatever of the Commander in Chief. They were, in fact, to a very great extent, each a sort of water tight compartment of the War Office. I am glad to say that, from personal knowledge of all the officers concerned at the heads of those departments, they were all old colleagues of mine, and I do not think in any single instance they ever kept from me personally anything that they told to the Secretary of State for War. I have no complaint to urge against them whatever; they were most loyal to me throughout; they invariably told me, when sent for by the Secretary of State for War, what the Secretary of State for War had said to them. But, as I conceive the duties of a man in the position of Commander in Chief of the Army, especially an Army constituted as ours is, scattered all over the world, it is most essential that all the military functionaries carrying out the various duties in connection with the Army should be absolutely staff officers of the Commander in Chief, and not of the Secretary of State for War, unless you adopt the course that I pointed out to you yesterday, which I think is the true course, which is to have the Secretary of State for War a soldier himself.

Although not conceding that he should have Cabinet rank, Lord Lansdowne supported the association of the Commander in Chief with control of the discipline of the army. He stated, in a minute to Cabinet on 31 October 1895, '... no scheme will work, or be understood by the Army, which does not give the Commander in Chief an undoubted right of interference in questions of discipline'.

The position of the Adjutant General during the period 1895-1904 is of particular interest. The Council Order of 1901 re-established control by the Commander in Chief over the Department of the Adjutant General. The Adjutant General, at the time, expressed strong approval of the change. Lord Lansdowne, in his evidence to the Royal Commission into the South African War also endorsed the change but somewhat half-heartedly, when he stated:

My successor, in deference to very strong expressions of military opinion, put the Adjutant General back into a

position distinctly subordinate, under the control and not under the supervision of the Commander in Chief. My feeling about that is, that while I adhere to the reasons which induced me to put the Adjutant General in a quasi-independent position, I feel that in a case of that kind you cannot ignore the great weight of solid military opinion in favour of putting the Adjutant General in a different position from the other heads of Departments - in a position, namely, of more direct subordination to the Commander in Chief.

The phrase 'under the control and not under the supervision' is a difficult one to interpret in practical terms. Similarly, there is something quite imprecise about a 'quasi-independent position'.

It is difficult not to gain the impression, particularly with hindsight, that all was not well with the internal relations within the War Office particularly during the period 1895-1900. Perhaps the best evidence in support of this view is to compare the contents of a letter Lord Esher, who was one of the Royal Commissioners, wrote to the king on 29 October 1902 concerning the evidence of Sir Evelyn Woods who was the Adjutant General during the 1890s, with the statement by Lord Lansdowne.

Lord Esher wrote:

Sir Evelyn's evidence was of importance, . . . stating his views upon all subjects, and the efforts he has made for 30 years to get them carried into effect.

Of course Sir Evelyn found it a matter of difficulty to explain how it was that having been QMG and AG for a period extending over nearly 10 years, he had been unable to give effect to his ideas. His explanation generally was the helplessness of the military branch when brought into conflict with the civilian element i.e. Secretary of State, the Permanent Under Secretary and the Financial Secretary. Sometimes when reforms entailed large expenditure this excuse was valid; but there were many questions affecting the comfort of the soldier, recruiting, training of the officers, military organisation, methods of promotion and appointment to commands, upon which the military side of the War Office could have carried their point, had the distinguished officers been agreed, or had they been firm enough to take the necessary initiative . . .

He repudiated all responsibility for the preparations for war in South Africa. He contended that, as Adjutant

General he was never consulted either as to the numbers required nor the officers appointed to command. He told us privately that he was the 'whipping boy' between Lord Lansdowne and Lord Wolseley.

The gist of his evidence like that of every other officer hitherto examined, was that for all shortcomings at the War Office, it is Your Majesty's civil servants, and not the military officers who are to blame.

In similar vein Lord Esher wrote to the king on 4 December 1902, concerning Lord Roberts' evidence to the Commission:

Lord Roberts complained very earnestly (and made out a strong case) of the change brought about in 1899 when the sphere of action of the Quartermaster General and the Adjutant General was altered; and he related the efforts he had made to remedy what he thinks is a serious evil in war. But he was over ruled by the Secretary of State and the Cabinet.

. . . Lord Esher put to Lord Roberts the question whether, in the event of a breakdown in war occurring due to a want of trained AQMG's in the field, the Commander in Chief would be held by the country to be responsible; and Lord Roberts admitted that this view would undoubtedly be taken, although he has no power to remedy the defect.

. . .

It is also obvious that Lord Roberts himself is morally weakened, in dealing with serious reforms by the conviction that his responsibility is unreal and that he is absolved by the action of another authority.

This, Lord Esher ventures humbly to suggest, is the gravest question connected with the organisation of Your Majesty's army.

This view of the state of mind of Lord Roberts is endorsed by a letter he wrote to Sir Ian Hamilton on 18 May 1901:

The fact is the position of the Commander in Chief at the War Office is not properly understood, owing, I imagine, to there really having been no such person for several years. For some time before the old duke was retired, he practically did nothing - the ordinary routine of the office was carried on by Gipps, while Buller did what he could without having the authority to do it. It was much the same in Wolseley's time. He was often absent for days and

weeks together. Grove did as Gipps had done, and E. Woods followed in Buller's footsteps. The consequence was the C in C came to be a sort of nonentity whose opinion could be asked and taken according as the Secretary of State and the Civil side of the House thought desirable. It was not considered necessary for the authorities to know what the Commander in Chief thought of this or that question, and if he made an occasional protest, he was looked upon as stepping beyond his proper authority . . . I could not be the Figurehead the Duke was in the latter part of his military career, and that Wolseley was during the whole time he held office as Commander in Chief . . . I have made it quite clear that matters cannot go on as they are now. I have in fact placed my resignation in Brodrick's hands, and he and the Cabinet must now decide whether they will have me as their Commander in Chief or someone who will do exactly as the Secretary of State tells him . . .

After the report of the Royal Commission into the South African War, on 30 August 1903, Lord Roberts wrote to the Secretary of State for War. It included the following:

I can speak now with nearly three years experience of the War Office, and I am entirely in favour of the proposal to form a Board. It is in fact the inevitable outcome of the change made by Mr Childers when he removed the office of the Commander in Chief from the Horse Guards to the War Office and placed the Duke of Cambridge under the direct control of the Secretary of State. So long as His Royal Highness filled the post he was "in appearance" the head of the Army, but in appearance only, for from the date of his removal to the War Office, the Commander in Chiefship practically ceased to exist.

The position of the Commander in Chief is quite anomolous, a position which no one who has been a real Commander in Chief or held a high command in the field, could possibly fill with advantage or satisfaction to himself.

Believe me, I am not writing this from a feeling of any personal grievance. You have told me more than once - and I am sure it is the case - that I have been treated with greater consideration than former Commanders in Chief. I am only giving expression to a feeling, which I

have vainly endeavoured to fight against, a feeling of helplessness, of being throttled as it were by the system in force . . .

This look behind the official scene suggests a situation of responsibility, without real power, among senior military officers and a large measure of power, without real responsibility, in the civilian sphere. There can be no argument that the Secretary of State for War had the clear responsibility to Parliament and should have been required to accept the blame for acting on the wrong advice, if that is what he did. On the other hand, fifty years of apparently conscientious debate had resulted in a system which influenced the Secretary of State to listen more to his civilian advisors. To attribute blame to any one individual in such circumstances, would be quite unrewarding. There were some signs, however, that more people were beginning to identify the fundamental problem as being a system which concentrated on apparent executive responsibility with little thought to the need for a prior adequate consultative process.

After its examination of the position of the Commander in Chief, the Royal Commission into the war in South Africa considered the Defence Committee of Cabinet. During the South African war a Defence Committee had existed but its prime concern was with the Estimates and in resolving questions which arose between the War Office and the Admiralty. On such matters it made positive decisions.

After the war there was a substantial change in the nature of the Defence Committee. It stopped consideration of the Estimates and as explained by the Secretary of State (Mr Brodrick) in his evidence to the Commission ' . . . the functions which he (the Prime Minister) assigns to the (Defence) Committee are deliberative and not executive'. Mr Brodrick explained that the new Defence Committee was more concerned with 'questions of policy' on which the estimates for the year would depend. In addition, one of the main objects of the Committee was to bring the War Office and the Admiralty much closer together. Mr Brodrick stated 'I do not think anything the Committee can do will ever in any way release the head of the Admiralty or the head of the War Office from his responsibility, but it will undoubtedly coordinate their work to a much greater degree than heretofore . . .'

Finally the Royal Commission considered the idea of a War Office Council. In its introduction to this problem it stated:

No defect in War Office organisation has excited more hostile criticism than the want of consultative power which

has characterised its administration. The Royal Commission of 1890 commented adversely on the then condition of matters, and especially on the "wholesale recourse" to separate and independent Committees; and in the 10 years which followed that Report the evil which it condemned was certainly not removed though there were some attempts at improvement. One great difficulty in estimating the various Committees and Boards of the War Office at their true value is still the fact that they have been so numerous and so indeterminate in their functions.

At the higher levels, during the latter half of the 1890s there had been meetings of officers in the War Office on a semi-formal but unrecorded basis. These committees had been known under a number of titles. Eventually, on 28th May 1899, 'The Army Board' was constituted by office memorandum presided over by the Commander in Chief. At the same time a Promotion Board and a Selection Board were also established. Subsequently a Permanent Executive Committee of the War Office was created, presided over by the Permanent Under Secretary.

There had also been established in 1895 a War Office Council, but this met only at irregular intervals on the initiative of the Secretary of State. By 1902 the Council had been formalised, met regularly and kept minutes of its proceedings. This tended to take over much of the considerations previously undertaken by the Army Board and there was some difference of opinion in the Commission's witnesses as to the continued need for the Army Board. Of greater importance was the Commission's concern that the Council was constituted by memorandum from the Secretary of State which he could subsequently revoke. The Commission considered that the Council should be on a much more permanent basis. They stated:

. . . The duties of most of the high officers, who are members of the War Office Council, are already defined by Orders in Council, and, in our opinion, there is still more reason that the duties which they are to perform as members of the Council, and the constitution of the Council itself, should be defined with the same formality. The issue of an Order in Council would give the whole arrangement a more correct status, and a larger measure of permanency.

The recommendations of the Royal Commission into the South African war set the stage for the great reorganisation of the War Office which was to prepare it for the tremendous events of

the twentieth century. To bring this about, a committee was formed under the chairmanship of Lord Esher to make recommendations for the reorganisation of the War Office.

The report of the Esher Committee is a most remarkable document. It seems to have digested the whole history of the previous fifty years and reached some simple but profound conclusions. In the first paragraph of its report for example, it states:

It is necessary to make a complete breach with the past and to endeavour to reconstitute the War Office with a single eye to the effective training and preparation of the Military Forces of the Crown for war.

. . .

At the outset of our enquiry, therefore, we are driven to the conclusion that no measure of War Office reform will avail, unless it is associated with provision for obtaining and collating for the use of the Cabinet all the information and the expert advice required for the shaping of national policy in war, and for determining the necessary preparations in peace. Such information and advice must necessarily embrace not only the sphere of the War Office, but those of the Admiralty and of other offices of State.

These conclusions can be applied to any country if they are posed in the form of questions such as: 'What is the basic objective of a Department of State for War?' and 'What national organisation is necessary before the basic objective can be realised?'

The Esher Committee answer to the second question is that 'The Defence Committee of Cabinet' would fill the requirement but that:

. . . a permanent nucleus to the Defence Committee is essential as the only valid guarantee (1) the vitally important work with which no one is now charged shall be continuously and consistently carried on, and (2) that the Prime Minister shall have at his disposal all the information needed for the due fulfilment of his weighty responsibilities. And, further, we can conceive no other means of focussing questions of national defence under existing conditions without involving constitutional changes which would be undesirable if not impracticable.

In the reconstruction of the War Office itself the Committee recommended, 'as a first step', that ' . . . the position of the

Secretary of State should be placed on precisely the same footing as the First Lord of the Admiralty . . .' and that:

The next step is the constitution of a Board, or as we prefer to call it, an "Army Council", following the general principles which obtain at the Admiralty . . . As regards the legal aspects of the constitution of the Army Council we have received a memorandum prepared by the Parliamentary Counsel which makes it clear that this Council can be "constituted under the prerogative by letters patent".

Subsequently the Committee expanded on their views on the Army Council, after the creation of the Council itself had been approved. They enunciated certain principles governing the operation of the Council:

The Members of the Army Council will act in a dual capacity (a) as colleagues of the Secretary of State at the Council table, and (b) as Superintendents of the several branches into which the business of the War Office will be divided.

The responsibility of the Secretary of State to Parliament and to the Country for the administration of the military forces will in no sense be diminished, but it will be shared by the Members of the Council.

The Council will decide all questions of military policy, and all important questions affecting more than a single branch of the War Office.

The decisions taken will stand, and executive orders will be issued in the name of the Council as a whole. It thus becomes the duty of any Military member or Members of the Council who may dissent from a decision taken, either to resign, or to accept a share of responsibility for the action involved.

The other part of the Esher Committee report which is of particular importance concerned the General Staff. In this the Committee was fortunate in the choice of its Secretary (Lieutenant Colonel G.F. Ellison). In part, he was a by-product of the history of the gradual deterioration of operational staffs throughout the nineteenth century which created a problem which was never adequately grasped or considered by any of the Royal Commissions or Committees which enquired into the organisation of the War Office. To understand his importance a brief examination of this history is warranted.

Before the close of the Painsular War, where the Duke of Wellington had first made his name, the Quartermaster General's Department had assumed the functions of an operations staff under the Commander in Chief. In 1816 the ration of officers in the QMG's branch to those in the AG's branch was 11:5. Fifty years later that ratio was reversed. This decline in the operational side of the Commander in Chief's staff resulted mainly from over forty years of peace. Attempts to rejuvenate the operational responsibilities of the Quartermaster General were unsuccessful and in 1888 the QMG became a Director of Supplies and Transport. In 1888 also, Military Intelligence, which had been responsible for mobilisation, was absorbed into the Adjutant Generals Department. In 1895 the mobilisation section was placed directly under the Commander in Chief. In 1901 the Intelligence branch and mobilisation section with some functions of the Adjutant General's Department was placed under a Director General who became a member of the War Office Council and the Defence Committee. Thus, at the outbreak of war in South Africa many essential elements of an efficient General Staff had not been in existence for years.

When Lord Roberts became Commander in Chief he was so conscious of the lack of a General Staff that he detailed one of his officers (Lt. Col. G.F. Ellison) to draft a manual dealing authoritatively with the question of staff organisation and duties.

