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CHAPTER I

The Constitution of the University

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CHAPTER I

THE CONSTITUTION OF THE UNIVERSITY

THE UNIVERSITY OF CAMBRIDGE in the eighteenth century has been convicted of violating its statutes, misusing its endowments, and neglecting its obligations. It is impossible to dispute the substantial justice of this verdict, and to bring the condemned criminal again into the dock may well seem a piece of unnecessary cruelty. It doubtless would be if all that could be urged both for and against the University in that age had already been said, but this is not so. Little or no attempt has ever been made either to measure the extent of its shortcomings or to discover how they came to exist and to be tolerated. It has moreover been frequently forgotten that both scholarship and virtue, if not obtrusively present, were not completely absent. A fresh investigation may therefore not be an entire waste of time, but, as it must be detailed, it cannot but be tedious. Yet it may possibly serve a useful purpose if it succeeds in revealing a little more of the truth about Cambridge two hundred years ago.

The indispensable preliminary to such an undertaking is an enquiry into the constitution of the University in the eighteenth century, for so much of the administrative and legislative machinery, then in existence, has been obliterated or transformed by the successive waves of reform in the nineteenth and twentieth centuries, that few nowadays know how the University was once governed. Yet without such knowledge we cannot fairly judge our predecessors who in a measure were the victims of the constitution under which they lived.

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It was not a homogeneous whole but a patchwork created by different hands and of varying degrees of stability. It consisted of the code of statutes granted by Queen Elizabeth in the twelfth year of her reign, such ancient statutes as that code had left unrepealed, royal letters which had either been formally accepted or adopted in practice by the University, and ordinances or bye-laws approved by the Senate. These various parts were not however of equal sanctity, for though the University was at liberty to repeal or modify its ancient statutes or later ordinances, it could not, without the consent of the Crown, change in the smallest detail either the royal letters it had accepted or the Elizabethan statutes.[1] This was a very great restriction of its independence, for though the royal letters were not of much importance, being for the most part exhortations to a better observance of statutory obligations,[2] the Elizabethan statutes were both comprehensive and detailed, regulating with absurd minuteness the government, curriculum and discipline of the University. But as it is impossible to legislate for all time or even for the next age, the University was under a great disability in not being able to change these statutes except by an appeal to an authority external to itself and not easily accessible. The curriculum which they prescribed grew in course of time antiquated, and in many other respects also they became hopelessly out of date and therefore a barrier to progress.

It was of course open to the University to petition the Crown for a revision of the statutes, but it is perhaps not surprising that it adopted the easier and more expeditious mode of merely disregarding those which it found inconvenient or inexpedient to enforce. This illegal way of meeting a real difficulty was very early taken. There is no doubt that some of the statutes were being systematically violated not many years after they had come into

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force; and, as it is almost impossible to restrain the habit of law-breaking within reasonable limits, this movement gained momentum in its course. By the eighteenth century the academic legal conscience had become sadly hardened. It is perfectly true that the statutes were still in theory recognised as binding, and that some of them were scrupulously obeyed, but the code as a whole was probably less observed than in any previous period of its history. Such conduct was doubtless reprehensible but it was not without excuse, and part of the blame must be given to those who had attempted to restrain the University within a legal strait-waistcoat.

The breakdown indeed would have been even more apparent than it actually was, if a device had not been adopted which served partially to cloak it. The statutes authorised the Vice-Chancellor and Heads of Houses, acting together, to determine any ambiguities in their meaning; and although it is perfectly clear that the validity of such interpretations was conditional upon their "accordance with the plain grammatical meaning and legal import of the statutes themselves",[3] this power was certainly sometimes used to introduce substantial changes which, however desirable they might be, were in direct conflict with the statutes and therefore not within the competence of the Vice-Chancellor and Heads to make. This misuse of authority was most frequent during the fifty or so years after the promulgation of the code, possibly because it was then thought judicious to disguise the violations of it that were occurring; but the disguise was certainly very thin. Thus though the statutes explicitly required bachelors of arts to reside nine whole terms before proceeding to the degree of master of arts, the Vice-Chancellor and Heads published in March 1608 an interpretation which dispensed them from residence and defended the concession with arguments very much beside the point. It urged that bache-

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lors of arts were fit to study by themselves, that their services were required in Church and State, and that no change in practice was being made as the condition of residence had never been strictly enforced; but it is of course perfectly clear that as interpreters of the statutes the Vice-Chancellor and Heads were not authorised to take such considerations into account.[4]

Thus the Elizabethan code is a most unreliable guide to the working constitution of the University, for some of its provisions had become obsolete, and others had been interpreted in a sense contrary to their literal meaning. And another process had also gone on. Side by side with the written law grew up a mass of customs and conventions which, though not legally binding, were consecrated by time and, generally, faithfully observed. Some of these conventions, as will later be seen, actually limited the freedom allowed by law, so that what was permissible was not always practicable. In short the constitution, despite all attempts to stereotype it, underwent substantial modification.

