

CHAPTER V

REGULATIONS AND PROCEDURE

IN THE conduct of privy council business there was much variety and adaptation as seemed best to the lords in respect of the vast number of new and different things that were constantly arising, yet business was largely conducted under certain general rules that were well understood and formally revised or amplified on occasion. In 1625 Sir Julius Caesar observed that the council was expected to abide by rules laid down for the conduct of business in former reigns, as in that of Henry VI, or any time since, in the Rolls of Parliament or in the council books. It would be well now, he thought, if the king would appoint a commission to review all such rules and orders of the past, setting down the most fit, for regulation of the council at present.¹ Charles I, who was accepting advice and seeking better formal regulations with the zeal of a new monarch, seems to have complied at once. As a result, perhaps, of certain learned memoranda written by Sir Julius, one of the secretaries drew up rules for the council in 1625.² In 1628 "Orders to be observed in Assemblies of Councill," containing twenty-two regulations, were embodied in the register of the council.³ In 1630 "Orders to be observed in assemblies of Counsell" appear in the register, "Signed by the Kinge Ma.^{tie}

¹ S. P. D., Charles I, viii, 31 October 1625.

² Secretary Coke, "The manner & proceedings of the Councill Table": S. P. D., Charles I, viii, 81, assigned to October 1625.

³ P. C. R., xxxviii, 1B-3; also in *ibid.*, liv, 1, the first register of the reign of Charles II. These regulations are likewise in S. P. D., Charles I, xciii, 20 February 1627-8. They are printed in *Clarendon State Papers*, i, 34-6.

and entred by his Commande." They contain twenty-three articles, of which the first thirteen are practically identical with the articles of 1628.⁴

Most meetings of the privy council were now held in the council chamber in Whitehall Palace, or in the council chamber reserved for it in the other abodes of the king. Under such circumstances they were always held about the board or the council table.⁵ A Venetian ambassador, Scaramelli, has described a meeting of the lords of the council a few days before Elizabeth died. On Easter Day he went to Richmond. "I was immediately introduced into the Council Chamber. There I found sitting on long benches, on each side of a table, the Lord Chancellor, the Treasurer, the High Admiral, the Equerry (*Scudiero*), the Lord Chief Justice of England, the Treasurer and the Controller of the Royal Household, and others not Peers but Knights. They numbered eleven in all, and no one was missing except the Archbishop of Canterbury, who is Primate of England and President of the Council as well. I was received with every mark of respect for your Serenity . . . They compelled me to sit down on a brocaded chair at the head of the table, and listened to me with gracious and friendly mien."⁶ Francis Bacon, in his essay "Of Counsel," written between 1607 and 1612 and so important for the early history of the cabinet, comments upon the council board: "A long table and a square table, or seats about the walls, seem things of form, but are things of substance: for at a long table a few at the upper end, in effect, sway all the business."

The council chamber was under the care of a keeper, who furnished the paper, ink, wax, and other necessaries used by the members and the clerks, and who kept the

⁴ P. C. R., xl. 152-5.

⁵ S. P. D., Charles I, viii, 31 October 1625.

⁶ *Calendar of State Papers, Venetian, 1592-1603*, p. 567.

chest and the records of the council.⁷ In the earlier period there had been only one keeper of the council chamber, and he was in continual attendance. It was not thought necessary to have more than one at a time, able and sufficient by himself and with his servants to discharge the duties of the place. Later on the office was bestowed on two keepers, who held by patent. In 1616 the council declared that neglect in discharging the duties had occasioned much inconvenience, neglect, and disorder, dishonoring the board and otherwise to the prejudice of the king's service. Accordingly it ordered that thenceforth each one of the keepers, with a servant or two, should wait by turns, for a month at a time, to the end that any abuse or neglect might be more easily discerned, and not passed on from one to the other as was being done. There had also been much complaint of exactions by the keepers of the chamber, from suitors and those who had business at the council table, to the great scandal of the place. So the keepers were commanded at their peril not to demand anything from persons having business, whether as a fee or under any pretence, either for giving them admittance to the council table or delivering petitions for them, or on any account. They must be content with their "ordinary entertainm^t" received in accordance with their patents, and nothing further.⁸ The history of those who kept the king's entrances later on and the general history of janitors and door-keepers in places high and low make it doubtful whether any complete cure was to be effected.

Adjoining the council chamber were other rooms used for privy council business, in which waited petitioners who were to have a hearing, or those whom the council had summoned to appear before it. In 1614 the king ordered the clerks of the council to see to it that when the

⁷ P. C. R., xxxiv, 29 October 1626; S. P. D., Charles I, cxxiv. 48.

⁸ P. C. R., xxviii, 17 March 1615-16.

council was sitting none should be allowed access to the council chamber save those who were called, and that they should depart at once when their business was done.⁹

In term time—11 to 31 January, 15 April to 8 May, 22 May to 12 June, and 2 to 25 November—the councillors were in ordinary course to hold regular meetings on Wednesday and Friday afternoons, if greater occasions of state did not hinder, to deal with business brought forward by suitors.¹⁰ The other meetings were either arranged beforehand, or called by special summons. The members were to be warned to meet by order either of the lord president or one of the secretaries of state. Summons to attend was sent out by a clerk of the council.¹¹ When such summons went forth each councillor was supposed to keep the hour of meeting, or, if he could not come, send his excuse by the hour appointed, that the other councillors need not wait.¹² It was understood, however, that except for the great officers of state and the privy councillors at court at the time, members were not expected to attend unless they received a personal summons to come to a meeting.¹³ When the councillors assembled, they were always to come through the presence chamber, not by the private way, unless they were upon “especial and secret Coñmittees.”¹⁴ When as many as three lords were in the council chamber, all the suitors, attendants, and others must avoid the room which was to be kept private, both for dignity and that the lords might confer alone to prepare business before they sat.¹⁵

If it was a day for ordinary business, as soon as the lords of the council were seated, all petitioners were to

⁹ *Ibid.*, xxvii, 21 October 1614.