In December 1932, Lieutenant General Sir Gerald Ellison, as he had become, wrote of that time:

As a preliminary step I sent to the Adjutant General a short memorandum proposing a system exactly on Wellingtonian lines . . . The file containing my memorandum went the round of all the big wigs at the War Office . . . and it finally reached Lord Roberts, who gave his decision at considerable length. Briefly, the outcome was that the Quartermaster General's branch was to be expanded into a real operations staff, and on this decision I was now in a position to push on with the preparation of the staff manual. I had already made a good deal of progress when, towards the end of 1903, the Esher Committee was assembled to reconstitute the War Office on the lines of the Board of Admiralty, and I was appointed its Secretary. Accordingly, I was then in a position to bring to their notice, in concrete form, Lord Robert's view regarding staff organisation in War, and they had no hesitation in deciding to make the War system the basis of the new

constitution of the War Office. Throughout their preliminary discussions the Esher Committee talked of the three branches of the staff under the Peninsular nomenclature which Lord Roberts had already approved: namely, QMG, AG, and Commissary General; and it was only the last moment, just before their first report was published, that they substituted the term "General Staff" for the operations branch, leaving the Quartermaster General to remain what during a long period of peace he had become - namely the controller of the great supply services. A name only was changed; the distribution of War duties between the three great branches of the staff was with a few minor exceptions, as Lord Roberts had already conceived it . . . The credit of creating a General Staff belongs to the Esher Committee, but to Lord Roberts is due the initiative which gave us a Staff system in 1914, so widely at variance with what had been obtained in the Boer War . . . Lord Roberts not only gave the Army the Field Service Regulations, but, more important still, he revived in the Home Army the Staff system that Wellington had initiated during the peninsula campaign . . . The Staff system that saw us successfully through the Great War was due to Lord Roberts and Lord Roberts alone . . .

The remaining section of the Esher Committee report, of importance, concerns military finance. Its importance results from the fact that it is one of the few, possibly the only, public document which tries to pinpoint the fundamental problems which can arise in this field.

The Committee made clear the paramount responsibility of the Treasury when it stated:

In the first place, the Treasury is, and must be, responsible for the provision of the funds annually allocated by the Cabinet to the maintenance of the military forces. The Treasury is also responsible for all such diversions of allocated funds as it may sanction on the application of the War Office. Lastly, the Treasury is responsible for financial order in all departments of State, and may, therefore, require such methods of accounting as it approves.

The Committee pinpointed the major source of difficulty, however, when they defined the position of the Accountant General in the War Office, as follows:

The special relations of the Accountant General to the Treasury, and the fact that he, or the Financial Secretary, is the medium of all communication between the War Office and the Treasury, have led the finance branch generally to take up a position of divided allegiance. Thus, a case has come to our notice in which the Treasury was asked to sanction and did sanction expenditure the nature of which was disapproved by the military head of the branch concerned. Finally the Accountant General in his other capacity as the adlatus of the Financial Secretary has had free personal access to the Secretary of State and has been able to obtain decisions which the military heads, if present, would have strongly combatted.

The results have been eminently unsatisfactory. The War Office is divided into two camps whose occupants regard each other with mutual suspicion. The responsibility of the military heads has been rendered nominal, except in time of war, when the finance branch is effaced as a controlling power. The Secretary of State has been led to give decisions upon a partial presentation of the case . . .

The Committee summed up the position in the War Office as follows:

The entire system of War Office finance, which has been built up during many years, and has its origin in a distant past, is based upon the assumption that all military officers are necessarily spendthrifts, and that their actions must be controlled in gross and in detail by civilians. This theory is largely responsible for the unreadiness for war which has been frequently exhibited, as well as for reckless and wasteful expenditure.

As a result of the 'assumption that all military officers are necessarily spendthrifts' the Committee commented:

The theory that military officers of all ranks are, by the fact of wearing uniform, shorn of all business instincts has inevitably tended to produce the laxity which it is supposed to prevent.

. . .

While the present system of financial control is futile in peace, it is ruinous in war. Officers unaccustomed to bear any financial responsibility, and ruled by excessively complex regulations, cannot at once improvise a system for

the control of expenditure in the field, when the restraints are suddenly removed . . .

The Committee believed that as a result of 'the principle of the Government of the Army by a Council which has now been established, some of the evils . . . must automatically disappear'. They enlarged on the position of the Financial Secretary, as part of the Council, as follows:

The Financial Secretary is now the colleague of the members of the Council, and can no longer occupy the position of an independent critic with special powers of access to the Secretary of State. His responsibility for the efficient and the economical administration of the military forces is co-equal with that of the other members. He has specially assigned duties, but not special responsibilities apart from them. Parliament and the whole country must in future hold the Army Council responsible as a whole, through the Secretary of State, for the efficiency of the Forces. The Council is one and indivisible, with aims and interests shared in common by all members.

There is one important aspect of the Esher Committee report which seems to require some interpretation. In their recommendation to abolish the office of Commander in Chief they ' . . . urge the divorce of administration from executive command', and imply, in parts of their report, that 'executive command' has no place within the War Office. In other parts of the report, however, they state that 'The Council will decide all questions of military policy . . .' and that ' . . . decisions taken will stand and executive orders will be issued in the name of the Council as a whole'. As the Council was created by Patent it automatically became the highest element of the chain of command so it is necessary to decide the difference between 'executive orders' and 'executive command'.

It seems clear that the Esher Committee looked upon 'executive command' as an authority vested in a single individual to command. It recognised the position of the Council in the chain of command by virtue of its authority to issue executive orders but it tended to exclude it from being 'in command'. It recognised the War Office as a 'consultative' organisation with a corporate authority at the top as distinct from a field command which necessitated individual authority.

In this regard it is interesting to examine the wording of the Defence (Transfer of Functions) Act of 1964 which brought the new Ministry of Defence into existence in the United Kingdom. Section 1 of this Act states:

1. (1) If Her Majesty is pleased to make arrangements -
 - (a) for one of Her principal Secretaries of State to be charged with general responsibility for defence; and (b) for the establishment of a Defence Council having powers of command and administration over Her Majesty's armed forces, and of an Admiralty Board, an Army Board and an Air Force Board to be charged (under the Defence Council) with the administration of matters relating to the naval military and air forces respectively.

It is difficult not to reflect on the history of the higher command organisation in the United Kingdom during the nineteenth century.

Superficially it would be easy to conclude that the changes were only concerned with a rearrangement of duties at the top and that this should have been easy to sort out. That the problem was not merely superficial but complex is made obvious by the fact that the leading men of the nation were involved in the various commissions trying to solve it. Its importance is reflected in the belief expressed by General Sir Gerald Ellison that the near disasters of the Crimea and South Africa would have culminated in real failure in Europe in 1914 had the command organisation not been changed.

This brings home the importance of having the right command organisation at the highest levels if failure in war is to be averted.

Another lesson which can be learned from the experience in the United Kingdom results from the time which elapsed between the realisation that a problem existed and the finding of a lasting and proper solution.

It took a war - in the Crimea - to make the Parliament and Whitehall aware that there was a problem. It took fifty years of conscientious and objective debate by the leaders of the nation involving numerous Royal Commissions comprising the great names of the period, including some who became Prime Ministers, before an answer was found. And when it was found it was based on a change which had the appearance of being relatively simple.

Although the solution found in 1904 has stood the extreme tests of the twentieth century and still remains valid, in its fundamental form, to the present time, some further analysis seems necessary.

If the beginning and the end of the nineteenth century are compared, two main features present themselves in so far as the problem of army command is concerned. The first is the improvement in communications. In 1800 sailing ships provided the only overseas link. In 1900 the steamship was the order of the day. This resulted in an enormous increase in the capacity of any particular line of communication. In addition, by 1900 telegraphic links on a world scale had been developed. The improvement in the exchange of information between the field and London was so great as to make comparison with the situation in 1800, almost impossible.

The second main change during the nineteenth century was the impact of the industrial revolution. In no country was the effect of the industrial revolution greater than in the United Kingdom. In the nineteenth century she changed from a relatively poor nation to a relatively rich one. The population increased, internal communications were transformed and technological development was the order of the day.

The combination of both these major changes could account for the tremendous changes in the nature of war. At the time of Waterloo, the supply problem of the army would bear no resemblance to the supply problem one hundred years later in the area. Not only were the weapons of war relatively simple at the time of Waterloo, but the standard of living of the ordinary soldier was so low that he could exist - and fight - on relatively simple support. The impact of war on life at home was minimal.

As the industrial leadership of the United Kingdom developed so the demands of the army must have changed with it. It is not without significance that the Crimea was the first war the United Kingdom had fought for forty years, and one of the major problems was supply. The United Kingdom then experienced another forty years until the Boer War, a feature of which once again was the problem of supply. As David James wrote in his biography of Lord Roberts,

The Elgin Commission (i.e. the commission into the war in South Africa) . . . revealed an appalling picture of lack of preparedness. Although it was known that Khaki uniforms would be needed, there was no reserve of anything but scarlet and blue; the Lee Enfield rifles were found to be wrongly sighted, their bullets were prone to strip in the barrel, disabling the men who fired them; there was practically no reserve of horses, of saddles, or of horse shoes; the cavalry sword was useless and the nation's entire

reserve of this (as then considered) indispensable weapon was only 80!

One result of the Crimean War was that the 'fighting' side of the army staff was absorbed into the realm of the Secretary of State. Prior to that time it had remained independent in the Horse Guards. Lord Roberts saw the significance of this when, in 1903, he wrote to the Secretary of State favouring the proposal to form a Board as it was an 'inevitable outcome' of the removal of the Commander in Chief from the Horse Guards to the War Office in 1855. Instead of changing from a field executive staff to a strategic consultative staff and therefore a thinking staff the objective seemed to remain one of merely operating as before but in a new environment. The Commander in Chief became neither one thing nor the other and so tended to lapse into the state of obscurity described by Lord Roberts when he took office.

It was this desire to operate the old system in a new environment to which it was totally unsuited which probably developed into a fixation until it was identified by the Hartington Commission. The change was still too radical for immediate acceptance, however, so another ten years - and a war - became necessary before this simple, but radical, change was adopted.

During the whole of the fifty years of debate the technological advances had been having their material effect on the army and the nation. And during all that time the army was falling further and further behind in its ability to even cope with, let alone exploit, the tremendous technological superiority it had developed.

In the end the solution to the problem was, in essence, a recognition that:

- (a) the field commander must have an independence of action to mould and to operate his command as a fighting force to meet clearly stated objectives, with the minimum of interference from the political level. Hence the decision that 'it was imperative to abolish the office of Commander in Chief' and 'to divorce . . . administration from executive command . . .'
- (b) the backing of the nation would be necessary. This would involve many problems affecting other Secretaries of State making a national committee necessary to coordinate all these activities and to keep them in perspective. This, in turn, was clearly a role for the Prime Minister who would require a small staff to make the work of the committee effective.

- (c) a key Department of State would be that of War. It would be dependent for its efficiency, in turn, on a carefully selected and specially trained staff to act as a group of 'strategic' thinkers to lead the consultations necessary to bring the various and increasingly complex aspects of army operations into focus. This would be the General Staff.
- (d) the outcome of the leadership through the General Staff would be the development of strategic policy decisions which would be either
- (1) issued in the form of executive directions to the field commanders, or
 - (2) submitted to the national defence forum for consultation and consideration of its impact on the various other Departments of State.
- For this purpose the War Council was needed as a corporate body, covered by statute, each member of which, including the Secretary of State for War, must accept responsibility for joint decisions of the corporate body, or resign.

In the middle of the period covering the events leading to the important changes in the command arrangements in the United Kingdom, the constitution of the Australian federation was sealed and the federal Commonwealth of Australia came into existence. What effect did the events in England have on the Australian scene?

3. The Constitutional Basis for Command in Australia

The Constitution of the Commonwealth of Australia must be the starting point of any examination of the command arrangements for the Australian armed forces.

There are three sections which concern the armed forces, the most important of which is Section 68:

(a) Section 51. 'The Parliament shall, subject to this Constitution, have powers to make laws for the peace, order, and good Government of the Commonwealth with respect to:

(vi) The naval and military defence of the Commonwealth and of the several states, and the control of the forces to execute and maintain the laws of the Commonwealth'.

(b) Section 63. 'The provisions of this Constitution referring to the Governor General in Council shall be construed as referring to the Governor General acting with the advice of the Federal Executive Council'.

(c) Section 68. 'The command in chief of the naval and military forces of the Commonwealth is vested in the Governor General as the Queen's representative'.

A point which needs to be made at the outset of any examination of the command problem in Australia is the essential difference between S51 and S68. S51(vi) concerns the making of laws and the 'control' of the forces whereas S68 'vests command'. Command means 'To order with authority' and control means 'To check or verify and hence to regulate' or 'To exercise restraint'.

It is not clear just how the working of S68, as it was submitted to the Melbourne Convention Debate, was prepared in the first place. It is easy to trace its origin back as far as the National Australasian Convention in Sydney in 1891. At that convention the wording accepted was almost identical with the present Section 68, and with the draft submitted to the Melbourne Convention in 1898. Thus the wording remained virtually unchanged, least from 1891 onwards, as the only change was to delete the word 'hereby' from the phrase 'is hereby vested'. It seems probable that the wording accepted in 1891 had its origins in the State Colonial Acts.

The Volunteer Forces Regulation Act of 1867 of the State of New South Wales declares, in the fourth section, that:

The Governor as the Queen's Representative shall be the Commander in Chief of all the local forces raised in the Colony and all arrangements connected with the organisation drill and discipline of such forces shall so far as the same shall come under the scope and operation of this Act be made by his authority by such officers as he may appoint.

In Queensland, the Volunteer Act of 1878 declares, in Section 3, that:

The Governor, as Her Majesty's Representative, shall be Commander in Chief of all the Naval and Military Forces in Queensland.

The Defence Act of 1885 of the State of Tasmania is substantially a transcript of the Volunteer Act of 1878 of the State of Queensland.

In the State of Victoria the Defence and Discipline Act of 1890 did not make direct reference to command of the forces of the Colony insofar as the Governor was concerned.

The similarity of the wording in the State Colonial Acts of New South Wales, Queensland and Tasmania, with the wording of S68 prompts consideration of the interpretation placed on such wording. It should be noted that the Colonial Acts did not 'vest' command in the Governor, as S68 does in the Governor General, but merely 'made' the Governor the Commander in Chief.

Nevertheless, there seems to have been general agreement among recognised legal authorities at the time that power was conferred on Governors of the Colonies in two ways. The first was as 'the Governor in Council' but the second was as the Governor in Person'. Thus it was necessary in all matters concerning the local forces for the Governor to decide, first and foremost, in what capacity he was acting whenever a problem presented itself for decision.

In 1869 the Attorney General of New South Wales was requested by the Governor to advise him as to his powers and functions under the Volunteer Forces Regulation Act of 1867. The Attorney General gave a detailed reply with the firm opinion that some matters, such as appeals against certain disciplinary decisions of the Officer Commanding the Volunteer Force, 'should be decided by the Governor upon his own responsibility, as Her Majesty's Representative, exercising the functions of Commander in Chief of the Forces'. As a more general observation, however, the Attorney General submitted a further opinion as follows:

I think that all matters concerning the Force, originating within it, or properly coming under the cognizance of the Commanding Officer in the first instance, should be submitted by him direct to the Governor. Other matters (though it may be impossible to draw a line abstractly) should be submitted by the Colonial Secretary. Thereupon, it will be for His Excellency to determine in each case whether the advice of the Executive Council is required, or whether to act prerogatively on Her Majesty's behalf.

In considering the role of the Governor of Queensland, Mr Justice Clarke observed in 1905:

It cannot be supposed that the Parliament of Queensland intended to place the Governor as the Representative of the Crown in any other position in relation to the command of the military forces of the State, and in relation to the execution of the statutory powers conferred upon him by The Volunteer Act of 1878, that the position occupied by the Crown itself in relation to the command of the Imperial Army and to the execution of the Acts of the Imperial Parliament relating to the military forces in the United Kingdom. The relation of the Crown to the military forces raised and maintained under the direct authority of the Imperial Parliament is fully stated in the following extract from Anson's Law of the Constitution.