In the eighteenth century, as always, the Chancellor was the highest official in the University. The Elizabethan statutes prescribed that he should be elected by the undivided Senate,[5] and, in accordance with the ancient statutes and customs, hold office for a minimum period of two years and afterwards at the pleasure of the University. In medieval times it had been customary for the Chancellor to be a resident and only to remain in office for two or three years, but in the sixteenth century it became the established practice to elect distinguished statesmen and noblemen and to treat the appointment as normally one for life. Thus the Chancellor became a permanent, non-resident official, and though the University did not thereby suffer, as the statutes provided for his duties in his absence to be discharged by the Vice-Chancellor, the office inevitably fell to be one of dignity

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divorced from power. Unacquainted with academic business and not infrequently engaged in great affairs of State, the average Chancellor was inclined to consider that he had fulfilled his duty by presenting University addresses to the Crown, paying a few formal visits to Cambridge, and defending the interests of the University whenever they were threatened. Of the three eighteenth-century Chancellors two at least, the Duke of Somerset and the Duke of Grafton, were well content to remain mostly in the background, and though the other, the Duke of Newcastle, was for ever interfering in the routine business of the University and attempting to direct its course, he was in this, as in much else, a law unto himself, and only succeeded in showing that he had set himself an impossible task. He neither followed a tradition nor created one, for it was obvious to all but him that a non-resident Chancellor did well to be inactive.

Yet though the Chancellor was not required to be busy as an administrator, he was expected to be active as a patron. It was to him, though not to him alone, that members of the University looked for the satisfaction of their hunger after preferment, and when they looked in vain, they were apt to be as cross as the Neapolitan peasant who fruitlessly invokes a saint. In condoling with the second Lord Hardwicke on not succeeding Newcastle as Chancellor, Edward Leeds pointed out that the cloud had a silver lining, as he would be spared "the endless importunity of needy suitors and the mortification of finding your inability to serve them all construed, according to custom, into a studied or wilful neglect of each disappointed individual";[6] and it is at least very doubtful whether either Newcastle or Grafton would have been chosen by the University if they had not been leading servants of the Crown and therefore presumably able to influence the dispensation of the royal ecclesiastical patronage. Yet as Ministers of State come and

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go, the University sometimes discovered that it had made an unfortunate speculation. Of Newcastle it had little cause to complain, for he was in ministerial office during the greater part of the twenty years he was Chancellor, and always strove to obtain for Cambridge a lion's share of the bishoprics, deaneries and livings in the gift of the Crown. Grafton, on the other hand, was a great disappointment. When he was elected in 1768 he was First Lord of the Treasury and was expected long to remain so. But he retired from the government in 1770, and, though he subsequently held subordinate ministerial office, he was never again First Minister and after 1783 never sat in any administration. Thus the University was saddled with a Chancellor who had little or nothing to give, and consequently felt itself aggrieved. James Nasmith of Corpus is said to have refused to stand for the mastership of his college, partly on account of its inadequate stipend, but also because "the being Head of a House, now the Duke of Grafton, the Chancellor, was in opposition to the Court and took no concern about the University, was no longer a step to preferment".[7] There must have been many others who had little use for a Chancellor unable to smooth the road to an episcopal palace or a snug deanery.

When the Chancellor ceased to reside, the Vice-Chancellor became the most important resident official in the University. The mode of his appointment was carefully set out in the Elizabethan statutes. He was to be annually elected by the undivided Senate on November 4th from two candidates nominated the day before by the Heads of Houses; and any master of arts or doctor was qualified to be elected unless he held one of the three Regius Professorships of Divinity, Hebrew and Greek.[8] Thus, though the form of a popular election was conceded, the power of the Senate was most narrowly circumscribed. The Heads were able to ensure that one