¹⁰ *Ibid.*, xxxviii. 1B; liv. 1.

¹¹ *Ibid.*; S. P. D., James I, xevi, 9 March 1617-18.

¹² P. C. R., xxxviii. 1B; liv. 1.

¹³ S. P. D., Charles I, viii, 31 October 1625.

¹⁴ P. C. R., xl. 155; liv. 2.

¹⁵ *Ibid.*, xxxviii. 1B; liv. 1.

be admitted, each one to deliver his petition at the upper end of the table kneeling. The petitions thus presented, each petitioner was to withdraw at once without talking or troubling the board, and not come in afterward unless he was summoned.¹⁶ When this task had been done, or on days not appointed for ordinary business, the councillors took up other matters.

Caesar says the secretary of state was wont to acquaint the lords present with all occurrences except such as were by the king reserved for his privy consideration, these not being revealed except by his special direction. The secretary would stand at the upper end of the table, declaring what he had to say, to know their lordships' pleasure therein. Of late, however, business had been presented by the lord president. Yet matters of state or foreign business were still transmitted from the king to the council by the secretaries of state.¹⁷ About the same time Secretary Coke says that after petitions had been presented, when the chamber was voided and the lords left in privacy, they first considered business of state or of the king's service, propounded commonly by a secretary, sometimes by command of the king, sometimes *ex officio*, though often such matters were moved by such members as first knew of them or into the cognizance of whose office such affairs were most apt to come.¹⁸

According to the regulations of 1628 the lord president or one of the principal secretaries of state was to make known to the council the cause of the meeting. If either of the principal secretaries had anything to deliver from the king or any "intelligence" he was to do it standing at the upper end of the board, and when he had propounded the matter resume his own place. If his majesty sent anything to be considered or if something required

¹⁶ P. C. R., xxxviii. 1B; liv. 1.

¹⁷ S. P. D., Charles I, viii, 31 October 1625.

¹⁸ *Ibid.*, October 1625.

dispatch for the public, that was always to be preferred before any private matter.¹⁹ The lord president and the secretaries, under the king, were thus preparing agenda for the council, as they did long afterwards, and as the cabinet secretaries were doing for the cabinet in 1922. In 1627 the Venetian ambassador declares that having been warned by some "confidential friends" concerning intended business which he considered inimical to the interests of Venice, "I deemed it well to see the president of the council to have the despatch of this business delayed for a few days longer."²⁰

Some business doubtless was settled in the council without discussion, by mere routine procedure. It was of the very nature of such a body, however, that much involved expression of opinion and discussion. What was said in the council is not recorded in the registers, which are journals of procedure and records of business not records of debates. Many speeches and opinions are known, however, from outside sources, especially from rough notes taken by members who were present and afterwards preserved in various places, often in the miscellaneous papers of state.²¹

Difficult matters, said Secretary Coke, were decided by vote, the majority prevailing. "But this voteing, or opining falleth out but seldome in causes of great consequence, or in Arduis Regni. The usuall course is to take opinion of such as speake to it for a resolution, the rest being silent, and consequently consenting."²² He goes on to say that when a matter had been brought before the council it was to be debated, every man speaking as he

¹⁹ P. C. R., xxxviii. 1B; liv. 1.

²⁰ Letter of Contarini, 2 December 1627 (N. S.): Venetian Transcripts, xv. 665, 666.

²¹ For example, *Sir Thomas Rowe his Speech at the Councill Table, touching Brasse-Mony . . . July 1640*, in *Speeches and Passages of this Great and Happy Parliament*, etc. (London, 1641), pp. 351-8.

²² S. P. D., Charles I, viii, October 1625.

found cause. If the sense of the board was clear, resolution was accordingly taken forthwith, but if the matter was difficult, the lords would take further time for consideration, desiring a full board, and appointing a second, sometimes a third and a fourth meeting, until all had been said that was to be spoken. Then the matter was settled by vote, beginning at the lowest and ascending, the major part of the council deciding, though actually a vote had seldom to be taken.²³ This order of speaking, when a decision was being sought, had long been commended and tried, for it was believed that the lesser members would speak more freely if not under the restraint of contrary opinions already given by the greater. In 1615, when a council was considering how to pay the king's debts and how to make revenue and expenditure balance in the future, Sir Thomas Lake, one of the secretaries, spoke first, "the order being before taken that euey one should deliuer his opinion in ranke as he sate beginninge at the lower end according to the 'antient manner of consultation."²⁴ According to the regulations of 1628 whenever there was debate secrecy and freedom were to be maintained, every one to speak with respect to the other, no offence to be taken, as little discourse or repetition as possible. When a lord spoke at the board he must uncover if speaking to the council, but not if he was speaking to some one not a member.²⁵

When causes were heard—in which it may be said that to some extent the council was acting as a court, though not a court of law—the respective parties might speak, the lords by questions or otherwise to inform themselves concerning the truth or the facts, but not to reveal any opinions of their own until all the testimony or information had been received. When the cause had been fully

²³ S. P. D., Charles I, viii, October 1625.

²⁴ S. P. D., James I, lxxxi, 28 September 1615.

²⁵ P. C. R., xxxviii. 1B; liv. 1.

heard, the parties thereto must retire; the lords then would debate alone. If variety of opinions continued, the members should vote severally, if this were demanded, the votes to be taken by the lord president, or in his absence by one of the secretaries of state. In voting the lowest councillor to begin to speak. The matter to be decided by majority, since each councillor had equal voice before the board. Afterwards no publication to be made by any one of how particular voices and opinions had been given.²⁶

The debates, doubtless, were often interesting enough. "The counsell," says a certain one in 1616, "haue bine much busyed about the Cautionarie townes of his Ma^{ties}, the maior partie of the Counsell table doe inclyne to the giuinge uppe of the townes into the states handes, my Lrd of pembroke and S^r thomas Lake to the houldinge of them, yt seemes his Ma^{tie} is gon from hence wthout takeinge anie resolution."²⁷ Bacon and Raleigh had both of them written that a king never need take advice of his council unless he wished. In 1628 a manuscript among the state papers gives the speech of Charles I when he heard that parliament had granted him five subsidies, and also at length the speech of the duke of Buckingham on the same occasion.²⁸ In 1636 certain officials of the mint proposed a project for enhancing the value of the king's coins, declaring that such a thing had been done recently in France and in Spain. The affair was thoroughly discussed before the council. "It endured a long Debate, my Lord *Cottington* spake excellently well in it; in the End it was dashed, for it clearly appeared, that the King being the greatest Receiver, he would be the greatest Looser."²⁹

²⁶ *Ibid.*, xxxviii. 2; liv. 1.