'The Secretary of State is responsible for the exercise of the royal prerogative in respect of the army, and everything that is done in the army is done subject to his approval. For the use of these powers he is responsible to Parliament. He must answer to Parliament for the discipline of the army and its relations to the civil members of the community as well as for its distribution, efficiency and cost, but he is also bound to prevent the interference of Parliament in the action of the Queen's servants as to the movement and disposition of the forces.

The House of Commons may express its disapproval of a Minister directly by censure, or indirectly by refusing him a vote on a question which he thinks important in the business of his office, but while he holds office he is responsible for the exercise of the Queen's prerogative in respect of the army, and is bound to see that the

prerogative is exercised by the Crown and not by Parliament. No one would desire to see the army the servant of a majority of the House of Commons, nor is it possible to conceive that the management of any Minister however incapable would be so bad as the management of an indeterminate number of irresponsible politicians.

Especially is the Secretary of State bound to maintain the discretionary prerogative of the Crown in the appointment and dismissal of officers, their promotion or reward, or the acceptance of their resignation. This prerogative is exercised through the Commander in Chief, though the Secretary of State is responsible for its exercise by a non political officer such as the Commander in Chief, because our army unlike the armies of other European countries, is not divorced from the political rights of citizenship. The soldier if duly qualified, may exercise the franchise, the officer may sit in the House of Commons. Plainly then, the King or a minister of the Crown might use or be pressed to use the powers of appointment, promotion, or dismissal for political and party ends. The history of the last century attests the reality of this danger'.

This quotation by Clarke from Anson's Law of the Constitution, was subsequently updated after the formation of the Royal Air Force and in the edition dated 1935 the corresponding section now reads as follows:

The Secretary of State is responsible to Parliament for the exercise of the royal prerogative, and everything that is done in the Army or Air Force is done subject to his approval. He must answer to Parliament for the discipline of the forces and for their relations with the citizen as well as for their distribution, efficiency, and cost. In time of war, though the Cabinet as a whole determines policy, a special responsibility naturally falls on his shoulders, as in 1914-18. The House of Commons may express its disapproval of a minister directly by censure, or indirectly by refusing him a vote on a question which he thinks important in the business of his office: but while he holds office he is responsible for the exercise of the King's prerogative in respect of the Army or the Air Force, and is bound to take care that the prerogative is exercised by the Crown and not the Parliament. No one would desire to see the Army or Air Force the servant of a majority of the House of Commons, nor is it possible to conceive that the

management of any minister, however incapable, would be so bad as the management of an indeterminate number of irresponsible politicians.

Especially is the Secretary of State bound to maintain the discretionary prerogative of the Crown in the appointment and dismissal of officers, their promotion or reward, or the acceptance of their resignation. In the eighteenth century the Crown used its power for political ends and it was in part to obviate such influences that in 1793 the Commander in Chief was created. At the present time qualifications for appointment are ascertainable in the first instance by the conditions of education, and beyond this, the readiness with which public opinion can be concentrated on any supposed misuse of patronage affords a fairly sufficient safeguard.

The great difference between the two explanations given by Anson lie in the abolition in the later version of the way in which the prerogative is exercised. Anson found it necessary to expand on this aspect of the changes brought about subsequent to 1904. Although the revised version of Anson was published in 1935 it endorses many of the points made by the Esher report. For example Anson states:

Thus was a great change effected in the administration of the Army. By Letters Patent of 6 February 1904 all power and authority exercised under Royal Prerogative by the Secretary of State or the Commander in Chief was henceforth to be exercised by a Council, consisting of three civil members - the Secretary of State, the Parliamentary Under Secretary, and the Financial Secretary - and four military members . . .

(b) In his relation to the Army we must note here the change which has been effected by the creation of the Army Council. Until that change was effected there was a marked difference in the positions of the First Lord of the Admiralty and the Secretary of State for War. The First Lord was the first and chief of a Board, which collectively represents the Lord High Admiral and is at the head of the naval profession: while the Secretary of State for War had no such position in respect of the Army. The Commander in Chief was at the head of the military profession . . . The Admiralty Board was thus more closely connected with the service which it controls than was the War Office.

Nor was there the same security that the Secretary of State for War should be furnished with the best professional opinion on military matters . . . The Secretary of State is now the presiding and responsible member of a Council on which civil and military members alike are bound to advise him to the best of their power, and share with him, though in a minor degree, the responsibility for the efficiency of our Army. No professional head of the Army any longer rivals the position of the Secretary of State . . .

It was the first Anson view which was used by Clarke and reflected the view which must have been held generally, prior to the abolition of the position of Commander in Chief. It is significant also that the quotation from Clarke was in the second edition of his study on Australian Constitutional Law. Although the first edition was published in 1901, Clarke had not updated it in 1905 to take into consideration the fundamental change which had taken place in the United Kingdom in 1904 and which Anson recognised in his Law and Custom of the Constitution.

The fact that Clarke did not seem to have appreciated the nature of the change in 1905 would indicate that there was little appreciation of the real nature of the debate which had been going on in London during the 1890s. This would explain much of the reasoning behind the debate at the Melbourne convention in 1898 concerning section 68.

4. The Melbourne Convention Debate : 1898

Section 68 of the draft Australian Constitution was debated at the Melbourne Convention debate on 10 March 1898. Dr Cockburn opened the debate on behalf of Mr Deakin who was absent when clause 68 was tabled. He moved an amendment: 'that the words "as the Queen's representative" be omitted and the words "acting on the advice of the Executive Council" inserted in lieu thereof'.

The vigorous debate which developed from this proposal had speakers either clearly for or clearly against the amendment. There were, however, four main groupings in the debate:

- (a) Those in favour of the original wording and against the amendment. These were led by Mr Barton.
- (b) Those in favour of the amendment led by Mr Deakin.
- (c) Sir John Forrest who favoured the original wording.
- (d) Others who also favoured the original wording.

The Deakin Argument

The essence of Mr Deakin's argument was that, without the amendment, the clause ' . . . appears to point directly to some additional personal power to be vested in the Governor General in regard to the control of the naval and military forces of the Commonwealth'. He also drew attention to the fact, by quoting from Todd's book "Parliamentary Government in the British Colonies", that in Victoria the Governor exercised no more authority in military matters than he exercises in regard to other Departments of State. He also commented on the situation in New South Wales where the right of the Military Commandant 'to primarily consult the Governor in respect to questions of discipline' had 'removed to a large extent the control of the naval and military forces from Parliament and from the Ministry of the day'. He was concerned that, in Section 68, 'We are not dealing with common law, but with a statutory power, and desire to place the powers beyond dispute.'

Unfortunately, Mr Deakin was not questioned on the reasoning behind his statement that consultation with the Governor of New South Wales for discipline removed 'control' from Parliament and the Ministry of the day. It is not clear, therefore, whether he was aware of the reasoning, first expressed in 1856 when the Commander in Chief first received his appointment, not by patent

directly, but indirectly through the Secretary of State, of the need to retain a direct link with the Crown in the matter of discipline. This arrangement still existed, theoretically at least, in the United Kingdom in 1898. As the debate showed every sign of being honestly objective, however, it can only be concluded that he was not thoroughly aware of the situation in the United Kingdom at the time.

The Barton Argument

Mr Barton was in agreement that the Governor should not act without the advice of the executive council but indicated his belief that such a requirement was inherent in the existing wording of clause 68. He said:

It is perfectly competent for any Minister under responsible government, such as we have it, to secure for the people through their Executive Council every control that my learned friend wishes to obtain, that is to say, every control of the entire management and administration of the department for which the Minister is responsible . . .

Mr Barton drew attention to a principle laid down by Sir Henry Parkes following an incident when the Commandant in New South Wales once offered to the Governor a battery of troops to serve out of the Colony. Sir Henry Parkes then said:

The military forces have been called into existence by the Parliament, and are paid out of the revenue of the Colony, and they are as much subject to the control of the responsible Government existing in this Colony as any other branch of the public service.

Mr Barton gave a long and detailed account of how the Governor of New South Wales would be obliged to act in certain situations with which he became involved. He explained that, in each case, the Governor would be obliged to act on the advice of the executive council. Each example he gave, however, was quite correctly concerned with the 'control' of the army. He tied the examples to the prerogative and explained how certain prerogative rights

. . . have been demitted or got rid of by statute or by other practices - generally by statute - and in any statute the words "in Council" are inserted . . . There are (other) certain prerogative rights . . . which are not described in

a statute as rights of the Governor in Council, simply because no statute has ever dealt with them, and because they belong to that part of the prerogative which has never been nominally given up by the Crown. Of such is the power to summon and dissolve Parliament, to which no one who understands these matters would dream of adding the words "in Council". But yet these rights can never be exercised without the advice of a responsible Minister . . .

In many ways this speech by Mr Barton indicated that he and Mr Deakin were arguing semantically. Mr Deakin emphasised that they were concerned with a statutory power and this was the reason for the amendment. Mr Barton argued that prerogative powers were 'got rid of' by inserting in any statute the words 'in Council'. But here they were debating the wording of a statutory power and Mr Barton was arguing against the insertion of the words 'in Council'. One explanation of this apparent contradiction might be that the ties with Westminster at that time were so strong that Mr Barton's reference to 'getting rid of' prerogative powers was only in the Westminster context.

Subsequently, Mr Barton referred to that section of Anson's "Law and Custom of the Constitution" which was also quoted in Mr Justice Clark's book. His use of this quotation requires separate examination.

In common with Mr Deakin it seemed clear during his formal exposition that he believed that the Governor General should not have the power to act at all except with the advice of the executive council. Also in common with Mr Deakin, Mr Barton did not consider the problem of 'command' at all but devoted his entire argument to matters of 'control'.

Sir John Forrest's View

Sir John Forrest made a short speech but he did confine himself to consideration of 'command' of the armed forces. He sympathised with the object of the amendment but did not believe that clause 68 was the place for it. He said:

The command of the naval and military forces of the Commonwealth must, it seems to me, be vested in some person - the Governor General, not in the Governor General in Council . . . The Parliament will have full power and authority to make laws for the naval and military defence of the Commonwealth, and under these laws the powers of the Governor General and his Ministers and everything else

connected with the administration of the military forces, will be defined.

In this speech Sir John Forrest seemed to accept that 'command' of the armed forces by the Governor General was real. In exercising that command, however, the Governor General would be as much subject to the regulatory powers of the Parliament as anyone else.

It may not be significant but it is of interest that consideration of the problem of command, as distinct from control, only seemed to occur towards the end of the debate, when other members of the convention spoke. Mr Barton certainly endorsed this aspect when it was raised but he did not mention it himself during his speech.

Mr Symon was one of the first to raise the aspect of command. He summed up his view when he said:

It seems to me utter rank absurdity to enact in a solemn Constitution that the Commander in Chiefship, which, of course, is supposed to be vested in somebody . . . is put in some person with the aid of a Governor in Council. I do not know whether it would be expected that the commanding officer, when he went out on parade, would order them to right-about face by order of the authority of the Executive Council. The whole thing is ludicrous.

To this Mr Barton then commented:

This might happen: A court martial might say - "Corporal John Smith, you are guilty of insubordination, by and with the advice of the Executive Council".

The question mark hanging over Mr Symon's views is that he carried his example to a rather absurd degree which Mr Barton aggravated during his only endorsement of the 'command' aspect of the debate. They may have done this to try and emphasise their point.

On the other hand, in reply to a question on the effect of usage on a written constitution, Mr Symon, himself a constitutional lawyer, said:

We must have some regard to the instrument we are framing, and we ought to look upon it as a Constitution with plenty of elasticity, under which all the constitutional usages will apply and be interpreted.

Mr Symon also indicated that he did not fully appreciate the real role of an army when he suggested that if the Governor

General 'interfered unduly' then the Parliament would have to tell him that they would take the army away so that he would be Commander in Chief only nominally.

Although the amendment was rejected there is no way of telling whether there was a majority of those who voted against the motion who did so because they believed that the Governor General should be vested with 'command' or whether the majority thought that 'constitutional usage' would limit the Governor General's ability to act in matters of 'control'.

Of particular interest is the reference by Mr Barton to the passage from Anson's 'Law and Custom of the Constitution' which, of course refers to the British constitution. The passage which he quoted was passed to him by Mr Symon. It is the same passage as that contained in Mr Justice Clark's book. It reads as follows:

Especially is the Secretary of State bound to maintain the discretionary prerogative of the Crown in the appointment and dismissal of officers, their promotion and reward, or the acceptance of their resignations. This prerogative is exercised through the Commander in Chief, on the responsibility of the Secretary of State; and it is the more important that power of this sort should be in the hands of a non-political officer, such as the Commander in Chief, because our army, unlike the armies of other European countries, is not divorced from the political rights of citizenship. The soldier, if duly qualified, may exercise the franchise; the officer may sit in the House of Commons. Plainly then, the King or a Minister of the Crown might use, or be pressed to use, the powers of appointment, promotion, or dismissal, for political and party ends. The history of the last century attests the reality of this danger. The office of Commander in Chief, as constituted in 1793, was intended to meet it.

Mr Barton's use of this passage seems to have been lukewarm. After completing the quotation, he said:

We find that, as time has gone on, all these powers have come to be exercised by the advice of the Minister if not by the advice of the Executive Council. The constitutional usage in this case seems to me so clear that it would be of no use to attempt to disturb it, and, whether these words are or are not inserted, this power will be really in the hands of the people.

These comments seem to pose more questions than they answer. What are 'all these powers (which) have come to be exercised by the advice of the Minister'? Are they the powers referred to by Anson, viz. the powers of appointment, promotion or dismissal? If they are, then Mr Barton's statement seems to be at odds with the Anson interpretation which suggested that because such powers in the hands of 'the king or a Minister of the Crown' might be used 'for political and party ends'. Then, Anson implies, the exercising of the prerogative power should be in the hands of a non-political officer such as the Commander in Chief. The suggestion by Mr Barton that 'the constitutional usage in this case seems to me so clear . . .' then seems to assume no meaning at all.

Mr Kingston, who obviously voted in favour of the amendment, re-read the first part of the Anson quotation concerning the appointment and dismissal of officers etc. 'a little more slowly'. He stated that the Anson view 'emphasises the position in England' where, he suggested, 'the Crown, in the exercise of its prerogative, can deal with these matters as it pleases. Do we wish that to be the case under the Commonwealth?'

In replying to Mr Kingston, Mr Symon seemed to highlight the essential difference between the two sides. He said:

I think if we alter it in the way which is proposed, we shall simply put a proclamation in the Constitution of our want of knowledge of constitutional law and the position of the Queen and her representatives in self-governing colonies in relation to any military force.

From these two statements it would seem that one side believed that the unwritten constitution of the United Kingdom would continue to prevail even after federation. The other side was not so sure.

It is possible that Mr Barton was aware of the position prevailing in Whitehall at the time where the Commander in Chief had been largely shorn of any real responsibility, an aspect subsequently highlighted by Lord Roberts. There is little, if any, evidence that any member of the Convention was aware of the real nature of the debate which had been going on for the previous forty-five years in London.

