

To discuss this question intelligently we must go back, as Mr. McCarthy and Dr. Weldon did, to a remote period in English constitutional history in order to find out the original source from which alone such a court or jurisdiction could have arisen. The history of the Privy Council is an interesting one. It has existed under various forms from the time of the Norman Conquest. Out of it arose our courts of law and equity, which became entirely distinct both from the political and legislative functions of government. In the reign of Henry VIII., the Privy Council began to emerge out of the General Council, which by degrees lost alike its power and importance. From being advisers of the Crown, the council became its servants, and the mere executors of its will. Courts were formed out of it more fully to establish the royal prerogative, and finally its whole judicial power was transferred to a new tribunal—the well-known court of the Star Chamber, which, in addition to any regular judicial functions, exercised all the powers which previously belonged to the General Council. In the words of Mr. Dicey: "This august tribunal was merely the council under another name; and the court whose overgrown power the patriots of 1640 cast to the ground was the same body whose early encroachments had alarmed the parliamentary leaders under Edward III. and Richard II." He adds that "The process by which the judicial authority of the council passed into the form of the Court of Star Chamber admits of some dispute and is involved in no little obscurity," and he goes on to cite various authorities which have differed on this point. But on the main point all authorities concur.

With the abolition of the Star Chamber by the act of the Long Parliament, 16 Car. I., cap. 10. fell the whole system of government by councils, and government by Parliament began. Though the Star Chamber, as such, was abolished, the entire jurisdiction of the Privy Council was not removed till the Act 3 & 4, William IV., when its appellate jurisdiction was conferred upon what is now called the Judicial Committee of the Privy Council, the highest court of appeal for the trial of all colonial causes.

Thus it appears that from the time of Henry VIII. the purely judicial functions of the Privy Council, as a whole, have ceased to exist. Whatever powers it formerly possessed were merged in the general jurisdiction of the Star Chamber, and