²⁷ Sir Horace Vere to Sir Dudley Carleton, 6 April 1616: S. P. D., James I, lxxxvi.

²⁸ S. P. D., Charles I, c, 4 April 1628.

²⁹ Rev. G. Garrard to the lord deputy, 5 April 1636: *Strafford Letters*, ii. 2.

In 1642, according to notes by Secretary Windebank, Charles announced that on the next day he would go to the north. Thereupon the general situation and military plans were discussed by the king and his principal councillors.³⁰ That year, when the earl of Strafford was on trial, he justified himself by saying, among other things, that "Hee alwaies submitted to the major part of the councill."³¹

Secretary Coke says that in the handling of council business precedents were much respected. He declares that matters of state were understood to be those that concerned the weal of the kingdom, the safety, honor, dignity of the king, the queen, or the prince, peace, plenty, military discipline, reformation of disorders, upholding the government, executing the laws, or whatever else had relation to the being or well-being of the state. They were of infinite latitude and extent. The resolutions of the table were to be noted by the clerk of the council attendant, he setting down the orders agreed on, drawing up the minutes of letters to be sent out, making out warrants and other commandments of the board, always subject to the direction of a secretary. According to one of the regulations of 1630 it was understood that when the king was present in council, no clerk of the council should be present, unless he were called in—except at the hearing of a public cause.³²

Secretary Coke's memoranda go on to declare that after business of state had been dealt with, private causes were decided. First came those of the most public concern, such as regulation of trade, jurisdiction of cities, towns, corporations, companies, and the like, which had been offered to the board by way of petition. These matters were settled at the council either at once by debate and

³⁰ S. P. D., Charles I, ccclxiv, 16 August 1640. It may be that this meeting was of the cabinet and not of the privy council.

³¹ *Verney Papers* (Camden Society, xxi), p. 32.

³² P. C. R., xl. 154.

information given by learned counsel, or they were referred to some of the councillors—it may be observed that committees of the privy council were coming to be more and more used, or to the king's counsel at law, or to such others as might be designated, for further hearing or examination, and according to the report thus rendered the council gave its decision. Last of all came the private causes. They concerned petitions of favor and grace in respect of some service or consideration—to be recommended to some office or place, to obtain speedy justice at home or abroad, asking relief from extremity, differences between one party and another, concerning complaints or wrongs or oppression or hard measures, or disability to run the circle of the law. Such petitions were referred to be further heard or they were settled upon reading them in council, the clerk attendant entering in the register such orders as were taken, or according to the direction of the board preparing letters to be signed by the lords. In those causes which concerned the public or the king's service, a secretary of state gave orders for the letters, and they were afterwards signed by the lords.³³ Coke thought all orders and acts of the privy council, decreed at one sitting, should be read at the next meeting, to receive approbation and effect. To prevent delay, indeed, he thought that the privy council ought to have certain sittings twice a week. If that were too often, then there should at least be a committee of the council appointed to see that such work was done. This committee would take cognizance of suits brought to the council and present those proper for its notice.³⁴

During a session the councillors were to keep their places at all times. If a member rose, he was to stand uncovered. If any cause was heard that concerned a privy councillor present, he was to retire when the lords came

³³ S. P. D., Charles I, viii, October 1625.

³⁴ *Ibid.*

to consider that cause and return after decision had been given.³⁵

Just before the end of the meeting the lord president, or in his absence one of the secretaries, should state what business remained unfinished, and take the resolution of the lords as to what business should begin the next meeting, unless greater things meanwhile arose.³⁶ With respect to the orders and commandments agreed on in the council, and sent forth in the king's name or in that of the council, it was ordained in 1630 that from time to time special care should be taken to see that they were carried out.³⁷

In 1630 it was provided that if a member of a committee of the council was absent three times without giving an excuse which the committee would accept, he was to be dropped from the committee by the king's command, one of the secretaries to let the king know of such default.³⁸

Business at the council—though we know from later testimony that the king and some of the members often found it dull and tedious enough—was, certainly with respect to outsiders, conducted in much solemnity and form, always with consideration of the dignity of so great a body. The council table represents the king, says Secretary Coke in 1625; hence offenders kneel at the board.³⁹ On one occasion a nobleman's son was called in to answer for alleged insolent and contemptuous carriage in the presence of Lord Wentworth, a member of the privy council and president of the council of the north. The young man appeared with a cudgel in his hand. Required to kneel, he made some show of obeying, but did not. It was charged that he had come insolently into the room where the lord president of the north was

³⁵ P. C. R., xl. 155; liv. 2.

³⁶ *Ibid.*, xxxviii. 3; liv. 2.

³⁷ *Ibid.*, xl. 155.

³⁸ *Ibid.*, xl. 155; liv. 2.