As the situation changed radically some six years later, in the United Kingdom, it is unfortunate that the real problem of 'command' was not adequately debated. The result is that Section 68 has sealed a situation into the Australian scene and we do not know, even as a starting point, whether or not the founding fathers

wished the Governor General and the Parliament to have a relationship such as now exists in the United Kingdom or not.

Possibly as a pointer to the future, it is interesting to reflect on Mr Barton's suggestion that the prerogative power inherent in Section 68, would never be used because a similar prerogative power was '. . . the power to summon and dissolve Parliament to which no one who understands these matters would dream of adding the words "in Council". But yet these rights can never be exercised without the advice of a responsible Minister . . .' It would be interesting to reflect on the effect on Australian history had the words 'in Council' actually been added to Section 5.

5. The Implications of Section 68

In an examination of Section 68 the Attorney General's department, on 22 October 1973, expressed an opinion on the interpretation which should be placed on the section, as follows:

7. While, undoubtedly, the formal supreme command is vested in the Governor General by Section 68 of the Constitution it is nevertheless a command that is to be exercised in accordance with the principles of responsible Government. The point is well brought out in Quick and Garran's Commentaries on the Constitution, at page 713-

'The command in chief of the naval and military forces of the Commonwealth is, in accordance with constitutional usage, vested in the Governor General as the Queen's Representative. This is one of the oldest and most honoured prerogatives of the Crown, but it is now exercised in a constitutional manner. The Governor General could not wield more authority in the naval and military business of the country than he could in the routine work of any other local department. Of what use would be the command without the grant of supplies necessary for its execution? All matters, therefore, relating to the disposition and management of the federal forces will be regulated by the Governor General with the advice of his Ministry having the confidence of Parliament'. (Todd's Parl. gov. 2nd ed. p.377)

The comment by Quick and Garran is in complete harmony with the views expressed by Mr Barton during the constitutional debate in 1898. The question posed by Quick and Garran, 'Of what use would be the command without the grant of supplies necessary for its execution?', has two particular implications. The first is that there is a distinction between command and the system for granting supplies, i.e. the control exercised by Parliament. The second is the lack of appreciation of what command really means in an armed service. It suggests that command has an ulterior purpose which can never be implemented because the control measures available to Parliament are such as to make it possible to render the command impotent.

While it is very important that Parliament should always be in a position to prevent misuse of the armed forces this avoids consideration of the real purpose of command. This is to provide

an effective basis for the efficient operation of the armed forces, albeit within the control measures approved by Parliament.

This tendency to place emphasis on what Section 68 does not mean suggests a fear that the army could be misused. This might have resulted from the role of the army during the early days of the Australian colonies when the army enjoyed a predominant role in its affairs. The implications of a dominant army could well have been more in the minds of the leaders of the community at the turn of the nineteenth century than the needs of the armed forces in an independent nation seventy-five to a hundred years later.

On the other hand, the advice given to the Governor of New South Wales by the Attorney General in 1869, thirty years closer to the period of a predominant army role, was quite different. In this case, however, the Governor was asking a pragmatic, specific question and probably expected an equally pragmatic reply.

In reply the Attorney General advised that in matters of command the Governor should act as the Governor in person rather than the Governor in Council. More precisely the New South Wales Attorney General considered that 'all matters . . . properly coming under the cognizance of the Commanding officer in the first instance, should be submitted direct to the Governor'. The phrase 'in the first instance' implies a real depth of understanding on the part of the Attorney General. It suggests that matters concerned with command should be referred to the ultimate command authority and should not be considered by persons not included in the command chain.

This is very close to the problem facing the United Kingdom in 1855 after the death of the Duke of Wellington when it was decided that the Commander in Chief should not receive his charter by patent direct from the sovereign. In this case the supplementary patent made it clear that the Secretary of State had to respect the accessibility of the Commander in Chief to the Sovereign, '. . . so far as relates to and concerns the military command and discipline of our Army and Land Forces . . .' Even though the Secretary of State had to bear responsibility to Parliament for all that was done.

How then did the situation in Australia after federation compare with the situation which prevailed in the United Kingdom prior to 1904?

The most obvious difference was that in the United Kingdom they recognised that they had a problem and had, in fact, recognised its existence for forty years. Perhaps this problem needs stating. It developed after the death of the Duke of Wellington, who had received his command in chief direct from the

Sovereign, by patent. The Parliament then decided not to accept continuation of that practice and transferred the Commander in Chief from his location with the Secretary at War in the Horse Guards to that of the Secretary of State for War in the War Office. The question then arose: if the command in chief was not to be exercised by direct authority from the sovereign, by what authority should it be exercised? As a supplementary question it also became necessary to consider what should be the relationships connecting the Sovereign, the Secretary of State for War, and the Commander in Chief?

The problem needs stating if only because a similar problem existed in Australia - and still exists - but remains unrecognised. The problem in Australia, however, differed in one major respect.

In the United Kingdom the Sovereign was the Head of State but with the traditional royal prerogative which permitted transfer of responsibility and authority by patent. The Sovereign was not the Commander in Chief. In Australia, the Governor General became not only the head of state but also the Commander in Chief. The authority of the Commander in Chief stemmed not only from the patent but also, and more rigidly, from a formal written constitution. In the United Kingdom, therefore, the sovereign could transmit command of the armed forces without restriction, to any person or group of persons. In Australia the Governor General had no flexibility at all. His command in chief of the armed forces was, and is, rigidly embedded in the constitution.

The supplementary aspect of the Australian problem concerns the desire expressed by Mr Deakin in 1898 and the belief expressed by Mr Barton, that the Governor General should not have any function independent of advice from the executive council. Because this problem was not really debated in 1898 there has been a tendency to avoid discussing it.

The principle to be discussed is the one expressed by Anson, viz. that a Minister for the armed services 'is bound to take care that the prerogative is exercised by the Crown and not by Parliament'. Anson implies that the experience of two centuries in the United Kingdom shows the need for a check against the absolute power of either the sovereign or the executive government in their use of the armed forces.

One of the best examples of the need for strict observance of the principle was demonstrated in the United Kingdom after the changes in 1904 had given the Secretary of State a collective responsibility to the Sovereign as head of the Army Council for all matters which, under the old prerogative, he had been bound to observe only on behalf of the Commander in Chief. This was an

incident which occurred, at the time of the Home Rule Bill on Ireland, at the Curragh outside Dublin. It became known as the Curragh incident and warrants detailed description.

The Curragh Incident

One of the issues at the time of Home Rule for Ireland was the incorporation of Ulster into the Republic. This was resisted so strongly by the majority of the people of Ulster that a private army of some 100,000 men was developed. One of their problems was that they lacked arms.

Ireland was still not independent and there was a substantial force of the British army based in Ireland. The headquarters of the General Officer Commanding in Chief Ireland (General Sir Arthur Paget) was in Dublin but a sizable force was located at the Curragh about forty miles to the south west. Of particular importance were the dumps of arms and ammunition in various parts of the country including some in Ulster. There was concern that the private Ulster army might try to break into this store. This concern was expressed in the House of Commons by the Secretary of State (Colonel J.E.B. Seely - an ex yeomanry colonel) in March 1914. He included in his statement the possibility that such an army might march on Dublin. Any such action by a private army which could develop into a civil war could involve the British army fighting the men of Ulster. Many of the men serving in the British army in Ireland were in fact Ulstermen, and most Ulstermen were strongly opposed to Home Rule and were aligned to the United Kingdom. The king (George V) was concerned. He asked the Prime Minister the blunt question 'Do you propose to employ the army to suppress disorder? . . . Will it be wise, will it be fair to the Sovereign as head of the army, to subject the discipline, and indeed the loyalty of his troops, to such a strain?'. It was assessed that the probability was that if the army was used to suppress an Ulster insurrection there would be a possible resignation of up to thirty per cent of officers.

In March 1914, after advice from the Chief of the Imperial General Staff (Field Marshal Sir John French) and the Adjutant General, that special steps should be taken to ensure the maintenance of discipline because of attempts to subvert the discipline of the army, the Secretary of State summoned the General Officers Commanding of the six army commands to the War Office and read them a lecture:

[I] informed them that I should hold each of them individually responsible to see that there was no conduct in their Commands subversive of discipline.

They could let it be clearly understood that any such conduct would be dealt with forthwith under the Kings Regulations. If any officer should tender his resignation they would ask his reasons and if he indicated in his reply that he desired to choose which order he should obey, I would at once submit to the King that the officer should be removed.

Subsequently the Army Council ordered Paget to take steps to safeguard government stores of guns, small arms and ammunition in Ireland, particularly Ulster. Paget replied routinely and the King was informed that steps were being taken to protect army stores in Ulster.

A conference was called in Whitehall as a result of which major precautionary movements were ordered which included the movement of two infantry battalions to points in and around the Ulster border, establishment of a military governor in Belfast, a guarantee of major naval support, 'indulgence' to officers domiciled in Ulster and direction that officers who attempted to resign the service if ordered to Ulster should be dismissed from the army.

This final ultimatum really caused trouble particularly at the Curragh where a majority of officers in the Cavalry Brigade under Brigadier General Hubert Gough, chose to resign.

The GOC of the 5th Infantry Division at the Curragh (Major General Sir Charles Fergusson) could see the trouble spreading to his division and observed to General Paget that presumably the order had the endorsement of the king, to which Paget replied '... of course it is his order'. The GOC then used the argument with his officers that as they were a royal army and the orders were endorsed by the King they were bound to observe them. This averted trouble in the 5th Division but not in the Cavalry Brigade where Fergusson was eventually obliged to relieve Gough of his command and order him to London. Gough then signalled Lord Roberts (who was then retired) for advice. Lord Roberts sought an audience with the King who became aware of the problem for the first time. The king then wrote to the Prime Minister expressing his concern about 'this disastrous and irreparable catastrophe which has befallen my army'. He also complained about being kept in complete ignorance of the occurrences at the Curragh and the conference in Whitehall which led up to them. He then requested that nothing further be done without consulting him. Fortunately

there was no action in Ulster but much was to happen in London before the affair was over. In the context of command the real repercussions resulted from the king's concern over the use of his name and the irresponsibility of the Secretary of State in his unilateral action without consulting the King.

The episode brought great criticism of the king both from within the army and from both sides of politics until eventually, the Prime Minister was forced to make a statement in the House that the king was absolutely innocent in the whole affair.

From a command viewpoint a simple issue becomes apparent. A situation was developing in Ireland which had strong internal political overtones within the United Kingdom. Into this situation the government of the day acted unilaterally in its commitment of the armed services. The question which must be considered is: what would have been the situation had the sovereign been consulted on the use of the army, from the very beginning? In particular, would he have agreed to the ultimatum which the Secretary of State issued to the officers?

This was an issue with clear implications in the field of discipline. It was particularly appropriate to the Anson observation that: 'Especially is the Secretary of State bound to maintain the discretionary prerogative of the Crown in the appointment and dismissal of officers, their promotion or reward, or the acceptance of their resignation'. Yet the Secretary of State had chosen to ignore the sovereign and had precipitated a crisis within the army.

It is difficult not to draw the conclusion from the Curragh incident that the crisis started to be resolved from the time Lord Roberts sought an audience with the King. This points to the probability that consultation with the King, in the first place, would have prevented the crisis from arising. It would not have prevented the problem of Ulster. What it would have done was to have involved an authority distinct from the political forum who would almost certainly have modified the way in which the army was used, particularly insofar as the 'ultimatum' was concerned.

In many ways it is probably the service element of the Army Council who must receive the greatest criticism. It is interesting that the immediate reaction of Lord Roberts, on becoming aware of the problem, was to consult the King. But the CIGS and other service officers on the Army Council had been involved from the very beginning and had not only not apparently insisted on consultation with the King but seemed to have actually supported, or at least permitted, the Secretary of State to act in the unilateral way he did. The Service members of the Army Council, in particular, had the responsibility for seeing that the army was

not seen to be a mere tool of the executive government to be used for political purposes. To prevent such use they had every right to oppose the Secretary of State in the Army Council and had the further right to insist on consultation with the Sovereign in the first place.

The Curragh incident, therefore, provides an excellent example of the need to keep the discipline separate from the administration of the armed services. In other words it is important to keep the chain of command separate from the control by Parliament.

The Australian Scene

It is a matter of considerable interest that the Constitution, even in its earliest drafts, separated the control function of Parliament from the command function of the Governor General. The study of the convention debate in 1898, however, would indicate that these two functions remained separate more by accident than design. The whole trend of the debate was that the Governor General should not have any independence of action.

On the other hand, the apparently deliberate separation of the two functions suggests a deep understanding of the basic relationship between command and control. It suggests, in fact, that the initial drafting of these two elements of the constitution must have taken place in the United Kingdom, because the evidence indicates that there was very little understanding in Australia of the distinction between the two functions.

There was one man, however, who indicates from his writings that he did understand clearly the difference between the two functions. That was Andrew Ingles Clark of Tasmania who has been described as 'probably the greatest contemporary Australian Authority on Federal Constitutions'.^[1]

He was a member of the sub-committee that drafted the Bill for the establishment of the Federal Constitution in 1891. By 1898, however, he was a judge of the Supreme Court in Tasmania so did not attend the Convention debate of that year. Had he done so perhaps the debate on section 68 might then have been more informed. On at least one occasion he was plainly critical of Mr Barton's tinkering in his absence, with the 1891 Convention's draft bill.

This does not necessarily answer the basic question, viz. whether or not, in Australia, the principle should be observed which is stated by Anson, that a Minister for the armed services is bound to take care that the prerogative is exercised by the Crown and

not by Parliament. The question must also include the attendant principle that by separating the prerogative control a close consultation between control measures and command functions became a constant and paramount necessity.

If the principles are to be observed then this can be done easily within the present wording of the constitution. It is not adopted at present but the changes necessary are purely of a procedural nature. If the principles are not to be observed then there should be an informed debate on the subject which should include not only the reasons why it should not be adopted but also what principle or principles should take its place.

Before a conclusion can be reached it is clear that a study of the history and experience of command in Australia is necessary.

NOTE

1. John Reynolds, Edmund Barton, pp.81-2.

6. The Evolution of Command in Australia

Note This part of the study will, I expect, take a long time. The main reason for this is that the subject has never been really debated. What discussion there has been, has tended to skirt around the subject and has been led astray by many spurious argumants often by people with absolutely no qualifications to argue the subject at all. The result is that most of the real evidence on command in Australia is I suspect camouflaged with inconsequential verbiage. Finding it and sorting it out, therefore, will take time.

For this reason I have decided to approach the study in two stages. In the first stage I will study the subject with the material that is readily available. Where this study shows up questionable areas I will insert a comment in red so that the areas of research will be readily apparent when I complete Stage 1. Stage 2 will then include a thorough reexamination of Stage 1.

. . .

The problem of command of the Australian armed services for many years after Federation was largely academic. For practical purposes the Navy did not come into existence until 1910 when two destroyers reached Australia. By the end of World War I the fleet had grown to include seventeen ships and two submarines with a total strength of 4972. By 1939 the quality of the Navy, but not the number of ships, had increased but the total personnel strength was still only 5440. The army at Federation comprised mainly citizen forces and was developed as a force for home defence. It provided the basis for development into the Australian Imperial Force during the period 1914-18. By 1930 the strength of the army was 29,334 all ranks but, for all practical purposes, it remained preponderantly a citizen force. It continued in this form until the outbreak of World War II in 1939. The air force came into existence in 1921 with a strength of 151. At the outbreak of World War II the strength had increased to 3489 with ten operational squadrons and 164 operational aircraft. The citizen force element was small.