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of two men should be appointed, and could indeed do more; if they chose to nominate as one of their two candidates a very unpopular or extremely unsuitable person, they could practically secure the election of the other and consequently reduce the rôle of the Senate to a nullity. This device, which was known as "nominating a stale", appears to have been practised very soon after the Elizabethan code came into force, for we find the Chancellor, Lord Burghley, being advised to admonish the Heads "to chuse the best learned men for their lectures, and for the Vice-Chancellor always to prick two fit men, and never hereafter to practise that of the two nominated one should be an unfit man and, as it were, a stale to bring the office to the other".[9] This abuse of power was naturally resented, and in 1580 the malcontents mustered sufficient strength to pass a grace associating doctors with the Heads in the nomination of the two candidates.[10] As this grace was in direct contradiction to a provision of the Elizabethan statutes, it was promptly disallowed by Lord Burghley,[11] but it served a useful purpose by drawing attention to, and thereby checking, a particularly scandalous practice.

It is also evident that from the first the Heads were inclined only to nominate one another and consequently to monopolise the office. This was not unreasonable, as a difficult and somewhat ridiculous situation necessarily arose when a Fellow of a college, by becoming Vice-Chancellor, was placed in authority over his own Master. Indeed, if there was any opposition to this policy of restriction, it quickly died down, and from 1587 the Vice-Chancellor was invariably a Head of a House.

Having thus secured the exclusive possession of this important office, the Heads were not likely in normal circumstances to damage their influence and prestige by bickering between themselves for the prize. It was in their interest to establish a fixed order of succession, and

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the other members of the University, having acquiesced in their own exclusion, had no occasion to resist such a development. It therefore became the established custom to elect as Vice-Chancellor the senior by degree among those Heads of Houses who had never held the office, and, in the event of all the Heads having previously served, to elect the one whose term of office was least recent. A system of rotation had obvious advantages. It saved the University from being annually disturbed by the excitement of a disputed election, and deprived academic politicians of an opportunity of displaying their ability for intrigue and wire-pulling. But the particular system adopted had one great disadvantage. The preference given to the senior by degree among the Heads who had never been Vice-Chancellor often resulted in a person being called upon to fill the office when almost totally unacquainted with academic business. It not infrequently happened that a recently appointed Head of a House, if possessed of a doctor's degree, became Vice-Chancellor within a few months or even a few weeks of his return to Cambridge after a prolonged absence, while another Head, because he was only a master of arts, might have to wait several years for the same office.[12] Thus there was an ever constant risk of a Vice-Chancellor being quite unacquainted with the duties he had to discharge.

It became an established tradition that a Head, if elected Vice-Chancellor, could not decline to serve unless he held a bishopric,[13] but in the eighteenth century further exemptions were allowed. When, for instance, Sir James Marriott, Master of Trinity Hall, was elected Vice-Chancellor in 1786, he refused to serve on the ground that he was a judge of the Admiralty court, and his claim was admitted, as the University Counsel advised that "no process in a court of law could oblige Sir J. Marriott to serve the office of Vice-Chancellor while

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he continued judge of the court of Admiralty".[14] A few years earlier the question of exemption on the score of age had been raised by Dr Thomas, Master of Christ's, who, when elected Vice-Chancellor in 1777, had declined to accept office on the plea that he was too old and infirm. Being seventy years old and very gouty, he had a good case; but, as he showed no inclination to resign the deanery of Ely which he held with his mastership, he was suspected of purposely exaggerating the burden of his years and ailments to evade a legitimate obligation. A grace allowing him exemption was therefore rejected by the Senate on November 8th. Dr Thomas however was adamant. With the selfish persistence of a valetudinarian he continued to decline to act, and finally carried his point; for, after the University had been for some weeks without a Vice-Chancellor, it was at last agreed to excuse him. To prevent a recurrence of the inconvenience which had been caused, a grace was passed in 1780 exempting all persons who had attained the age of seventy from holding office in the University.[15]

Claims for exemption were however rarely urged, but it was by no means unknown in the eighteenth century for the conventions, which governed the appointment of a Vice-Chancellor, to be defied. In 1712 there was an attempt, which almost succeeded, to nominate a Fellow of Pembroke as one of the two candidates,[16] and, sixty years later, certain doctors, who were not Heads of Houses, unaware that the grace of 1580 had been declared invalid, endeavoured to nominate Stephen Whisson, a Fellow and former Tutor of Trinity.[17] In the troublous days of Bentley moreover, when the University was rent with controversies and sharply divided into two hostile parties, the nomination by the Heads was not infrequently the occasion of a sharp contest, and the election by the Senate not always a foregone conclusion.[18] In quieter times also the Senate could take the

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