³⁹ S. P. D., Charles I, viii, October 1625.

holding a meeting, showing him no reverence, keeping himself covered, and insolently staring at his lordship. He had not seen Lord Wentworth, he averred, since he was talking with Lord Fairfax at the time. Bidden to withdraw and then recalled, he was again commanded to kneel, which this time most grudgingly he did. The lord keeper admonished: "he did not so well vnderstand himselfe, or the dignity of the Councill as hee oughto." Because of his youth he was only required to sign a statement of regret. Refusing, he was at once committed to the prison of the Gatehouse.⁴⁰ In 1637 it was ordered by the council that when any alderman or citizen of London or when any serjeants or councillors of law appeared before the board, they were to wear their gowns, or be fined.⁴¹

Clarendon, writing about 1646, says the excellent rules of the council board came to be less observed, and that debates, which ought to have been private, and in the absence of the party concerned, were allowed to be in public. Judgments thereupon should have been pronounced by one member of the council, without interposition of others, and without any reply allowed from the party concerned; but questions had been asked, passions discovered, opinions openly and promiscuously given. Hence, all the advice, directions, reprehensions, and censures of the council fell into less awe and esteem; so that besides the delay and interruption in despatch, often the justice and prudence of what was said in council was outweighed by the passion and infirmity of members. Suitors and culprits returned with such exceptions and arguments as prejudiced them against whatever proceeded from the council.⁴²

Privy councillors were required to take the oaths of allegiance and supremacy, and also the oath of a privy

⁴⁰ P. C. R., xl, 6 April 1631.

⁴¹ *Ibid.*, xlvii, 8, 14 March 1636-7.

⁴² *History of the Rebellion*, i. 90, 91.

councillor. "This day Sr Peter Wych kt Comptroller of his Ma^{ties} Houshold was sworne of his Ma^{ties} most honorable Privy Counsell, by his Ma^{ties} Command sitting in Counsell at the Board, and tooke his place and Signed Letters."⁴³ When sworn of the council a new member took oath to be a faithful servant of the king. If he knew of anything harmful to the king he would withstand it and reveal it to the king or the council. In the council he would express his sincere opinion on all matters. He would keep secret all the business of the council. In all respects would he be the faithful servant and defender of the king. All this he swore before God and on the book.⁴⁴

Of the engagements made in this oath the pledge of secrecy might have seemed the easiest to enforce. At times, undoubtedly, particular efforts were made for secrecy and even against the spreading of rumors outside. In 1612 Chamberlain says that the privy council was examining divers persons and had committed some of them close prisoners for having alleged differences at the council table between the archbishop of Canterbury and the lord privy seal, though the world marvelled such a matter should be so taken up. Presently six were fined in Star Chamber.⁴⁵ Later on he writes that two persons had by the Star Chamber been sentenced to fine, pillory, loss of ears, and whipping through the streets, for reporting that some of the privy council had implored the king to grant toleration in religion.⁴⁶ Bacon once declared that the first of the inconveniences in using counsel, was "the revealing of affayres whereby they become lesse secrett." Hence, he says, in some other countries, remedy

⁴³ P. C. R., liii, 3 August 1641.

⁴⁴ *Ibid.*, xxvii, fo. ii; liv. 3, 4; S. P. D., James I, exc. 42.

⁴⁵ Chamberlain to Carleton, S. P. D., James I, lxxi, 26 November, 17 December 1612.

⁴⁶ *Ibid.*, lxxii, 13 May 1613.

had been sought in having a smaller body, a cabinet council.⁴⁷ Before this time and afterward kings were wont to restrict important matters to the knowledge of a few of their most confidential advisers, and this was indeed one of the principal reasons why a cabinet council developed in England. "I doe forbear," wrote the secretary of state in 1617, "to communicat Sir H. Wooton's letters to the body of the counsayl vpon thease reasons that if they showld be divullged yt would make a great noice."⁴⁸ In 1623 a certain one reported, with respect to the journey of the prince and Buckingham to Spain: "I may safely and truly affirme that not one of the LL^{ds} of the Counsell knew of it before it was too late for them to giue their counsell (:my L^d of Buckingham excepted:) and not one of them that did not professe a great deale of apprehension when they had the first news of it."⁴⁹ At times the council sat close, with clerks excluded and no record taken. Sometimes the register is bare of account when it is certain from list of members present that a meeting of the council was held.⁵⁰

Doubtless there was always difficulty in keeping government resolutions secret. Froissart recounts that after a great council held at Eltham in 1395, he was able to obtain detailed information about an important decision just made, as he walked with one of the councillors, Sir Richard Stury, through the arbors and walks about the hostel.⁵¹ It is evident that during the earlier part of the

⁴⁷ Harleian MS. 5106, fo. 21.

⁴⁸ Sir Ralph Winwood to the earl of Buckingham, 5 June 1617: *H. M. C.*, 10th report, appendix, i. 100.

⁴⁹ Dudley Carleton to Sir Dudley Carleton, S. P. D., James I, cxxxviii, 27 February 1622-3. ⁵⁰ P. C. R., xxvii, 9, 13 November 1614.

⁵¹ "Et après tout ce et en gambiant luy et moy ens ès allées à l'issue de la chambre du Roy à Eltem, je luy demanday de ce conseil, voire se dire le me pouvoit, comment il estoit conclud. Il pensa sus ma parole et demande ung petit, et puis me respondy et dist: 'oyl, ce ne sont pas choses qui facent à céler: car prochainement on les verra et orra publier

seventeenth century council business and debates in council constantly leaked out, and were as well known to foreign ambassadors and others at this time as afterwards privy council affairs were known to Pepys and to emissaries of Louis XIV. In 1614 it was said that the Spanish ambassador, who had meddled much in affairs, had bribed the servants of other ambassadors, servants of the king and servants of the lords of the privy council.⁵² In 1623 the Venetian ambassador wrote to his government, as of an unusual occurrence, that he had not been able to learn what was transacted at a close council recently held.⁵³ A few days after, however, the French ambassador believed that he knew what the councillors were doing and saying: although great penalties had been pronounced and high oaths of secrecy imposed, he had penetrated what was being done.⁵⁴ The same ambassador,

partout' . . . Je me suis delité à vous monstrier au long le procès de ces matières dessus dites et proposées pour vous mieulx infourmer de la vérité, et pour tant que je acteur de ces histoires y estoie présent. Et toutes les parties qui sont icy-dessus contenues, celluy vaillant chevallier ancien messire Richard Stury les me dist et racompta mot à mot en gambiant les galleries de l'ostel à Eltem où il faisoit moult bel et moult plaisant et umbru, car icelles galleries pour lors estoient toutes couvertes de vignes." Froissart, *Chroniques* (ed. de Lettenhove), xv. 157, 158, 166, 167.