During the period until 1939, the administration of the three armed services was effected through a single Minister for Defence and a Department of State which included a Defence Council and Naval and Military Boards, with an Air Board included when the Royal Australian Air Force came into existence in 1921. In 1939

separate Ministers for the three armed services were created, in addition to the Minister for Defence whose role became one of coordination.

At Federation, Australia assumed responsibility only for Home defence, the responsibility for Imperial defence remaining with the United Kingdom government in Westminster. This resulted in all Australian forces in overseas battle areas being placed automatically under the command of the United Kingdom. How did these arrangements work in practice?

How was the Westminster Act worded to retain this power?

In the case of the navy it remained capable at all times of being a working element of the Royal Navy. The arrangement was for all officers to serve part of their time in Royal Navy ships. To ensure full compatibility with their Royal Navy contemporaries their promotion was conditioned by their ability to assume appointments within the Royal Navy. Their promotions and appointments were promulgated in the London Gazette as well as in Australia.

The army did not have a regular fighting element. The fighting units were built up with citizen forces around a regular nucleus. For practical purposes therefore, the regular army's role was one of training citizen forces. Only after mobilisation was it possible to create effective fighting units. Thus, the operation of the army in peace time became a very routine matter, apart from policy decisions which were clearly problems of control and not command.

Although the youngest, the air force developed at a much greater rate than either of the other two services. Moreover, it developed purely within the Australian environment. By 1938, for example, its planned expenditure exceeded that of the army for the first time. It was a force comprising mainly permanent personnel and, as such, resembled the navy in its structure more than the army. The problems of the air force before World War II are, therefore, of particular interest.

The original Defence Act was designed primarily to constitute the Australian Military Forces (AMF) but it also had some general provisions which were applicable to the Royal Australian Navy (RAN) and, when it came into existence, the Royal Australian Air Force (RAAF). The RAN was constituted under the Defence Act which applied the general provisions to the RAN. In addition, a general principle of service law in Australia was its reliance on Imperial legislation. Thus, the Imperial Naval Discipline Act and the Imperial Army Act applied to the RAN and AMF respectively although only to the latter in time of war and when serving with

Imperial forces outside Australia. To cover forces in Australia in peace, certain of the laws and regulations relating to courts martial in the king's regular land forces applied to courts martial in the AMF. The Naval Defence Act provided for the application, at all times, of the King's Regulations and Admiralty Instructions for the time being in force, subject to any modifications enacted in Australia.

The army system was not very satisfactory so a Bill to amend the Defence Act was introduced in the Senate on 7 April 1921. The debate in the Senate emphasised the feeling that discipline required for the Australian forces was very different from that imposed on the forces of the United Kingdom and that the Imperial Act was too harsh and severe.

Almost immediately after the debate in April 1921 an Air Defence Bill to constitute the air force was introduced. It followed the naval pattern because of the intrinsic mobility of the new force. In addition to the general provisions of the Defence Act the new Bill sought to apply the Imperial Air Force Act, for disciplinary purposes both in peace and war subject to any modifications enacted in Australia. Because of the debate on the amendments to the Defence Act which had just taken place, the Air Defence Bill was modified to cover the application of the Imperial Air Force Act only in time of war. The Bill, introduced in the Senate, lapsed when it did not proceed beyond the first reading in the lower House. From 1921 to 1923 the RAAF remained constituted only under the general terms of the Defence Act.

In 1923 a further Bill was withdrawn again because of objections concerned with the application of Imperial legislation. As an interim measure, until the Air Defence Bill could be re-introduced, an Air Force Bill was introduced in September 1923 and passed so as to provide for the establishment of the RAAF as a distinct part of the Defence Force of the Commonwealth. The new Act was very brief. It established the RAAF and provided for it to be governed by the Defence Act and regulations made under it. An amendment provided that the Imperial Act, called the Army Act, should not apply to the RAAF. Another version of the Air Defence Bill was never submitted to Parliament and the Air Force Act was the only legislation specifically concerning the RAAF until the outbreak of war in 1939. The greater part of RAAF law was never covered by legislation but only by regulation until after the outbreak of war in 1939. It was ironical that the only guidance available to the makers of the regulations was the Imperial Air

Force Act which, therefore, provided the basis of the regulations despite Parliamentary objection to it.

After the outbreak of war in 1939, the absence of Imperial legislation to cover the RAAF overseas made it extremely difficult for members of the RAAF to serve in conjunction with other Imperial forces. Two solutions were suggested. The first was the application of the Imperial Air Force Act to the RAAF under the National Security Regulations which would then lapse automatically when the National Security Regulations ceased to be law. The second was to amend the 1923 Air Force Act. This solution was adopted, but it was obviously an expedient because the nation was at war. The new Air Force Act came into force in 15th December 1939 and adopted the Imperial Air Force Act in force at that date. This prevented automatic adoption of any amendments to the Imperial Air Force Act. Under the new Act the Governor General was given the power to make regulations for the discipline and good government of the RAAF.

An interesting aspect of all the Defence Acts of 1939 was that they made no provision for command of the three services. The role of the Naval, Military and Air Boards was almost completely advisory. What authority they had was exclusive of command. Organisation, control and discipline were covered in varying degrees but not command. Field commanders, by virtue of their appointment, could exercise command. Between the field commanders and the Governor General, i.e. at the highest military and civil levels, command could only be exercised lawfully by virtue of rank.

Not only had the Australian services not received the benefit of the long series of debates in the United Kingdom which had revealed the ineffectiveness of a system based on a Commander in Chief in the War Office, but Australia had also ignored consideration of the problem of the higher command arrangements altogether.

In the RAAF case the Chief of the Air Staff (now Air Marshal Sir Richard Williams) was the only person who could lawfully execute control decisions taken at the highest levels. He was not consulted during the decision making process and was regarded as a subordinate in matters of control. He has recorded a number of cases of his lack of access to ministers during the decision making process. He records, for example:

Our Minister, Mr Green, was a very cheerful man known to everyone as 'Texas' but he appeared not to trust any Service officer. He would not deal with anything requiring

his approval, no matter how routine, unless the file was initialled by the Secretary. If one went to him on a matter in the absence of the Secretary he would ask what the Secretary thought of it and if told that the Secretary had not seen the recommendation he would hold the file and would give no approval. It was clear that the Minister had been advised to beware of Service officers.

It is clear from Sir Richard's book that it was the Secretary of the Department of Defence to whom Ministers turned for final advice and that when the Secretary was consulted, the Chief of the Air Staff was not present. It is evident from the Williams documentation that he is giving expression in his book to: '. . . a feeling, which (he has) endeavoured to fight against, a feeling of hopelessness, of being throttled, as it were, by the system in force . . .' The quotation is not from Sir Richard's book, it is from the letter written by Field Marshal Lord Roberts, then Commander in Chief at the War Office, to the Secretary of State for War on 30 August 1903. It might also be said of Sir Richard Williams' autobiography that he sets out 'the helplessness of the military branch when brought into conflict with the civilian element . . .' This quotation, also, is not from Sir Richard's book but from one of Lord Esher's letters to the King when advising him of the evidence the Adjutant General had given to the Royal Commission into the South African war. Lord Esher, it will be recalled, concluded that letter to the King with the remark that '. . . for all the shortcomings of the War Office it is Your Majesty's civil servants and not the military officers, who are to blame'. It will also be recalled that Lord Esher included in one of his letters to the King:

Lord Esher put to Lord Roberts (in the Royal Commission) the question whether, in the event of a breakdown in war occurring due to a want of trained AQGMs in the field, the C in C would be held by the country to be responsible; and Lord Roberts admitted that this view would undoubtedly be taken, although he had no power to remedy the defect . . .

A direct parallel with the situation described by Lord Roberts is provided by Sir Richard Williams' description of the events leading to an investigation by Marshal of the Royal Air Force Sir Edward Ellington and the outcome of that report. It is difficult not to draw the conclusion from Sir Richard's book (which is endorsed by officers who were serving in the RAAF at that time) that the Ellington report was loaded by a number of factors. The

terms of reference, in the first place, were developed without any reference to any members of the air force. They were not even given the opportunity to comment on them. There is evidence, however, that the terms of reference were well known to the Secretary, Department of Defence, who might even have been responsible for drawing them up. Had he done so it would never have become public. In other words the civilian element of the Department of Defence was exercising considerable influence without being obliged to bear any responsibility.

Secondly, Sir Edward Ellington, as Inspector General of the Royal Air Force would almost certainly assume, as so many others have done since, that the working arrangements in Australia could be compared directly with those in the United Kingdom. In the event he met the terms of reference in the way the government seemed to want it but the report contained inaccuracies and drew wrong conclusions.

Douglas Gillison, whose desire for the truth is beyond question, observed in his official history of the RAAF 1939-42 that 'For some time service flying casualties had been arousing hot criticism in Press and Parliament, a situation which led to mis-statements that were unfair both to the public and to the service' and implies that this was the reason Sir Edward Ellington was invited to Australia. He also endorses Sir Richard Williams' observation that the first time the Air Board knew of the invitation to Sir Edward Ellington was when details appeared in the press. Gillison observes that the Ellington report was '. . . a document written dispassionately, clearly and formally'. Gillison does not comment on the adequacy or otherwise of the report but he does endorse Sir Richard's statement that it was the Prime Minister who released the report to the press who were '. . . highly critical of the Air Board and the Chief of the Air Staff, in particular'. His comment also implies that the Air Board, once again, had not seen the report before its release to the press and that it '. . . was hot with indignation'. Gillison then reports statements by the then Mr Fairbairn, who was a World War I pilot, and subsequently became the Minister for Air. Mr Fairbairn's criticism was that the report was made public without any opportunity being given the Air Board to defend itself publicly. Mr Fairbairn declared

In my opinion, this is one of the most staggering of the many signs of ineptitude in regard to national leadership at the present time. Moreover, I have reason to suspect that some inner report must have been given to the Press over and above that given for publication because I have read

Sir Edward Ellington's report over and over again and I cannot see in it anything on which to base the criticism made by several newspapers of the Chief of the Air Staff.

Subsequently a press statement by the government made criticisms of 'shortcomings in the directive faculty' and announced that 'Air Vice Marshal Williams is being sent abroad for two years'. In fact he did not ever return to assume an air force appointment in Australia.

Whether or not Mr Fairbairn's suspicion that some inner report must have been given to the Press is justified or not, it is impossible not to sympathise with it. The CAS was criticised by the media for something which, from Mr Fairbairn's comments, supported by officers who were serving in the air force at the time, had little, if any, foundation in Sir Edward Ellington's report. The CAS was apparently then held responsible by the nation for something which, even if true, was beyond his authority to remedy. This was just such a situation acknowledged by Lord Roberts at the turn of the century. Probably Sir Richard, as well as Lord Roberts, was philosophically aware of such a state of affairs. He deplored it but knew it was inevitable and continued to serve the nation in whatever capacity was asked of him. Many officers serving at the time believed the RAAF suffered the consequences during the war which was to come.

The situation in the RAAF and, to a lesser extent, in the other two services bore a close resemblance to the situation existing in the British army at the turn of the twentieth century. There was one important difference. In the Australian situation there existed both Army and Air Force Headquarters. These were so completely integrated into the Ministerial Departments of State that it was impossible to decide whether any particular officer was in one or other organisation or both. The Chief of the Air Staff, for example, was an appointment bearing precisely the same title as existed in the Air Ministry in London from which it was obviously derived. The CAS in the Air Ministry was, beyond doubt, the chief of the Minister's Air Staff and, as such, was a member of a statutory authority called the Air Council which, as a corporate body, was charged with the command and administration of the Royal Air Force. The CAS in Australia was also a member of the Air Board which was a statutory body but not one charged, in the Air Force Act, with any authority. In essence it was an advisory body to the Minister. The branch of the CAS was within the Department of State for Air. Where Air Force Headquarters fitted into this picture remained undefined. Signals to field units were

sent before the war from 'Air Board' which certainly did not exist in Air force Headquarters as it included civilians without any command status. The best that could be said of it was that it was the headquarters of whatever officer happened to be holding the appointment of CAS. In this event the CAS could also be said to be the Air Officer Commanding the RAAF. As such the arrangement could be compared with that in the War Office in London when the Duke of Cambridge was the Commander in Chief. At that time, however, the Duke of Cambridge did not claim to have an Army Headquarters superimposed on the Ministry. From the time the office of the Commander in Chief was removed from the Horse Guards and the Secretary at War and located inside the War Office under the Secretary of State for War no attempt was ever made to adopt such a dual arrangement. Even so, the relationship between the Secretary of State for War and the Commander in Chief remained a constant enigma. An examination of the Sleddon papers at this point is important.

As a preliminary examination of the basic question posed at the end of the last chapter, viz. whether or not the principle stated by Anson should be observed in Australia together with its implications, the case of the RAAF during the 1930s bears re-examination. Would the problems posed by Sir Richard Williams have been overcome had the changes introduced in the United Kingdom in 1904 been incorporated into the Australian system? The answer must be strongly in the affirmative.

At this stage of an examination of the Australian position, therefore, preliminary conclusions are that:

- (a) The present wording of S68 of the Constitution is correct.
- (b) Every Minister of State for Defence should respect the separation of the command from the control function.
- (c) The changes resulting from acceptance of these two principles should be incorporated into Australian legislation.
- (d) A proven system incorporating these principles is that adopted by the United Kingdom since 1904.

7. The Problems of World War II

Almost immediately after the outbreak of war in 1939, a problem presented itself in the command of the air force. Because there was no Act which covered the discipline of the RAAF when serving alongside Imperial forces, i.e. outside Australia, lawful command of Australian air force units by other than RAAF personnel became impossible. Command of Australian units serving outside Australia, however, remained an Imperial and not an Australian problem. This has been referred to already. The solution adopted was to accept the Imperial Air Force Act in force on 15 December 1939. Although the remedy was effected before any Australian units were actually committed to offensive operations overseas the implications of the action in December 1939, are important.

The first implication is that there is a tendency, in peace, to overlook the problems of war. In Australia, between the wars, command problems tended to be of a routine nature. As such, they were given very little consideration. Much the same thing had happened during the forty odd years between Waterloo and the Crimea and between the Crimea and the South African wars in the United Kingdom.

The second implication follows from the first. Because command problems had not been given adequate consideration when time permitted, a crisis precipitated a hasty solution that was in principle the direct opposite from that expressed by the Parliament at the time of the formation of the RAAF. Times had certainly changed and the solution to the problem of overseas deployment might well have been the same as that reached in December 1939. It is more probable, however, that a properly prepared Air Defence Bill which had been properly considered when time permitted, would not have saddled the RAAF with an Act which was very difficult to amend. The result has been that, despite constant efforts since 1945 to obtain the approval of Parliament for a new disciplinary code, the situation still exists that in over fifty years of its existence the only reasonably comprehensive Act to be produced for the RAAF is one which was evolved in the United Kingdom and adopted in a matter of weeks when a crisis affected the nation. It is only within the last ten years, in fact, that the problem of command, below the Governor General, has received consideration in respect of any of the three Services. This requires a more detailed examination of the Defence Acts, particularly that which amalgamated the three Service Departments into one Department of Defence.