⁵² Archbishop of Canterbury to Sir Dudley Carleton, letter partly in cipher: S. P. D., James I, lxxvi, 16 March 1613-14.

⁵³ "A Tibols dove S. Mta migliorata, era venuta, si tenne due volte il consiglio ristretto, con l'intervenuto del Re et del Principe, quello che si trattasse resta pur guardato, con straordinaria segretezza." Letter of Alvise Vallaresso, 24 November 1623 (N. S.): Venetian Transcripts, xii. 6.

⁵⁴ "Pour ce qui regard l'effect des Conseilz longs et continus qui se tiennent en ceste ville, toujours en présence du Prince de Galles et quelque fois devant le Roy, son père, encores qu'il y ayt de grandes peynes à qui les descouvrira et de grands sermens tendans à les céler, J'ay néanmoins pénétré, ce qui fait que de douze que ils sont, cinq aident à la lascheté de leur Maistre et au party d'Espagne . . . Les autres qui tiennent le party du Prince de Galles et soubtiennent l'honneur d'Angleterre sont" . . . Letter of M. de Tillières, 21 December 1623 (N. S.): Transcripts from Paris, lvii. 271.

in a memoir written that year, reported that he had gained one of the clerks of the council who would give him a copy of all important council doings.⁵⁵ Contarini, the Venetian, reported, with unconscious irony it may be, that recent sittings of the privy council had been held with extraordinary secrecy, especially a council of the night before, at which it was finally decided to summon the parliament.⁵⁶ Certain other things "were communicated to me with the greatest secrecy by a member of the council, although they were all enjoined to keep the strictest silence about it."⁵⁷ In 1639, by the king's command, Secretary Coke sent to the privy council the questions propounded to Lords Say and Brooke, with their answers, asking that they be read at the board and registered in the book of the council. The councillors replied it was not conceived to be for the king's service to have them registered; the originals had been delivered to Secretary Windebank to be safely and secretly preserved; they might be registered later if the king commanded. A week later Coke replied that the king was content that no entry be made.⁵⁸ "Sure he could never be a good Privy Counsellor; for he tells all that he ever knew or did," is the comment of a contemporary on Windebank after he had fled to Paris in 1641.⁵⁹

Writing and routine were carried on for the council by secretaries of the council or clerks. As was the case with privy councillors, clerks were sworn, there being a particular council oath for them.⁶⁰ In 1613 there were three

⁵⁵ "Nous avons trouvé moyen de gagner un des Secrétaires du Conseil qui me donnera copie de tout ce qui s'y passera d'important: je vous en envoie un échantillon de sa bonne volonté." Transcripts from Paris, lvii. 286.

⁵⁶ Letter of Alvise Contarini, 10 February 1628 (N. S.): Venetian Transcripts, xv. 951.

⁵⁷ *Ibid.*, fo. 986.

⁵⁸ S. P. D., Charles I, ccccx, 5, 11 May 1639.

⁵⁹ William Aylesbury to Edward Hyde, 8-18 January 1640-1: *Clarendon State Papers*, ii. 134.

⁶⁰ P. C. R., xxvii, fo. ii.

clerks of the council.⁶¹ In addition that year two others were sworn "Clerkes of the Councell extraordinary."⁶² In 1617 there were four clerks of the council.⁶³ In 1625 Caesar says that the council was attended by three or more clerks to await orders, and to write such letters or answers as their lordships might give to petitions delivered at the table or sent thither by the king, and whatever other things their lordships might command them to write.⁶⁴ A clerk of the privy council attendant was to be present at all meetings of the council, says Secretary Coke, waiting upon the board, unless the lords wished to do business privately. Often the lords employed a clerk upon a message or to draw up some despatch, and while he was absent had occasion for the services of another clerk to attend on the board for reading bills, letters, and other things. Hence it was thought necessary that two clerks should attend each meeting. Clerks were to serve a month at a time. One about to serve should attend a week before to learn the particular routine and business of the time. One about to leave should continue a week beyond his month to instruct his successor.⁶⁵ By the regulations of 1628 it was ordered that no more than two clerks should be in the council chamber at the same time, whereof one was to be the clerk whose month it was, the other the clerk of the month preceding, to wait with him for the first week at least; and the clerk that was to wait the following month should give his attendance for at least a week before his waiting month began, that he might acquaint himself with current council business against the coming of his own turn to wait. Clerks extraordinary of the council were not to come in unless they were specially called.⁶⁶ When the king was in council

⁶¹ P. C. R., xxvii, fo. i.

⁶² *Ibid.*, 22 July 1613.

⁶³ *Ibid.*, xxix. 1.

⁶⁴ S. P. D., Charles I, viii, 31 October 1625.

⁶⁵ *Ibid.*, October 1625.

⁶⁶ P. C. R., xxxviii. 3; liv. 2.

no clerk might be present, unless called, except at the hearing of a public cause.⁶⁷

In 1614 it had been ordered that all suitors should deliver their petitions at the board, as soon as the lords were seated in council. Then the clerk of the council attendant was to take them at once. Afterwards he must attend the secretary with them, at the secretary's next convenience. The secretary having perused them might, according to the nature of each petition, direct the clerk what to do, that it might be offered to the council to be signed, or, if a matter of importance, that he himself might acquaint the board with it at their next sitting.⁶⁸ The regulations of 1628 provided that upon the petitions of suitors the clerk of the council then serving should note when the petitions were exhibited, so that the lords might see in what order suitors stood: in accordance therewith and with respect to other considerations should petitions be dispatched. Respect was to be had to poor petitioners, they not to be wearied out with long attendance.⁶⁹

In 1630 it was ordained that when an order was agreed on, the clerk should write it out and read it to the board, so that any mistake might be amended. Afterwards, when he had drawn up the order at large, in any case of importance before entering the order in the council book and before delivering it to the person concerned, he was to show the draft to the lord president, or in his absence to a secretary of state, who was to allow it and sign it.⁷⁰ Next year it was provided that a clerk was to enter all orders within a week, all letters within two weeks of the end of his period of attendance. Since orders and letters might not be at once fetched away by those concerned, it was ruled that copies might be given, and when

⁶⁷ *Ibid.*, xl. 154.

⁶⁸ *Ibid.*, xxxvii. 2; liv. 1.

⁶⁹ *Ibid.*, xxvii, 21 October 1614.

⁷⁰ *Ibid.*, xl. 154; liv. 2.

given should be made out and signed by the clerk in whose month they passed, and not otherwise.⁷¹ In 1638 the council commanded that thenceforth no order of importance concerning the king's service, and no order which crossed, revoked, or annihilated any former order or direction of the board, should be issued by any of the clerks of the council until it had been first read and approved at the board.⁷²

In general during this period, the matters dealt with in privy council were often thought of as "causes"—a term which would seem primarily to denote matters dealt with by the council acting as a court, but apparently used also to refer to council business of any kind. This is evident in the usual appellation of the council record as a register of council causes. The results of the work of the council—the decisions, the determinations, the communications, the orders, the ordinances or general regulations—were conceived as of *acta*, things done, from which came the appellation more frequently used to denote council work as time went on and the title generally prefixed to modern printed collections of council records. In 1453, at a meeting of the council, the lords commanded a decision "to be enacted amonge th' actes of the Counsaill."⁷³ In 1533 a paper of minutes of orders by the council is entitled "Acta in Consilio Domini Regis."⁷⁴

Decisions, orders, letters, communications went variously out from the council. They were supposed to be signed by some or all of the councillors present at the meeting where they were despatched. They might or might not be sealed.

It would appear that there was at this time no set or well-defined regulation about signing, but it seems to have been desired that the papers should be signed by

⁷¹ P. C. R., xli, 31 October 1631.

⁷² *Ibid.*, xlix, 27 May 1638.

⁷³ Patent Roll, 32 Henry VI, membrane 20: *Paston Letters* (ed. Gairdner), i. 337.

⁷⁴ *S. P., Henry VIII*, I. ii. 414, 415.

the members responsible for them. Many council papers are subscribed with the signatures of a considerable number of the council. At times, in the absence of other records, some light on attendance at privy council can be had from councillors' names signed under particular dates. Apparently the signing and reading of such papers was an onerous duty, and there is reason to think it occupied much of the time of some councillors between meetings of the council. In 1623 rumor had it the earl of Arundel would be sent to the Tower: "he signeth līes done at the Board if they be brought to him but cometh not so frequent to Councell as he used." ⁷⁵

Council papers went out, it would seem, under one seal or another, and also without seal. Some acts of council, such as proclamations, were issued under the great seal; others under privy seal or signet. In addition, there was a seal of the privy council, as at present. There is considerable obscurity about the council seal. The minute regulations about council procedure have little or nothing about it. The records of the council themselves give scant information since they did not, of course, come under the seal. Accordingly, besides various allusions, reliance must be put much less upon investigation at the center of council activity in the privy council records and state papers than among the actual orders and communications sent out to the periphery of the council's power, some of them to be found now in colonial archives, in scattered libraries, and in private collections of papers.

In 1554 it was ordered in council that "all matters of Estate" passing in the king and the queen's names should be signed by them both, and that a "stampe" should be made in both their names to be used "for the

⁷⁵ Thomas Locke to Sir Dudley Carleton, 26 December 1623: S. P. D., James I, clvi.

stamping of suche matiers as shulde be requisite.”⁷⁶ A year later it was resolved in the council their majesties should be moved that “a Seale shulde be made with thiese letters P. and M., with a Crowne over the same, with which Seale all lettres passing this Boorde shuld be sealed, and the same to remayne in the custodie of theldest Clerc of the Counsaill.”⁷⁷ In 1558 letters from the council to three noblemen were ordered to be packeted and sealed with “The Counsell Seale.”⁷⁸ In 1573 the council ordered a warrant to the treasurer of the chamber to pay the clerks of the council the cost of two seals for their office.⁷⁹ A year later a letter from the privy council of England to the regent of Scotland was signed by six of the councillors and sealed with the seal of the council.⁸⁰ In 1578 a bag of evidence about Cornish papists was ordered sent out “sealed with the Counsell Seale.”⁸¹ In 1596 a certain one wrote from the Fleet to the lord keeper offering to appear and give information about a plot to counterfeit the council seal.⁸² In 1614 the council issued a warrant for £4. 12. 0 to the graver of the king’s seals to make a brass council seal for Francis Cottington, one of the clerks of the council.⁸³

Council papers show variety of usage. In 1600 a communication from the council to a certain one who was commanded to provide military service had eight signatures and the signet.⁸⁴ A year later a communication to the commissioners in Derbyshire for assessment of the first subsidy and fifteenth granted by parliament had the

⁷⁶ *A. P. C.*, v. 53. Mr. R. E. Moody, one of my graduate students at Yale University, directed my notice to the data contained in this paragraph.

⁷⁷ *Ibid.*, p. 130.

⁷⁸ *Ibid.*, vi. 261.

⁷⁹ *A. P. C.*, viii. 101.

⁸⁰ *Register of the Privy Council of Scotland*, I. xiv. 332.

⁸¹ *A. P. C.*, x. 261.

⁸² *Calendar S. P. Dom., 1595-1597*, p. 185.

⁸³ *A. P. C.*, xxxiii. 663.