The real testing time for Australia came with the war against Japan in the South-West Pacific. As the Japanese headed south towards Australia each Service had problems with command. The problem, in the case of the navy, was relatively minor so will be covered first.

On 1 October 1942 the Attorney General (Dr H.V. Evatt) introduced a Bill to adopt certain sections of the Statute of Westminster 1931. This measure was criticised by the Opposition who asked why it was suddenly necessary after three years of war to introduce a measure which had been rejected by the House as recently as 1937. Mr Menzies, who had been the Attorney General in 1937, indicated that such a measure should have been passed, in peace, when no unnecessary controversy would arise in relation to it. The Opposition appreciated, however, that problems could arise over the legality of regulations promulgated by the Australian government which conflicted with laws or regulations of the government in the United Kingdom.

The Attorney General gave an example of the problem:

. . . a month or so ago, two Australian naval ratings on an Australian naval vessel, which had been temporarily transferred to the Royal Navy, were brought before a court martial in respect of a crime committed in the Pacific ocean. After their trial they were sentenced to death. By one method or another the matter finally reached the highest court and there it was held that, for the duration of the war, because of a temporary transfer of the ships to the Royal Navy, as distinct from the R.A.N. the ships and ratings were controlled by the Imperial Act . . . It was held by the courts that an Imperial Act, which had come into operation by reason of the temporary transfer of our ships to the Royal Navy, prevented the Commonwealth Government from using its statutory power.

Dr Evatt explained that the two ratings were, in fact, charged with murder. He went on to explain that:

As the position now stands, if a member of the R.A.N. who has been transferred temporarily to the Royal Navy were to commit a serious offence in Australian waters, even in Sydney harbour, his trial by court martial would be conducted under Imperial law, and we would not have, in law, the power the Defence Act gives us to deal with commutation of the sentence imposed.

What Dr Evatt did not include in his statement was the interesting fact that when the offence and court martial took place, it is doubtful if there was a single ship of the Royal Navy serving in the Pacific.

In the context of command, the important point in this incident lies in the submission and confirmation of the proceedings of the findings of courts martial which are closely integrated with the chain of command. The statement by Dr Evatt on the authority under which courts martial were to be conducted, before Parliament passed the Statute of Westminster Adoption Bill, makes clear that the chain of command for RAN ships operating outside Australian waters lay to the United Kingdom and not to Australia.

Unfortunately, in 1942, no Member of Parliament thought fit to enquire about the chain of command in Australia once the Bill became law. It highlighted the fact that for the previous forty-one years the chain of lawful command had never been queried. When war came the chain of command which had been assumed to exist was found to be unlawful. The natural outcome of an Act to adopt the Statute of Westminster should have been a critical examination of the Australian naval command arrangements. But no such examination took place.

When viewed with the knowledge of the history of the problems of command in a Westminster type of government, it is not surprising that in both the army and the air force, command problems manifested themselves almost immediately after the Japanese threat to Australia itself became apparent. Both are of such importance as to warrant detailed and separate examination.

Army Command Problems

On 23 March 1942 General Blamey arrived at Fremantle on his return by sea from the Middle East. On his arrival he was handed a letter from the Prime Minister (Mr Curtin). According to John Hetherington in his biography of Blamey, this letter appointed him the Commander in Chief of the Australian Military Forces. Hetherington also records, however, that on 11 March 1942 General Lavarack had been named the acting General Officer Commanding in Chief. In the official history McCarthy records the Blamey appointment as being 'Commander in Chief, Australian Military Forces' complete with quotation marks, thereby implying that the appointment was not the more general title given to Lavarack. It was apparently overlooked by the government that it was legally impossible for Blamey to assume the title of Commander in Chief

as that role is enshrined in the Constitution and is reserved exclusively for the Governor General.

When Blamey became the Commander in Chief the Military Board was abolished and the military members of the Board became Blamey's Principle Staff Officers. There is evidence, however, that they continued to keep the old titles. The title of Chief of the General Staff remained and he continued as a member of the Chiefs of Staff committee. There did not appear to be any examination of the anomaly created by such an arrangement. The title Chief of the General Staff had its origins in the reorganisation of the War Office in 1904 following the recommendations of the Esher Committee. In essence it was a Chief of the General Staff inside the Ministerial Department of State. Under the Australian arrangement the title was kept but it seems to have been removed from the control of the Minister for the Army and placed under someone who was, essentially, a field officer, viz. the Commander in Chief. The closest parallel to be found in the exhaustive evolution of the command problem in the United Kingdom is that which prevailed under the Duke of Wellington except that his position was lawful whereas the Blamey position was not.

Just how Australia adopted a system which had a proven history of inefficiency and divided civil-military relations is difficult to determine. Consideration of the concept of a Commander in Chief was not, however, a new idea. As early as 1935, General Lavarack, then Chief of the General Staff at the age of fifty, had suggested that, at the outbreak of war the CGS should be appointed Commander in Chief, that Army Headquarters should become a General Headquarters and another officer appointed to command the field army. In April 1941 the Minister for the Army (P.C. Spender) recommended to the War Cabinet the appointment of a Commander in Chief of the Australian Military Forces, the retention of the Chief of the General Staff and the abolition of the Military Board. War Cabinet agreed in principle but shortly afterwards the Minister changed his mind and preferred one General Officer Commanding in Chief in supreme command of all military forces.

Subsequently, in September 1941, a circular from Army Headquarters to Commands stated 'There is now to be a General officer Commanding Home Forces as in Great Britain. The Military Board exercises the same function as the Army Council and AHQ as the War Office.'

This order is very revealing. In the first place it recognised the system in the United Kingdom. Secondly, it reveals the concern about higher command which existed in Australia. Thirdly

it implies confusion as it took from April to September, during a war, to change from one firm decision to another. The circular to the Commands outlining the final decision then makes statements which are quite incorrect, and can only be explained satisfactorily by accepting that there was a great lack of understanding of the real nature of the United Kingdom system and the historical reasons behind it.

The GOC Home Forces, even GOC in C as General Mackay subsequently became, can be compared directly with the United Kingdom, but there was an immense difference between the Military Board and the Army Council and between Army Headquarters and the War Office. The Army Council was vested with full command whereas the Military Board had no lawful command function at all. In the United Kingdom the War Office was a Ministerial Department of State, administered by a Secretary of State through the Army Council. In no way was the War Office an Army Headquarters. In fact, this was the very function the Esher Committee had been at pains to eliminate in 1904. Within this arrangement the CGS was the chief of the Minister's General Staff, and was specifically excluded from holding personal command.

A test of Blamey's relationship with the Minister for the Army (Mr Forde) came soon after Blamey's appointment. He was upset by an announcement by the Army Minister that Lieutenant General Gordon Bennett had been appointed a Corps Commander. Blamey had not been consulted and sought out the Prime Minister with a letter of resignation. The outcome was that Mr Curtin agreed that Blamey should have direct access to the Prime Minister '... on any matter on which I feel personal consultation is necessary'.

Although the appointment of an unconstitutional Corps Commander seems to have had its origins in 1935 it is not clear just why Lavarack made the suggestion in the final place. It is difficult not to associate such a recommendation with the problem of civil-military relations at the time as described by Sir Richard Williams' autobiography.

Hetherington records that, in March 1942, the Secretary, Department of the Army (Mr Sinclair) asked the Minister for the Army what was Blamey's charter. Forde advised him, apparently after seeing the Prime Minister, that '... the Prime Minister has told Blamey he can write his own ticket'.

Thus, almost at the outbreak of critical operations in the vicinity of Australia the system in force was:

- (a) Blamey was the GO(?) C in C with direct access to the Prime Minister and no apparent responsibility to the Minister for the Army.
- (b) There was no Military Board. The service members of the old Board became staff officers to the C in C.
- (c) The Secretary, Department of the Army retained the problems of finance and was responsible to the Minister for the Army.

This resembled the situation in the War Office in the 1890s with two modifications. The first was that the Australian arrangement included a staff officer known as the Chief of the General Staff. This used a name appropriate only to a completely different system of command and administration which had been introduced in the United Kingdom following the complete re-organisation of the War Office after 1904. The second was the authority of the Commander in Chief to by-pass the Minister for the Army.

Although it is relatively easy to see, in the light of the United Kingdom experience, that the organisation which Australia had chosen could expect trouble, two factors conditioned the arrangements. The first was that the implications of the reorganisation of 1904 in the United Kingdom had never been discussed, let alone debated objectively, in Australia. In the absence of any such debate, knowledge of the importance of the higher command arrangement was, for practical purposes, non-existent. The second factor was that the urgency of the situation precluded the allocation of the time necessary for a well researched debate.

It is easy to criticise the Prime Minister and the Cabinet for implementing such a system but this can only be done with hindsight, and is totally unwarranted. If anything Australia should be grateful that the emergency threw up people like Curtin and Blamey to assume the leadership and strengthen the nation and make the system work.

On the other hand, now that it is possible to review what developed during the years 1942-45, it would be equally wrong not to examine the command arrangements to determine what mistakes were made so that they might be corrected and so avoid similar problems in the future.

The first real problem in the army has been identified by Hetherington in the following terms:

The sweeping powers thus placed in Blamey's hands and, by inference, in the hands of certain officers about him were

the root cause of the long struggle which developed between, on the one hand, the army and, on the other, those men, notably Forde and Sinclair who had the duty of exercising control over the army in the higher spheres of non-military administration, and particularly in the realm of financial expenditure . . . The issue was simple: should Sinclair, as civil head of the Army Department, be responsible to the Minister for the public money spent by the Army or should financial control be exercised by an army officer responsible to Blamey, as Commander in Chief?

To the civilian element this was an impossible situation. Hetherington identified the basic element, if not the reason for its existence, when he stated:

. . . but the exercise of financial control by a Commander in Chief was directly opposed to British War Office practice; any democratic Government that granted it would have been guilty of surrendering rights it was not entitled to relinquish.

The military element argued that military officers should have '. . . authority, including financial authority . . .' They argued that civilian control tended:

. . . to make the uniformed army officer an impotent figurehead. They also charged the Government with having aggravated the difficulties by . . . delegating authority to boards, committees and other advisory panels who were not directly answerable for the efficient working of the army nor qualified to understand its needs.

Such arguments on both sides would have been enough to make Lord Roberts and Lord Esher turn in their graves!

The dispute was finally settled, two years later, in Sinclair's favour but Hetherington records that it '. . . all but resulted in splitting the Department of the Army into two irreconcilable factions. That it did not do so may be attributed to Blamey's good sense and Sinclair's inexhaustible patience'.

It should be noted that Hetherington does not say that the Department of the Army and Army Headquarters became irreconcilable. He implies acceptance of the fact that both factions were in the Ministerial Department. In addition he does not consider the implications involved had Blamey and Sinclair not been endowed with the particular virtues he attributes to them.

The simple, obvious deduction is that the dispute demonstrated only too vividly the very nature of one aspect of the problem over which the United Kingdom had spent so much patient objective debate.

Despite the settlement in Sinclair's favour, it is evident from Hetherington's description that Blamey was the clear winner. This is of interest in that it was the reverse of the situation which prevailed in the United Kingdom at the time of the Boer War. In the United Kingdom case it was the civilian element which prevailed. In the UK case, however, the Prime Minister did not usurp the role of the Army Minister in his relations with the Commander in Chief.

Another interesting problem, which Blamey identified in 1942, resulted from attempts by Members of Parliament to obtain preferential treatment for individual soldiers. Hetherington records that between 1 January and 15 June 1942 Blamey's headquarters received 10,353 letters from Members of Parliament. Hetherington records that Blamey wrote to Forde about this and stated:

Democratic armies have always been prone to this. The outstanding example is the Federal Army in the War of Secession. It was not until President Lincoln recognised the insidious effect on discipline of outside pressure that these large forces could build up the discipline necessary to make them superior to the more strongly disciplined though numerically inferior, Confederates.

I learn with regret that there is some distrust of Army Commanders generally in these matters and that a feeling exists that the popular control of the army may be weakened if this power to enforce discipline completely is allowed to military commanders. I would suggest that the full control of the army lies with the Government in all circumstances and no army leader in the Australian Army has any other view. But this control must be exercised through the machinery set up. This machinery must function in accordance with the law as set forth in legal enactment as issued by the Government. The Government has laid down regulations accordingly and the regulations governing redress of grievances etc., are part of the legal system of Army control.

The Commander in Chief must act in accordance with this, and both the Government and the Commander in Chief must give full support to all commanders to act in

accordance with the legal code. Therefore, the method of redressing grievances must follow this code and not be subject to spasmodic interference by extraneous action.

This is a very important point and is quite well stated and served the immediate purpose. Looking at it in retrospect, however, there are a number of points worth noting. It is a pity, for example, that Blamey used the actions of an American President. The US President is Head of State and head of the Executive. He is not part of the law-making body. He is also Commander in Chief of the Armed Forces. Thus, he is in a position to keep the discipline of the armed forces out of the pure political arena which, Blamey emphasises, is essential.

Under the Westminster type system, however, members of the executive are also members of the legislature. To keep the discipline of the army out of politics, therefore, the responsibility of the executive head of the army should lie to the Sovereign, as Head of State, for disciplinary matters. In the Australian case, this exemplifies the argument for the Governor General to be vested with Command in Chief independently of advice from the Executive Council. This leads to the second point in the Blamey statement. It makes the same mistake made during the Melbourne Convention debate on S.68 in referring to 'control' when he really meant 'command'. The redress of grievance system is part of the 'command' function and not the Parliamentary 'control' function. It is certainly the function of Parliamentary 'control' to legislate for a system for the redress of grievance. It is right, also, that the Minister for the Army Service concerned should be in a very responsible position in this system (which he does not enjoy in Australia in 1980) but the final responsibility for any redress should lie to the Governor General as Commander in Chief and not the Cabinet. To make the final redress to Cabinet is to sow the seeds of a Parliamentary army. The point has been well stated by Anson.

It is also worth noting that Blamey drew attention to the importance of observing the 'legal code'. When problems occur, in the end it is the 'legal' aspect of the problem which must prevail. Unfortunately, during times of peace there is a tendency to derogate the legal side. But the time to debate the legal implications of potential problems is before they develop, not at a time of crisis. In this regard it is interesting to contemplate on Blamey's reaction had he been advised at the time that it was not legally possible, under the Constitution, for anyone other than the Governor General to hold the title of Commander in Chief.

The next serious command problem was a strong difference of opinion between Blamey and Lieutenant General S. Rowell.

There was concern in Australia over the situation in Papua-New Guinea where the Japanese were within fifty miles of Port Moresby. The 7th Division was moved to Papua and Rowell was sent to the area to command all Australian ground forces there.

There were also doubts in Washington about the Australian ability to fight which complemented the pessimism in Australia. Forde wrote to Blamey asking him to fly to Port Moresby '... to enable you to confer with General Rowell as to strategy and report to the next meeting of the War Council'. Blamey acted accordingly. Hetherington records the view that Blamey feared Rowell would resist his appearance in Port Moresby but looked upon himself as someone simply obeying the orders from the government and the Supreme Commander. Hetherington does record, however, that it was MacArthur who '... had started the alarm bells ringing in Canberra' and 'had urged that Blamey should go to Papua to energise the situation'. Hetherington suggests that this fitted into MacArthur's scheme to denude Blamey of any real power as Commander, Allied Land Forces.