⁸⁴ *Rutland MSS., H. M. C.*, 12th report, appendix, iv. 361.

signatures of twelve councillors merely.⁸⁵ In 1602 an order bore ten signatures and signet.⁸⁶ A year later a council letter had ten signatures.⁸⁷ In 1607 a communication to the earl of Shrewsbury, lord lieutenant of Derbyshire, ordering him to suppress unlawful assemblies, had thirteen signatures and the signet.⁸⁸ In 1618 a communication to the lord lieutenant of Lincolnshire, ordering him to hold a view of the forces, went with eighteen signatures.⁸⁹ In 1631 a license of the council to a convicted recusant permitting him to travel five miles from his dwelling house had six signatures and seal.⁹⁰

Various records of the privy council are to be found in numerous privy council papers preserved in the privy council office and many manuscripts scattered through papers of the secretaries of state in the various collections of state papers.⁹¹ The formal record is in the series of volumes of the register of the privy council. According to Sir Julius Caesar, writing in 1625, it had always been the custom of the privy council that a "greate faire paperbooke" should be provided, in which all the orders of the council should be written, along with copies of council letters and whatsoever else the lords might ordain. This book was to be kept by one called the keeper of the council chest, preserving the records thus for the lords of the council, whenever they might wish to have them. In the register there is rarely if ever account of debate, but merely formal record of routine business, mostly entries of minutes of letters that were written or resolutions or orders or notes of warrants or passes issued or petitions received and the action taken thereupon. All-important and generally definitive as this

⁸⁵ *Ibid.*, p. 382.

⁸⁷ *Ibid.*, p. 387.

⁸⁹ *Ibid.*, p. 454.

⁹⁰ *Le Fleming MSS., H. M. C.*, 12th report, appendix, vii. 16.

⁹¹ For example, minutes of privy council business with the names of the members present are scattered about in S. P. D., James I, cxxvii.

⁸⁶ *Ibid.*, p. 383.

⁸⁸ *Ibid.*, p. 405.

record is as a rule it is lifeless and bare, and has constantly to be supplemented by the richer but more fragmentary and scattered papers of the clerks of the council, the records or notes left by officials or members of the council, and above all by the numerous papers of the secretaries of state, usually so active and important in so many of the affairs of the council.

The folio volumes of the so-called register are given different titles by those who compiled them. Frequently a volume is denoted a "Register of Counsell Causes."⁹² Altogether during the earlier period this is the predominant title. The volumes are no mere record of causes before the council as a court, however. This is recognized in other denominations, as when the entry of appearance of one who had by the council been summoned to appear is made in "this Register of Councill," though a similar entry a little later in the same volume is described as being entered in "this Register of Councill Causes."⁹³ A little later the appearance of two butchers who had been summoned "is heere entred in this Register Booke of Councill."⁹⁴ What is nowadays listed as volume thirty-nine of the register was called by a contemporary "The 11th Councill Booke."⁹⁵ In 1624 a report of the commissioners for trade was read at the board and approved, "And commandemt giuen to enter it in the Register of Counsell causes, & to remaine as an Act of Counsell."⁹⁶

The series of volumes of the register is complete for the seventeenth and eighteenth centuries save for one void. In 1619 old Whitehall Palace was destroyed by fire, and many of the records of the government perished. There is "A list of the Councill Bookes that were Extant the .12. of January .1618. and how many of them perished

⁹² P. C. R., xxviii, 24 March 1615-16.

⁹³ *Ibid.*, xxvii, 1 October 1614, 3 January 1614-15.

⁹⁴ *Ibid.*, xxviii, 2 March 1615-16.

⁹⁵ *Ibid.*, xxxix. 839.

⁹⁶ *Ibid.*, xxxii, 3 July 1624.

the same day when the Banqueting howse at Whitehall was burnt, the said Bookes being kept in two Chambers there." ⁹⁷ According to this list, practically all of the council records from 1544 to 1613 were destroyed. Doubtless the clerk of the council who made this memorandum did not know what he had when he drew up the list or exactly what had been destroyed in the fire. Some years later Sir Julius Caesar wrote that at the end of Elizabeth's reign there were no longer any council books more ancient than 36 Henry VIII, and he went on to say that many books also had perished in the conflagration of the time of James I. ⁹⁸

Some efforts were presently made to recover what seemed to be lost. In 1636 the privy council dispatched a letter to the countess dowager of Exeter, saying it was understood that her ladyship had divers copies of privy council records lost in the Whitehall fire, concerning military discipline and other public affairs. She was asked to deliver them to the clerk of the council. ⁹⁹ It is well known that government records in England were not preserved as carefully then as later, officials looking upon many of them as their own property and taking them off when their tenure of office had ceased, while others carelessly took what they had no right to possess. In 1630 a letter of the council was sent to the earl of Marlborough, saying that his father—he had died more than a year before this—had borrowed of the keeper of the council records one of the council books, and that this had never been restored. The council prayed and required the earl to cause it to be looked for and sent to the board as quickly as possible, because it was needed. ¹⁰⁰ In 1636 the council asked the earl of Portland to deliver up all surveys, certificates, and manuscripts relating to the king's service, that had been in the possession of

⁹⁷ *Ibid.*, xxx. 86.

⁹⁸ S. P. D., Charles I, viii, 31 October 1625.

⁹⁹ P. C. R., xlvi, 19 June 1636.

¹⁰⁰ *Ibid.*, xxxix, 26 May 1630.

his father, the late lord treasurer.¹⁰¹ In 1639 the clerk of the council wrote to a certain Mrs. Careis. The king understood that she had some manuscripts of her father, formerly a clerk of the council, especially one great book containing letters of the privy council, the originals whereof had been burned in the Whitehall fire. The king desired her to send them to a clerk or to one of the secretaries of state.¹⁰²

In 1840 when another survey was made some of the missing register volumes had already been noted as in the *Record Office*, and at present, with two or three serious gaps there is a complete series of the volumes of the council from 1540 to 1602. What has never been filled, however, is the entire blank in the record from 2 January 1601-2 to 1 May 1613; and it would seem now hopeless to discover any register volumes of the council record for this period.