Hetherington then records:

The sending of Blamey to Moresby was an expression of the Government's inability to comprehend the nature of his appointments . . . If Curtin had wished Blamey to direct the field forces in person he should not have named him Commander in Chief nor approved his appointment as Commander, Allied Land Forces, he should have asked MacArthur simply to appoint him to a field command. It is not a commander in chief's function . . . to direct the combat troops . . . since Australia had never before had a wartime commander in chief the Government's misconception of Blamey's duties was perhaps excusable, but the Cabinet must bear a heavy burden of responsibility for the consequences of the decision which left him no course except to go to Port Moresby.

This is an extraordinary paragraph. It expresses a view on the role of a Commander in Chief as a bland statement of fact, without any supporting argument. Although Hetherington himself does not seem to be qualified to make such a statement from personal experience he had spent most of the war years as a war correspondent in Europe and the Middle East. In these areas it would be stretching the imagination to reach a conclusion that located a commander in chief in an area other than in the field.

Since 1904, in fact, it had become a principle in the United Kingdom that the only place for a Commander in Chief was not at the executive level of government but only in the field. The evidence is that the United States had adopted the same approach. It was only in Australia, in 1943, that the Commander in Chief also seemed to have a role as a Ministerial Chief of Staff, albeit undefined. In Australia the situation bore a resemblance more to that which prevailed under the Duke of Cambridge in the late 1800s. For the very reason that the United States practice was to locate Commanders in Chief in the field it is more understandable that MacArthur might conclude that Blamey, as Commander in Chief, should be in the field. Had Blamey been the Chief of the General Staff, MacArthur might never have raised the issue and the move might never have taken place. But then Blamey would never have been Commander, Allied Land Forces as well.

Although names have a certain significance, depending on the background of the user, an open-ended appointment is fraught with difficulties, no matter what the name. The fact that Blamey's appointment was not associated with any terms of reference, or 'charter' as Hetherington quotes Sinclair as saying, must have contributed to the problems which occurred in New Guinea. Whether or not the government alone was to blame for such a situation is difficult to determine. The records do not seem to be readily available.

Hetherington covers the Blamey-Rowell discussion in New Guinea at length. In essence the problem was one of command. Who should command in New Guinea? Blamey had flown to Milne Bay after the preliminary talks with Rowell and had actually 'suggested' to a subordinate of Rowell's that an operation should take place, apparently without reference to Rowell. There seemed to be agreement that there could only be one commander as Blamey had suggested to Rowell that he should act as his deputy field commander. This amounted to relieving Rowell of his command and was unacceptable to Rowell who countered with a proposal that Blamey should establish an army headquarters in New Guinea. This would have placed great strains on an already overloaded line of communication and was unacceptable to Blamey. In the end Rowell had to go. His dismissal was effected, not through the Army Minister (Mr Forde), but through the Prime Minister and MacArthur.

The repercussions of the Blamey-Rowell affair effectively divided a large section of the community into two camps. The arguments in favour of one side or the other continued right on through the war and for many years afterwards. The result was to

look upon the problem as one of a clash of personalities. The rights and wrongs of either side became, inevitably, interwoven with emotional involvement with one man or the other. This has made difficult any unemotional examination of the facts. Hetherington has been as impartial as a pro-Blamey individual could be, but any thorough examination of the problem has been lacking.

The lessons to be learned from the affair are many. In particular, they should be reviewed in the light of the United Kingdom experience 1855-1904 because they bear such a close resemblance to the United Kingdom problem set in a Westminster type of administration.

The particular red herring that the clash was merely one of personalities should certainly be laid to rest. There were constant clashes of personalities in the various theatres of war throughout the world during World War II but these did not interfere with the efficiency of the command arrangements. The fundamental reason why command arrangements remained efficient elsewhere was that other countries had sorted out the problems of command before war broke out.

Although Australia was unique in the problems, such as those with Blamey, Rowell and Sinclair, which arose out of the somewhat mysterious decision to adopt the system stemming from a commander in chief appointment at the political level, the question marks should have been even more obvious when a similar command problem arose within the air force in Australia. In this case, however, the dominant personality of Blamey was not present and no senior officer in the air force had the direct ear of the Prime Minister. This problem became known as the Jones-Bostock affair.

The anomaly has already been discussed of having a Ministry or Department of State and a Service headquarters so integrated that it was impossible to determine without much conscious thought on each occasion, whether a serving officer was acting as part of a ministerial staff or a Service headquarters. But the mere reference to RAAF Headquarters automatically implied that it was the Service HQ of a senior serving officer. As the most senior officer in the Department of State it followed automatically that the Chief of the Minister's Air Staff, commonly known as the Chief of the Air Staff, might reasonably assume that it was his HQ. Such an assumption was even more reasonable when it is realised that lawful commands could only be issued by virtue of rank and not appointment at the highest levels of the RAAF. This phenomenon existed for the duration of the war and for a number of years afterwards. Nevertheless such a state of affairs was not

automatically obvious even to those who gave it any thought and such people were few. It is interesting to record that when Sir George Jones retired as Chief of the Air Staff a few years after the war, a Royal Air Force officer was appointed to the post. One of his first acts was to abolish RAAF HQ and transfer all direct command of the field forces to field commanders. This anomaly lay at the heart of the argument over command which developed between Air Marshals Jones and Bostock during World War II. The evolution of the problem is well described by Douglas Gillison in his official history of the RAAF 1939-42.

In September 1942 Allied Air Forces HQ came into existence under the command of General George C. Kenney. He also commanded the United States Fifth Air Force. He proposed the creation of an RAAF force which, in due course, became known as RAAF Command. Air Vice Marshal Bostock was to be the most senior RAAF officer in this force. Kenney wrote:

It is not proposed that Air Vice Marshal Bostock be named to command R.A.A.F. units. Command will rest, as at present, with the Chief of the Air Staff. A.V.M. Bostock will merely exercise operational control of certain U.S. and R.A.A.F. units assigned to Allied Air Forces . . . Eventually, upon the withdrawal of the Fifth Air Force, the R.A.A.F. elements . . . will remain as an operating headquarters . . . Its disposition will then rest with the R.A.A.F.

The new force, RAAF Command, Allied Air Forces came into existence on 21 September 1942 with A.V.M. Bostock designated as its Air Officer Commanding. Promulgation at RAAF HQ of the creation of this command stated that the command would not have any administrative control.

The CAS, however, believed that operational and administrative control should continue to be exercised by the CAS through the AOC RAAF Command, who was to become Vice Chief of the Air Staff (VCAS) as well and subject to day to day direction by Allied Air Headquarters. Bostock opposed this concept. He was not willing to serve under Jones. Perhaps this was understandable, if the story believed by many members of the Air Staff at the time about the retiring CAS (Air Marshal Sir Charles Burnett, RAF) was true. This was that the retiring CAS had asked Bostock who was then Deputy Chief of the Air Staff whether he would prefer to be appointed CAS or to be given a field appointment. Bostock chose the field appointment and, in due course, was appointed as Chief of Staff to the then Commander, Allied Air Forces (General Brett).

The Bostock opposition to the Jones concept resulted in its rejection by Allied Air Forces HQ. In turn the Air Board took no administrative action in support of the promulgation of the creation of RAAF Command. This produced a state of uncertainty throughout the RAAF except for those forces in New Guinea itself which had been formed into a separate group under the direct control of Allied Air Forces Headquarters.

The next move by the CAS was to organise all RAAF personnel at Allied Air Forces HQ into a Directorate of Operations, Intelligence and Communications responsible to the Commander Allied Air Forces HQ for operational control only. All other matters were to be executed only through RAAF HQ.

The order promulgating this arrangement emphasises the problem mentioned before of distinguishing between the action of an individual as a member of a headquarters and a Ministry. The order created a directorate within a field headquarters responsible to an air force headquarters within a Ministry. A directorate implied the existence of a director who by definition is one who directs or guides. He is therefore distinct from one who commands. A field command is one organised with recognition of the 'command' function. A Ministry is part of the central national Executive which has no command function, but recognises the function of a director. It is conceivable that a single organisation can have both functions so that a Department of State and a headquarters exist co-jointly although, as has already been explained, such an arrangement can have the most complex implications. To add to such complications further by injecting an international headquarters into the chain would only compound an already confusing command arrangement.

The argument continued for the rest of 1942. The friction reached the stage where the Prime Minister intervened and chaired a conference with Jones, Bostock and Drakeford (the Minister for Air). He then referred the problem to the Defence Committee (comprising the Chiefs of Staff and the Secretary, Department of State for Defence). The Chiefs of Staff, it should be noted, included Blamey's representative who was designated Chief of the General Staff although it does not seem to be clear whether it was Blamey's or the Minister's General Staff. This committee recommended that AOC RAAF Command should exercise operational control only pending a review of both army and air force command arrangements.

Curtin referred this decision to MacArthur who replied in strong terms:

The basis for the procedure outlined therein is the proposal to withhold from the senior officer of the R.A.A.F. Command the authority to command that organisation and to give him only operational control thereof. I consider this idea to be completely violative of sound military principles and cannot concur therewith. Australian or American units assigned to the South West Pacific Area must be actually commanded by officers who are assigned to that area. Administrative control flows down through national command channels, but the command function of the senior officer over his organisation cannot be impaired. 'Operational control' is in fact the military phraseology that describes the condition in which strategical or tactical direction rests with an officer who cannot exercise full command.

The letter went on to outline the organisation of Allied Air Forces HQ and stated that

It is absolutely essential that the Air Officer Commanding R.A.A.F. Command exercise full and complete command over his organisation and that the Chief of the Air Staff exercise his administrative functions through the chain of command.

To achieve this MacArthur requested, among other things: 'That the A.O.C. R.A.A.F. Command have full legal command of his organisation with the responsibilities, authorities and limitations prescribed by regulation and customs of the service . . .'

Favourable action in keeping with these requests, MacArthur added, would 'have the effect merely to give the R.A.A.F. Command the inherent structure essential to and present in every military organisation . . .'

This letter from MacArthur indicated an understanding of the fundamental features of a proper command system which had been sadly lacking in all the differences of Australian opinion associated with both army and air force problems. Gillison's analysis indicates a possible lack of understanding between MacArthur and the various Australian authorities. Gillison asserts that

. . . with the Air Board as a composite top level command authority that was geographically fixed and operational control separated from administrative control, there were difficulties enough . . . But when the R.A.A.F. was divided, with a separate operational command on the one hand and an R.A.A.F. Headquarters on the other hand . . .

these two elements . . . headed by an officer equal with the other in rank, in determination and, as it proved, in inflexibility, the complexities of command became to each of them most exasperating.

Initial responsibility for this . . . division of authority lay quite clearly with MacArthur. When he outlined the proposed formation of 'Coastal Command R.A.A.F.' (the first name for R.A.A.F. Command) [he] . . . was most specific . . . that the command status of R.A.A.F. H.Q. would remain unchanged . . . Yet only four months later, he was writing to Curtin, indulging in an exposition of military doctrine that condemned the immediate and inevitable result of this, his own direction as completely violative of sound military principles . . .

Curtin, Drakeford and the members of the Air Board were entitled to believe that MacArthur's first assurances were sincerely expressed . . .

This analysis by Gillison was a very reasonable one for an objective historian such as himself. But it is not necessarily the correct one. Gillison was a specialist in aviation journalism and, from the author's personal knowledge of him, was a skilled, honest and objective writer. His history shows these qualities at all times. On the subject of command, however, he was not skilled, as the author found during discussion with him after his history had been published. As is the case with the majority of historians, Gillison's conclusions were based on the evidence available to him and his personal knowledge of the subject itself. The result is that his assessments, while being an accurate reflection of prevailing Australian opinion at the time, did not necessarily get to the heart of the problem.

An example of mistakes in his writing, for example, is his reference to the Air Board as a top command authority and that operational command was exercised by RAAF HQ. It has already been pointed out that lawful command was not exercised by any appointment, either corporate or individual, at that time. Nor is it possible for command to be exercised by a headquarters.

Gillison's conclusion that initial responsibility for the poorly defined division of authority lay with MacArthur assumes that the status of RAAF HQ in his first letter was the same as that in the mind of the Air Board and therefore the minister (Mr Drakeford). There is, however, another and more likely explanation. MacArthur was steeped in the command arrangements of the United States which observed principles which were similar to those employed by

most of their active allies. It would have been reasonable for MacArthur to assume that Australia also followed those principles. One of these would be that, whatever names might be used to describe particular formations, a Chief of Staff at a ministerial or national level would have had functions similar to a Chief of Staff in Washington. In such circumstances he would have been writing, in his first letter, in that context. Just as such an explanation, would also explain his possible misunderstanding of Blamey's position and hence his suggestion that Blamey went to New Guinea, so also in the RAAF case his later letter should be read as one written in the light of an understanding that 'sound military principles' were in fact not being observed. This would explain why much of the later MacArthur letter tended to get down to matters of basic importance such as his reference to the need for the AOC RAAF Command to have 'full legal command'.

The implication of the Gillison analysis is that, at the national level the MacArthur letters were suspect. There can be no argument with such an analysis even though at a national level the suspicion was probably unjustified. In such a circumstance it would reflect the extent to which the problem had become largely a battle of personalities which was incapable of solution because of the very poor foundations upon which the subject was being discussed.

Gillison ends his chapter on the command problem with a recollection by General Kenney (Commander, Allied Air Forces) after the war, that he was not greatly concerned about the feud. Gillison deduced from this that there was some justification for the point of view that no very serious consequences flowed from the dispute.

In the setting of the war against Japan, in which Gillison was writing, such a conclusion could be justified. It would be wrong, however, to conclude that it was of little importance to the future. The role of the RAAF in the war against Japan was relatively small, particularly after the United States' forces moved forward from New Guinea. One example alone should demonstrate the importance of the problem for the future.

During May 1945, No. 71 Wing (Beauforts) had been given the task of a heavy bombing programme in support of an army operation to capture Wewak. By the end of May a total of 1458 sorties had been flown in support of the advancing Australian troops. A total of 1236 tons of bombs had been dropped. Odgers, in his official history, records:

There was a continued shortage of bombs in the area and at the end of May the position had become acute. Not only

did the shortage of bombs cause a curtailment of effort, but many bombs proved defective. Hancock (O.C. 71 Wing) wrote in his tactical appreciation for June 1945 'The shortage of bombs and ammunition has been very acute, stocks reaching the lowest level for the past seven months. Effort has been reduced to a fraction of our capacity and confined to targets of vital importance only'. To overcome the shortage the wing used Japanese bombs in considerable numbers, but unfortunately only about 60 percent of these were effective. A shortage of fuel aggravated the situation. Hancock in July reported: 'We have, at the moment, sufficient stocks for only three days operations with no prospect of replenishment'.

What Odgers did not record is the fact that the Wing was also forced to use 120-pound anti-submarine bombs against ground targets for which they were quite unsuitable. They had even been abandoned in Europe for anti-submarine operations approximately five years earlier. In March 1945 these bombs were found to have defective tail fuses but only after two Beauforts had blown up in the air.

At the time of the assault 71 Wing was probably more actively engaged in operations against the enemy than any other formation in the RAAF. It took place at a time when Australia, for almost six years, had been devoting its total resources to the task of fighting a war. Despite these considerations, the arrangements for the co-ordination of vital supply lines with operations of the highest national priority were obviously inadequate.

Well prepared lines of communication and well planned arrangements for resupply are absolutely vital prerequisites to a successful operation. Where these have not existed the arrangements for command, from the national level downwards, must be suspect. If they were not, then the resources should have been available to ensure adequate supplies for the planned operation. If the resources were not available then correct pre-operational planning should have made such a situation abundantly clear and the operation adjusted accordingly. The problem of resupply was a feature of the wars in both the Crimea and South Africa. Once the command arrangements in the United Kingdom were placed on a firm foundation the problem of adequate supply lines began to receive the priority it required, particularly during the planning stages.

In this regard it is worth recalling the observation by General Sir Gerald Ellison, after World War I, that the near disasters of the Crimea and South Africa would have culminated in real failure in Europe in 1914 had the command organisation not been changed.

In this context Kenney's view must be interpreted as one expressed by an American and not an Australian.

8. The Principles of Command

Although repetitious, it is convenient to review the previous sections so as to record, in a consolidated form, the various principles which have become apparent.

Before doing this, however it is important to consider why most of the analysis has been concerned with the experience of the United Kingdom. The fundamental reason of course, is that the Australian political and social system - at least until relatively recently, say, the last ten or twenty years - has been modelled on that of the United Kingdom. This means that all the intricate military - civil relationships in Australia have been influenced to a major degree by the British experience. Unfortunately the practice in Australia has often differed from that in the United Kingdom. There is little evidence to even suggest, however, that when Australia has followed a different path it has done so in the full light of understanding the reasons why the British path was followed in the first place. The result has been that Australia has run into exactly the same troubles which beset the United Kingdom during the sometimes painful process of identifying the problem they were experiencing and then finding the answer. In many cases Australia is a century behind the United Kingdom in this experience and is persisting in ignoring the United Kingdom experience.

There is no reason why Australia should not follow a different approach to the problem of command but it should do so only with the full knowledge of the principles resulting from the United Kingdom experience so that good and valid reasons are used for not accepting them. These principles are set out in subsequent paragraphs.

Although the prime concern of this study is with the problem of command the United Kingdom recognised that it is intimately associated with the problem of control. Both must be considered if the command problem is to be properly understood. But what, exactly, is the nature of the problem?

Basically, it is to realise the transformation of government control into non-government command of the armed forces based on the principle that governments must control but must not command. The main complications arise from two basic needs:

- (a) The Minister or Ministers responsible to Parliament for the Armed Services have a total responsibility.
- (b) To avoid the dangers inherent in a 'Parliamentary army', command of the armed forces cannot lie with Parliament.

At the highest level the control and command processes are so interdependent that the 'command' implications involved in implementing 'control' decisions must always be born in mind during the involved 'control' processes. This leads to a most important principle:

The Ministerial Department of State must be organised so as to ensure adequate and responsible consultative processes at all levels.

Before leaving the field of government control reference must be made to the principles of government control enunciated by Lord Hankey in 1945 after spending most of his life, after 1908, in key positions associated with the higher direction of war. He was Assistant Secretary of the Committee of Imperial Defence from 1908-12, Secretary of the Committee from 1912-38, Secretary of the War Cabinet 1916-19, Secretary of the Cabinet 1919-38, and held Ministerial office during 1939-45.

The principles laid down by Hankey concerning the role of the Prime Minister in peace and war are particularly important. Hankey emphasised the role of the Prime Minister in war by referring to Mr Asquith who, in 1916, refused a proposal by Lloyd George for a War Committee under Lloyd George's chairmanship. Mr Asquith insisted that 'whatever changes are made in the composition or functions of the War Committee, the Prime Minister must be its chairman. He cannot be relegated to the position of an arbiter in the background or a referee to the Cabinet'. On the role of the Prime Minister in peace, Hankey referred to Pitt the Younger, bent on a policy of peace, prosperity and reform, declaring in 1792, just before the outbreak of the long French wars, that 'unquestionably there never was a time in the history of this country when, from the situation in Europe, we might reasonably expect fifteen years of peace, than at the present moment'. Hankey drew attention to the position, more than a century later, when successive British governments of different parties adopted an equally complaisant attitude of assuming no major war for ten years and taking risks for peace up to 1935. Hence, Hankey concluded that the Prime Minister always should be responsible for our preparations for war, i.e. the same considerations which apply to control by the Prime Minister in war must also apply in peace to preparations for war.

The principle that the Prime Minister must accept responsibility for the national preparedness for war, i.e. for defence in its widest sense, involves consideration of the defence role of every Department of State. In particular, the role of the Department of

State responsible for the armed services requires resolution. It is misleading to label such a Department of State with the blanket name 'Defence'. It would be more definitive to call it the Department of State for the Armed Services to advise the Prime Minister on Defence (including Foreign Affairs) there is a need for a small section in the Prime Minister's Department including senior specialists from the various Departments of State concerned with National Defence such as Foreign Affairs, Armed Services, Trade and Finance, who would prepare studies on matters of national defence for consideration by a Cabinet sub-committee on defence.

With such an arrangement, the Department of State for the Armed Services should have a much more specialised charter. This was the first principle which came out of the forty odd years of debate in the United Kingdom, viz:

The Department of State concerned with the armed services must be reconstituted with a single eye to the effective training and preparation of the armed services of the crown for war.

This principle needs close examination. If the Minister and his Department of State responsible for the armed services is also to be responsible for matters of national defence and security such as the national strategic and industrial defence policies, there is an immediate clash of interests to be sorted out inside the armed services' Department of State. To a large extent this is what happens now. In times of peace, particularly, this has the effect of transferring the activities of Service officers away from their professional sphere into activities which are more civilian-oriented. This exacerbates any clash between military and civilian views inside the Ministry and results in a preponderant influence by the civilian element and adversely affects the efficiency and fighting strength of the armed services. More particularly, there is a tendency for the finance arm to become aligned with the Treasury and not to accept responsibility for the effect of its actions on the efficiency of the services. In these circumstances the tendency is to emphasise the civilian defence elements at the expense of armed service efficiency.

There is no doubt that national strategic considerations will play an important part in the shaping of fundamental military policy. It is equally certain that national strategic considerations, particularly in times of peace, have much wider implications than just the size and shape of the armed services. In reverse, the armed services are an important factor in many diplomatic relations but this results from their strength and efficiency. In

time of war, if diplomatic efforts fail, then the strength and efficiency of the armed services becomes paramount.

Thus the armed services role, in peace as well as in war, must be to develop their fighting efficiency. This is of such importance that it should be the sole task of one Minister of State. He should not also assume any responsibility for the development of national strategy in its broadest sense. He must have a much narrower charter, viz. he must have a single eye to the effective training and preparations for war of the armed forces of the crown.

The principles involved in the control of the armed services were not evolved easily in the United Kingdom and are of fundamental importance. Although they have been virtually ignored in Australia, they are relatively easy to understand compared with those required for the efficient command of the armed services.

Consideration of the command problem depends on the fundamental principle enunciated by Anson, viz:

The Secretary of State is responsible for the exercise of the (Royal) prerogative . . . and is bound to take care that the prerogative is exercised by the Crown and not the Parliament . . . Especially is the Secretary of State bound to maintain the discretionary powers of the Crown in the appointment and dismissal of officers, their promotion or reward, or the acceptance of their resignation.

This principle must be read in the light of the nature of command, viz. to exercise a lawfully bestowed authority within the control measures imposed by Parliament. In Australia, in addition, it must be examined within the meaning of Section 68 of the Constitution which vests command in chief in the Governor General.

The nature of command activity varies according to the level at which it is executed. The lower the level of command, the more specific it becomes. The higher the level the more broadly based is the responsibility. At the level of the Sovereign or the Governor General it becomes primarily a responsibility of ensuring that the armed services do not become a political tool of government, i.e. to avoid the creation of a Parliamentary army. As an extreme case of this, the Sovereign has the power to influence or even to deny the use of the armed forces if it is clear that the government of the day intends that the armed services should be used for purely political ends of a domestic nature. Such a safeguard reduces the possibility of a Russian type army being developed under the Westminster system.

How does the Sovereign achieve an end such as this without becoming involved in politics? One obvious way is to ensure that authorisation to command, withdrawal of such authorisation and all the disciplinary processes in between are shielded from the executive power of governments. Thus the execution of command at the level of the Sovereign should be confined to the fundamentals of the command system itself. In the final analysis, the Sovereign and not the Parliament must become the ultimate appeal authority on matters of command as distinct from control. For this reason the advice given by the Attorney General in NSW in 1868 was particularly incisive and remains pertinent to the present day. He said:

I think that all matters concerning the force, originating within, or properly coming under the cognizance of the Commanding Officer, in the first instance should be submitted by him direct to the Governor.

The Attorney General did not include the underlining but these phrases imply matters which are completely independent of the control measures imposed by executive government action.

In the Australian case, Section 68 of the Constitution should be read as vestment of a command authority exactly the same as that enjoyed by the Sovereign in the United Kingdom. If this is done, the principle laid down by Anson becomes directly applicable to Australia. It would then read:

The Minister of State responsible for the Armed Services is responsible to the Governor General for the exercise of the command authority of the Governor General and is bound to see that such authority is exercised by the Governor General and not the Parliament.

Adoption of a principle such as this creates a difficulty for a Minister, particularly in the present Australian environment if his portfolio is confined simply to the armed services rather than an ill-defined, all embracing objective called 'Defence'. With such a limited objective the clash between a Minister without any statutory authority to command and a senior individual Service officer who has such a statutory authority becomes obvious. The role of the Minister becomes lawfully impossible. To overcome the deficiency he might resort to the use of control measures which, inevitably, he will be tempted to use through his civilian staff in a way separate from his uniformed staff. But in the command sense the Minister has no part to play in the actual command of

the armed services. The chain of command must lie direct from the senior Service officer vested with command direct to the Governor General.

This is precisely the problem identified in the United Kingdom in the 1890s, criticised so strongly by Lord Roberts as the Commander in Chief in the War Office, and finally resolved by Lord Esher and his committee in 1904. It has since survived two world wars and many minor ones.

Anson sums up the problem well. Following his statement of the necessity for the Secretary of State being bound to maintain the discretionary prerogative of the Crown, he stated:

(a) Before 1904, that 'This prerogative is exercised through the Commander in Chief, though the Secretary of State is responsible for its exercise by a non political officer such as the Commander in Chief . . .'

(b) After 1904, 'Thus was a great change effected in the administration of the Army. By Letters Patent of 6 February 1904 all power and authority exercised under Royal Prerogative by the Secretary of State or the Commander in Chief was henceforth exercised by a Council, consisting of three civil members - the Secretary of State, the Parliamentary under Secretary, and the Financial Secretary - and four military members . . .'

In Australia, the arrangement is that described by Anson before 1904. It is difficult to believe that such an arrangement would be any more successful, under trial, than it was in the United Kingdom. What would seem to be required is that described by Anson after 1904. Australia would seem to need the 'great change' just as much as it was needed in the United Kingdom. In either case, however, the principle of command being the responsibility of the Crown remains the same.

Realisation of the principle of command being a Royal responsibility, however, is only half the problem. It is important to appreciate that command of the armed forces on the one hand, and control of them on the other, are inextricably inter-related. Despite the fact that they are two separate and distinct functions, their relationship must be as completely harmonious as possible. To ensure harmony between control and command decisions it is of importance that responsible consultative processes are incorporated into the system of advice to the Minister on matters of control. It is equally important that civilians responsible to the Minister for control measures, particularly financial control, are also incorporated into the command chain so that they accept equal

responsibility for the effect on command of the control decisions. Thus, there are two inter-related factors:

(a) The Minister of State can only realise his responsibility to the Governor General for the exercising of the command authority if he is actually incorporated into the chain of command.

(b) The Chiefs of Staff must be incorporated into the control system and the civilian responsible to the Minister for control measures must be incorporated into the command chain if a responsible consultative process is to be developed for the preparation of advice and subsequent executive control action.

The only way in which civilians can be incorporated into the command chain is by the creation of a corporate body, created by statute, and vested with the power of command over the armed services. The Minister and any appropriate civilian should be made members of this statutory authority observing two important features. The Minister should be the chairman of such a body. The service members of the body should be in the majority, bearing in mind the narrow terms of reference of the Minister and his Department of State.

A corporate body of this nature would require the body as a whole to accept responsibility for all that was done in its name. There could be no such thing as a minority report. If a member of the corporate body could not accept the final decision of the majority he would either have to accept the decision, and the responsibility which went with it, or resign. This arrangement would identify, with greater clarity, the authority and responsibility to the Minister of State. It would also ensure greater consultation, in its true sense, at all working levels within the Department of State. Because of the narrow terms of reference the fighting efficiency of the armed services would become of prime importance. For this reason, the Department of State would need, as its key staff, the equivalent of the Naval, General and Air Staffs. The chief of this key staff could become known as the Chief of the Armed Services Staff (ASF) and would be the second most important member of the Department of State, after the Minister.

At the fighting level i.e. in the field, the requirement is for rapid decision making by professional military officers charged with personal command. Such commanders would have to act, at all times, within the limits prescribed by law, to meet clearly stated objectives set out by the corporate command authority at

the national level. The field commander's authority over the forces under his command, however, would be complete. There should be the minimum interference with the field commander from the political level of the Department of State.

Finally, at all levels of command there should be the golden rule that no command should be issued at a higher level which can just as effectively be issued at the lower level.

The principles of command and control of the armed services which emerge from the foregoing study are as follows:

(a) At a Ministerial level, responsibility for the defence of the nation, in its widest sense, must lie to the Prime Minister and the Prime Minister alone, in peace as well as in war.

(b) To realise his defence role, the Prime Minister must be supported by a small highly qualified and competent staff which should include a qualified professional military officer.

(c) There should be a Minister of State for the Armed Services who must have a total responsibility to Parliament for the armed services.

(d) The Ministerial Department of State for the Armed Services must be constituted with a single eye to the effective training and preparation of the armed services for war. It must be organised so as to ensure adequate and responsible consultative processes at all levels.

(e) Parliament must control the armed services but command of the armed services must lie to the Governor General acting without the advice of the Executive Council.

(f) The Minister of State for the Armed Services is responsible to the Governor General for the exercise of the command authority of the Governor General and is bound to see that such authority is exercised by the Governor General and not the Parliament.

(g) Command and Administration of the armed services must be effected, at the national level, by a corporate body, created by statute and under the chairmanship of the Minister of State for the Armed Services.

(h) The Ministerial Department of State for the Armed Services should be organised around a key operational staff to provide the leadership in the preparation of studies for consideration by the corporate statutory authority.

- (i) Individual military command by professionally qualified military officers should be effected only at the field level and be distinctly separated from the national level.
- (j) Field commanders must have independence of action to mould and to operate the forces under their command to meet clearly stated objectives set out by the corporate command authority at the national level.
- (k) To meet the national objectives, detailed command should not be exercised at a higher level than is necessary.

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