Record of business transacted in council was made by the clerk in attendance.¹⁰³ The regulations of the privy council in 1630 provided that when any order of the council was agreed on, the clerk of the council attending should write it down, and presently read openly how he had conceived the sense of the board, so that any mistake might be corrected at once. After the clerk had drawn up the order at large, if it concerned any cause of importance, he was to show the draft to the lord president, or, in his absence, to one of the secretaries of state, to be allowed and signed under one of their hands, before he entered the same in the council book or delivered it to whom it might concern.¹⁰⁴

¹⁰¹ P. C. R., xlvi, 19 June 1636.

¹⁰² Edward Nicholas's Letterbook: S. P. D., James I, ccxv. 177.

¹⁰³ For a meeting at Westminster in 1537, in the handwriting of Paget, clerk of the council, there is a paper of "The matiers treated in Counsaill, at Westminster, the 3^{de} daye of April, anno 28": *S. P., Henry VIII*, I. ii. 545.

¹⁰⁴ P. C. R., xl. 154.

The structure of the council register is to some extent conditioned by the succession of clerks. Since each clerk attended the board for a month, the registers are often divided into months by beginning a new month on a fresh sheet, sometimes leaving a side or more blank. In 1632 it was ordered that "the Counsell Booke of everie moneth" should be by the clerk attending for that month. The title of every order must be entered in the margin—generally not done in earlier years—and an index of the whole book entered at the end. It may be said that the indexes that were afterward made were surprisingly good. It was also prescribed that each clerk at the end of his term of waiting should enter under the title of every order what return was made or what had been done, or what still remained unfulfilled or unanswered. At the end of his waiting he was to bring "the Booke" to the board that it might appear whether these regulations had been complied with. And it was further ordered that the clerks should divide among them the former books of the council, which had not been thus perfected, and with them do likewise. Fit compensation to be given for this.¹⁰⁵ The student now notices that the volumes of council records before this year often have marginal notes in a hand different from that of the text.

It is evident that the register volumes of the privy council are the result of many primary and original records, and are in that sense not original sources themselves. They were fair, perhaps elaborated, and often amended copies of such papers as the clerks of the privy council took down in the midst of the council business and of such notes as the secretaries of state and other officials who were present cared to make. Many of these papers are extant, and some of them possess much interest. In March 1635 there are numerous rough notes concerning meetings of the privy council, lists of members

¹⁰⁵ *Ibid.*, xli, 13 April 1632.

present at meetings, and of matters transacted in council. They are by Edward Nicholas, clerk of the council, and many of them are contained in his "Note booke" for the month. There are more like them by Nicholas for September 1636.¹⁰⁶ For May 1637 there is a so-called "Session Book" giving details about fourteen meetings of the council.¹⁰⁷ From notes and other materials of this sort the clerks apparently wrote out their extended record. In 1640 there are notes by Secretary Windebank of proceedings in the privy council, with a list of those present at the top.¹⁰⁸ These notes and others similar were doubtless made for personal use and private convenience, like the numerous cabinet "minutes" to be found a century later. Sometimes, at least, the clerk's record was copied into the register by his own secretary.¹⁰⁹

It is certain that the record in the register as we have it now is not in all cases what the clerk wrote out when he compiled his extended draft. In volume 43 of the register of the council, folio sides 125-8, or according to an earlier numeration, leaves 61 and 62 are missing. On side 124 is the note: "The two leaues ensewing, conteyning a letter to his M^{tie}, concerning the proceedings wth the Bishop of Chester, were by his M^{ties} co^mmand, signified by M^r Secretary Windebank, cut out of the booke."¹¹⁰ But there is no evidence whatever that any leaves ever were cut out of this volume in the place in question. Apparently the clerk wrote out the record in full from his notes and papers. From the record so written an excision was ordered and noted. Afterwards he copied this version including the then superfluous note in a great volume as the permanent record. In 1856 among the papers relating

¹⁰⁶ S. P. D., Charles I, cccxv. 3, 4; cccxxxii. 61, 62.

¹⁰⁷ *Ibid.*, cclvii. 159.

¹⁰⁸ *Ibid.*, cccclxvii, 11 March 1639-40.

¹⁰⁹ P. C. R., xxxviii, 11 March 1627-8; xxxix, fo. at the beginning: see E. R. Adair, "The Privy Council Registers," *E. H. R.*, xxx. 703 (October, 1915).

¹¹⁰ P. C. R., xliii. 124.

to trade and plantations were found four leaves endorsed "Virginia Tobacco", but containing also other matters. The form of the record embodied in them was just like what appears in the register of the council, but the sheets of paper were of a different size. They were evidently the preliminary draft of the clerk of the council, and they are now inserted at the proper place in the register of the council.¹¹¹

In general the method followed in keeping the record is clear, but from time to time some reason for doubt may arise. In the case of close councils where great secrecy was wished for, there is no other record of the meeting than the list of those who were present, and it may be that in other cases there is no record in the register at all. On the other hand a note in the register for 1633 says that "This day his Ma^{ty} sitting in Counsell" expressed his pleasure in a certain matter; but no list of those present at such a meeting is prefixed, and ordinarily it would not have been apparent that any privy council business was transacted that day in a meeting of the council.¹¹² On another occasion a report of the commissioners of trade was read at the board and afterwards approved by the king in council at Wanstead. The lord president commanded that it be entered in the register of the council causes and remain an act of the council. Actually it follows an entry under July 10, but a marginal note declares: "This shoulde haue beene entred as the thirde, but there was no sessions & therefore necessity constrained y^t omittance."¹¹³ This suggests that when the council was divided—on such occasions as when some of the councillors were away with the king while others remained at Whitehall, there may not be record in the register of all the business done by the councillors not sitting at Whitehall.

¹¹¹ *Ibid.*, lii. 680a-680h.

¹¹² *Ibid.*, xlii. 25 March 1633.

¹¹³ *Ibid.*, xxxii, 10 July 1624.